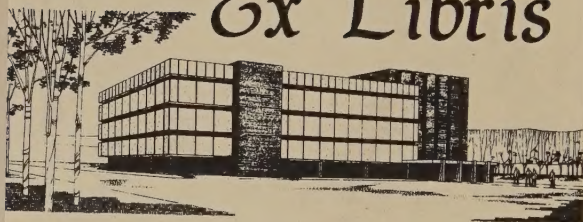


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REPORT
OF THE
DEBATES AND PROCEEDINGS
OF THE
CONVENTION
FOR THE
REVISION OF THE CONSTITUTION
OF
THE STATE OF INDIANA.

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H. FOWLER, OFFICIAL REPORTER TO THE CONVENTION.
A. H. BROWN, PRINTER TO THE CONVENTION.

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THE CONVENTION.

REPORTED FOR THE CONVENTION

H. FOWLER, CHIEF REPORTER.

MONDAY, Oct. 7, 1850.

The Convention assembled in the Hall of the House of Representatives, at 10 o'clock, A. M., and was called to order by the Hon. CHARLES H. TEST, Secretary of State, in pursuance of an act of the last General Assembly, to provide for the call of a Convention of the People of the State of Indiana, to revise, amend, or alter, the Constitution of said State.

The names of the members of the Convention being called over by the Hon. CHARLES H. TEST, Secretary of State, by Senatorial Districts and Counties, the following gentlemen appeared, and the oath to support the Constitution of the United States, and, to the best of their ability respectively, to perform the duties of their office as Delegates to this Convention, was administered to them by the Hon. ISAAC BLACKFORD, a Judge of the Supreme Court of the State:

From the district of Allen, Adams and Wells—JAMES W. BORDEN.

Bartholomew and Jennings—HIRAM PRAETHER.

Benton, Jasper, Pulaski and White—JONATHAN HAREBOLT.

Blackford, Jay and Randolph—NATHAN B. HAWKINS.

Blackford and Jay—DIXON MILLIGAN.

Carroll and Clinton—HIRAM ALLEN.

Cass, Howard and Pulaski—HORACE P. BIDDLE.

Cass and Howard—GEORGE A. GORDEN.

Clinton and Tipton—CORNELIUS J. MILLER and STEPHEN SIMS.

DeKalb, Noble and Steuben—ROBERT WORK.

DeKalb and Steuben—EDWARD R. MAY.

Dubois, Gibson and Pike—SMITH MILLER.

Elkhart and Lagrange—JOSEPH H. MATHER.

Fayette and Union—DANIEL TREMBLY.

Grant and Delaware—WALTER MARCH.

Hancock and Madison—THOMAS. D. WALPOLE.

Huntington, Kosciusko and Whitley—ELIAS MURRAY.

Huntington and Whitley—JACOB WONDERLICH.

Jackson and Scott—JOHN F. CARR.

Lake, Laporte and Porter—SAMUEL I. ANTHONY.

Lake and Porter—DANIEL CRUMBACKER.

Marshall, Fulton and St. Joseph—HUGH MILLER.

Marshall, Fulton and Stark—AMZI L. WHEELER.

Miami and Wabash—HARRISON KENDALL.

Monroe and Brown—DANIEL READ.

Ohio and Switzerland—ABEL C. PEPPER and DANIEL KELSO.

Orange and Crawford—WILLIAM F. SHEEROD.

Owen and Green—DAVID M. DOBSON.

Parke and Vermillion—OLIVER P. DAVIS.

Perry, Spencer and Warrick—JOHN P. DUNN.

Posey and Vanderburg—JAMES LOCKHART.

Sullivan, Clay and Vigo—WILLIAM R. HADDON.

Warren, Benton, Jasper and White—ROBT. C. KENDALL.

Wells and Adams—ERASTUS K. BASCOM.

County of Allen—ALLEN HAMILTON.

Bartholomew—ZACHARIAH TANNEHILL.

Boone—MARK A. DUZAN and WILLIAM MCLEAN.

Brown—SHADRACH CHANDLER.

Carroll—ROBERT H. MILROY.

Clark—JAMES G. READ, THOMAS W. GIBSON and JACOB FISHER.

Clay—FRANCIS B. YOCUM.

Crawford—SAMUEL PEPPER.

Daviess—ELIAS S. TERRY.

Dearborn—WILLIAM S. HOLMAN, JOHNSON

WATTS and JOHN D. JOHNSON.

Decatur—JAMES B. FOLEY and JOSEPH ROBINSON.

Dubois—BENJAMIN R. EDMONSTON.

Delaware—DAVID KILGORE.

Elkhart—WALTER E. BEACH.

Fayette—ROSS SMILEY and WILLIAM W.

THOMAS.

Floyd—PHINEAS M. KENT and HENRY P.

THORNTON.

Fountain—JOSEPH COATS and JOSEPH RISTINE.

Franklin—GEORGE BERRY, SPENCER WILEY and GEORGE G. SHOUP.

Gibson—SAMUEL HALL.

Grant—BENONI C. HOGIN.

Green—THOMAS BUTLER.

Hamilton—ALBERT COLE and HAYMOND W.

CLARK.

Hancock—GEORGE TAGUE.

Harrison—JOHN ZENOR and JOHN MATHES.

Hendricks—HENRY G. TODD and CHRISTIAN C. NAVE.

Henry—ISAAC KINDLEY, DANIEL MOWREER and GEORGE H. BALLINGALL.

Jackson—SAMUEL P. MOONEY.

Jefferson—MILTON GREGG, MICHAEL G. BRIGHT and WILLIAM M. DUNN.

Jennings—JOHN L. SPANN.

Johnson—FRANKLIN HARDIN.

Knox—JAMES DICK and WILLIS W. HITT.

Kosciusko—JAMES GARVIN.

Lagrange—JOHN B. HOWE.

Laporte—JOHN B. NILES.

Lawrence—GEORGE W. CARR and MELCHERT HELMER.

Madison—JOHN DAVIS.

Marion—ALEXANDER F. MORRISON, DAVID WALLACE, DOUGLASS MAGUIRE and JACOB P. CHAPMAN.

Martin—THOMAS GOOTEE.

Miami—JOHN A. GRAHAM.

Monroe—WILLIAM C. FOSTER, Sr.

Montgomery—HENRY T. SNOOK, DAVID A. SHANNON and HORACE E. CARTER.

Morgan—JAMES CRAWFORD.

Noble—THOMAS P. BICKNELL.

Orange—WILLIAM HOLLADAY.

Owen—GEORGE W. MOORE.

Parke—WILLIAM R. NOFFSINGER and SAMUEL DAVIS.

Perry—SAMUEL FRISBIE.

Pike—CHARLES ALEXANDER.

Posey—ROBERT DALE OWEN.

Putnam—ALEXANDER C. STEVENSON, ALEXANDER S. FARROW and OLIVER P. BADGER.

Randolph—BEATTIE MCCLELLAND.

Ripley—THOMAS SMITH and HENRY J. BOWERS.

Rush—JESSE MORGAN, JEFFERSON HELM and WILLIAM A. BRACKEN.

Scott—HEZEKIAH S. SMITH.

Shelby—THOMAS A. HENDRICKS and JAMES VANBENTHUSEN.

Spencer—WILLIAM HUFF.

Sullivan—BENJAMIN WOLFE.

Tippecanoe—JOEL B. MCFARLAND, JOHN PETTIT and OTHNIEL L. CLARK.

Union—BENJAMIN F. BROOKBANK.

Vermillion—THOMAS CHENOWETH.

Vigo—CROMWELL W. BARBOUR, GRAFTON F. COOKERLY and THOMAS I. BOURNE.

Wabash—WILLIAM STEELE.

Warren—JAMES R. M. BRYANT.

Warrick—CHRISTOPHER C. GRAHAM.

Washington—JOHN I. MORRISON, EZEKIEL D. LOGAN and RODOLPHUS SCHÖONOVER.

Wayne—JOHN S. NEWMAN, JAMES RARIDEN, OTHNIEL BEESON and JOHN BEARD.

The Delegates were all present but Messrs. JONES of Bartholomew, CONDUIT of Morgan, COLFAX of St. Joseph, RITCHEY of Johnson, TAYLOR of Laporte, HOVEY of Posey, and BLYTHE of Vanderburgh.

THE ORGANIZATION.

The SECRETARY OF STATE now announced that a quorum of the Convention was present, and ready to proceed to the business of organization, according to the pleasure of the Convention.

Mr. OWEN offered for adoption the following resolution:

Resolved, That this Convention now proceed to elect a President by *viva voce* vote.

The question having been announced by the Secretary of State—

Mr. PETTIT proposed the following as a substitute for the resolution of the gentleman from Posey:

Resolved, That GEO. W. CARR, Delegate from the county of Lawrence, be chosen President of this Convention.

Mr. OWEN accepted the substitute.

Mr. BORDEN said, he saw by this proceeding that the Convention was likely to get into a difficulty at once, and inasmuch as they had adopted no rules for their government, it occurred to his mind that the only way by which the body could come to an understanding and a decision of the matter, would be to act directly upon the question of the adoption of the original resolution.

Mr. PETTIT said, he saw no difficulty in the way. The Secretary of State was authorized by law to organize the Convention, and the next step to be taken was the election of a President.

The question being upon the adoption of the substitute—

Mr. KILGORE demanded the yeas and nays. Mr. CHAPMAN suggested that there was no rule under which the yeas and nays could be taken.

Mr. RARIDEN said, he did not wish to precipitate business. He thought the original proposition offered by the gentleman from Posey, (Mr. Owen,) would meet the wishes of the whole Convention, unless, perhaps, some gen-

tleman might object to the manner prescribed for the election—by a *viva voce* vote. If gentlemen were opposed to this manner of voting, the words might be readily stricken out.

Mr. STEVENSON said, he had no objection to Mr. CARR going into the Chair of the Convention, but he would suggest that as the usual mode of electing the officers of deliberative bodies of this State was by ballot, it might perhaps, be the better way for the gentleman to withdraw the proposition.

Mr. PETTIT said, he understood that his amendment had been accepted.

The SECRETARY OF STATE observed, that the amendment was accepted by the gentleman from Posey.

Mr. MORRISON, of Marion, said, he was very sorry that any discussion should arise upon such a question. He was in favor of the proposition as originally submitted, before the amendment was accepted, and the reason why he was in favor of the original proposition was this: if the Convention should now go into a *viva voce* vote, it would require but little more time than for the Secretary to take the mere passive vote proposed in the amendment.—Should the resolution of the gentleman from Tippecanoe be adopted, Mr. CARR would be the President of the Convention—to all of which he was agreed; but if the original resolution was adopted each gentleman could vote for whom he pleased, and in this way gentlemen could give either complimentary votes or elective votes, as they should see proper.

Mr. OWEN said, that to save time he would withdraw the proposition as amended, and offer again the original resolution.

Mr. PETTIT also re-offered the substitute which he had before proposed. By the adoption of his proposition, he said, there would be but one vote and Mr. CARR would be President of the Convention—which would be the result of any vote that might be taken; but if the original resolution was adopted, the names of all the members would have to be called over to ascertain the vote.

Mr. KELSO said, he understood that the question was now upon the adoption of the amendment. He did not agree with the gentleman from Tippecanoe, (Mr. Pettit,) that it would be better that there should be but one vote for this officer. For himself, however, he declared that he stood ready to vote for GEO. W. CARR—he intended to vote for him, but he was opposed to his appointment by resolution in this way. He was willing to vote for the first resolution, but if the amendment prevailed he should vote against it.

Mr. SPANN observed, that this was a mere matter of form; but upon examination of the law, with reference to the organization of this Convention, he found that it was expressly provided that the organization should be effected in the manner in which the General Assembly

of the State was organized. He maintained that the proposition of the gentleman from Posey (Mr. Owen) was a fair proposition; it was common in the Legislature of the State and well understood by all. Whatever preference for this office gentlemen might entertain, could be as well expressed in this as in any other way.

Mr. STEELE said, if it was in order, he would move to amend the substitute by striking out all after the word resolved, and inserting the proposition of the gentleman from Posey.

Mr. PETTIT said, that in order to give entire satisfaction to gentlemen on all sides, especially to those gentlemen who were desirous of recording their votes, he would withdraw his amendment.

The amendment was withdrawn accordingly.

Mr. KILGORE proposed to amend the resolution by adding the words: "and that all other officers of this Convention be elected in the same manner."

Mr. PETTIT opposed the amendment. He could not think that gentlemen were seriously disposed to go into the election of all the assistant Door-keepers, the fire makers, and laborers that were necessary about the House, at this time.

The amendment of the gentleman from Delaware (Mr. Kilgore) was withdrawn, and the question being taken, the resolution of the gentleman from Posey (Mr. Owen) was adopted.

Mr. BORDEN said, that the Convention having decided to go now into the election of a President, he would take the liberty of proposing the name of Hon. GEO. W. CARR, one of the delegates from the county of Lawrence, for that station. In doing so, he desired to be allowed to say that the dignity and impartiality with which that gentleman had presided over the House of Representatives, of this State, for the last two sessions of that body, was a sufficient guarantee, that, by placing him in the Chair, the Convention would secure the services of a presiding officer well qualified for the station, and in every way worthy of it.

Then the roll being called by the Secretary of State it was ascertained that the whole number of members voting was 140—71 being necessary to constitute a majority.

The Secretary of State announced that Mr. GEO. W. CARR had received 134 votes (scattering 6)—as follows:

AYES. Messrs. Allen, Anthony, Badger, Balingall, Barbour, Bascom, Beach, Beard, Besson, Berry, Bicknell, Biddle, Borden, Bourne, Bowers, Bracken, Bright, Brookbank, Bryant, Butler, Carr of Jackson, Carter, Chandler, Chapman, Chenoweth, Clark of Tippecanoe, Coats, Cookerly, Crawford, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Dunn of Perry,

Duzan, Edmonston, Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Graham of Warrick, Hall, Hadden, Holliday, Hamilton, Hardin, Helmer, Hendricks, Hiatt, Hogin, Holman, Huff, Johnson, Kelso, Kent, Kendall of W., Kendall of Warren, Kilgore Kindley, Lockhart, Logan, Maguire, March, Mather, Mathis, May, McClelland, McFarland, McLean, Miller of Clinton, Miller of Gibson, Miller of Fulton, Milligan, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Morrison of Washington, Mowrer, Murray, Nave, Newman, Niles, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Rariden, Read of Clark, Read of Monroe, Ristine, Robinson, Schoonover, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Stevenson, Tague, Tannehill, Terry, Thomas, Thornton, Trembly, Vanbenthussen, Wallace, Walpole, Watts, Wheeler, Wiley, Wolf, Work, Wunderlich, Yocum and Zenor—134.

The following gentlemen voted blanks, viz : Messrs. Clark of Hamilton, Cole, Hawkins, Helm, Howe, and Todd—6.

Mr. GEO. W. CARR, a delegate from the county of Lawrence, was therefore declared to be duly elected to the office of President of the Convention.

On motion by Mr. BORDEN it was

Ordered, That a committee of two be appointed to wait upon the President, and conduct him to the Chair.

THE SECRETARY of STATE, accordingly reappointed Messrs. BORDEN of Allen, and SMITH of Ripley, and this service being performed by them—

The PRESIDENT rose and said :—

GENTLEMEN : I rise to tender to you my sincere and grateful acknowledgements for the distinguished honor you have conferred upon me in electing me to preside over this Convention. The memory of your partiality and this evidence of your confidence, will be carefully cherished by me to the latest period of my life.

GENTLEMEN, you are assembled here for the discharge of high and important duties ; and the fact that you have been selected by the people for the performance of those duties, is a sufficient guarantee to me, that your intercourse with each other will be constantly marked by that high-minded and liberal bearing which everywhere distinguishes a free people.

In entering upon the discharge of the duties of this place, I cannot but distrust my ability to meet your expectations ; but I shall throw myself upon your indulgence, and shall rely much upon the hope that I shall be constantly aided by your own wise counsel and experience.

With these assurances I accept the office to which you have called me, and promise, as far as my ability will permit, a faithful and fair discharge of its duties.

Mr. PETTIT said, that in consequence of the amount of business which it was desirable should be done out of doors, he would move that the Convention do now adjourn until to-morrow morning at 9 o'clock.

Mr. KILGORE desired to amend the motion by striking out the words "to-morrow morning at 9 o'clock," and inserting the words "two o'clock this afternoon." He was proceeding to offer a reason for this modification, when—

The PRESIDENT interposed, and stated to the gentleman from Delaware, that the proposition was not debatable.

Mr. KILGORE contended that this motion to adjourn was debatable, because the Convention had not yet adopted rules—and being without any rules of government, anything and everything was in order.

Mr. BORDEN called the gentleman from Delaware (Mr. Kilgore) to order.

Mr. KILGORE having taken his seat,

The PRESIDENT requested the gentleman from Allen (Mr. Borden) to reduce his point of order to writing.

Mr. BORDEN said, that a motion to adjourn from day to day was not debatable. In reply to the argument of the gentleman from Delaware, that the Convention had no rules to govern their proceedings, he affirmed that the *lex Parliamentaria* was in force, and was the rule to govern the proceedings of every deliberative body in the country until such body had adopted rules for its own government ; that the *lex Parliamentaria* was as much the law to govern the proceedings of any deliberative body, as the common law was applicable to the government of proceedings of the courts of law. It was true that when any legislative body had adopted rules to govern its proceedings, those rules necessarily superseded the general parliamentary rules in all cases wherein they conflicted. But this body, not having as yet adopted any rules for its government, was necessarily governed by usages applicable to all deliberative bodies. For these reasons, inasmuch as the motion was clearly not debatable, he called the gentleman to order.

Mr. KILGORE said, he was aware that the gentleman on his left (Mr. Borden) understood parliamentary law very well. He doubted not that that gentleman had been studying this branch of knowledge very diligently during the whole of last summer. But the gentleman misunderstood his proposition. He had not offered a proposition for adjournment, but simply to amend the proposition of the gentleman from Tippecanoe. He now desired simply to say to his experienced friend from Tippecanoe, that he would like himself to know something about this informal business out of doors, to which the gentleman alluded. He threw himself upon the kind indulgence of that gentleman, and insisted that he should permit those who were not so much experienced—the within-door

members—to have an opportunity afforded them of knowing how the officers of the Convention were to be elected.

The PRESIDENT remarked, that there were no special rules as yet, it was true, for the government of this body; but he understood it to be an universal parliamentary rule, that all questions of adjournment should be decided without debate.

Mr. FOSTER said, he was obliged to dissent from the decision of the Chair, for the reason that this body, being without rules, had as yet fixed no definite time to which the adjournment should extend. He appealed from the decision of the Chair.

Mr. BORDEN suggested to the gentleman from Tippecanoe to modify his motion, so as to take a recess until 3 o'clock P. M.

Mr. PETTIT declined to modify his motion.

The question being taken on the appeal, the decision of the Chair was sustained.

And the question recurring upon the adoption of the amendment proposed by Mr. Kilgore, it was agreed to.

The motion, as amended, being also agreed to.

The Convention took a recess until 2 o'clock P. M.

AFTERNOON SESSION.

Mr. BORDEN offered the following resolution:

Resolved, That a committee be appointed by the Chair to prepare and report rules of order for the government of the proceedings of this Convention; and until said committee report, and it be otherwise ordered, the rules of the House of Representatives of this State be adopted by this Convention, as regulations to govern its proceedings and deliberations, so far as the same are applicable.

The resolution was adopted.

The following delegates appeared, produced their credentials, and, being duly sworn by the Hon. HORACE P. BIDDLE, took their seats, to-wit:

JAMES RITCHEY, of Johnson,
SCHUYLER COLFAX, of St. Joseph, and
ALVIN P. HOVEY, of Posey.

Mr. KILGORE offered the following resolution:

Resolved, That we now proceed to elect, *viva voce*, three Secretaries for this body, and that when elected, the President assign to each their respective duties.

Mr. KELSO said, that to his mind this seemed to be a very strange mode of proceeding—at one moment to adopt the rules of the House of Representatives, which require that all voting shall be by ballot, and in the next moment to adopt a resolution authorizing a *viva voce* vote.

The PRESIDENT said, he was not aware of any rule of the House prescribing that all voting should be by ballot.

Mr. PETTIT moved that the Convention adjourn until 9 o'clock to-morrow morning.

Mr. ROBINSON suggested whether it would not be better for the gentleman to make his motion to adjourn for a longer time—taking time enough for himself and his friends to retire and make a Constitution ready for submission to the Convention, so that the body would have nothing to do but to adopt it and go home.

Mr. PETTIT, (in his seat:) Oh yes, we will provide a Constitution in time.

The yeas and nays were demanded on the motion to adjourn, and being taken by the Secretary of State, were—yeas 37, nays 106; so the Convention refused to adjourn.

Upon the suggestion of Mr. SPANN, the county of Vanderburgh was called, and Mr. JAS. E. BLYTHE, delegate for said county, came forward, took the constitutional oath, and the oath of office, the same being administered by Judge BLACKFORD, and took his seat.

Mr. PETTIT proposed to amend the resolution of Mr. KILGORE by inserting after the word "duties" the words "and Sergeant-at-Arms and Door-keeper."

Mr. KILGORE said, he would suggest to his experienced friend from Tippecanoe the propriety of keeping the election of these officers separate, for there were several candidates for each place.

Mr. KELSO said, he preferred the old plan of electing one officer at a time. He would prefer that they should first elect the Principal Secretary, a gentleman whom the Convention might look to as the head of that department, and after the election of the principal officers in the three departments named, he would have them to employ as many assistants as their business respectively might require. Nothing had ever yet gone wrong under this mode of proceeding. He objected to the resolution as entirely too broad, and the amendment, he said, would only make it worse.

The question being taken on the amendment, it was rejected.

Mr. NAVE proposed to amend the resolution by striking out the word "three," and inserting the word "two."

[Several voices—"No, no."]

Mr. BORDEN demanded a division of the question; but subsequently withdrew the demand.

Mr. SPANN said, a resolution had just been passed, providing that we should proceed under the rules of the House of Representatives, of the last General Assembly, and he recollected no precedent for bundling up two, three, four, or five officers at a time in a single election.—He trusted that the Convention would not agree to such a course now, but that they would

proceed to elect one officer at a time. He thought the rules ought to apply, with special strictness, to everything connected with the organization of the Convention.

The PRESIDENT said, he knew of no rule that would prohibit the election of more than one officer at a time.

Mr. NAVE modified his amendment, proposing to insert instead of the word "two," the word "one."

Mr. KILGORE suggested that such an amendment would be incongruous with the latter part of the resolution.

Mr. READ, of Clark, moved that the Convention adjourn.

Mr. KILGORE and Mr. KELSO demanded the yeas and nays upon the motion to adjourn.

Mr. BORDEN desired to know to what hour the Convention would adjourn under this motion.

The PRESIDENT: The rules adopted by the resolution of this afternoon, fix the hour at 9 o'clock to-morrow morning.

The yeas and nays were then taken by the Secretary of State, who reported—yeas 37, nays 109; so the Convention again refused to adjourn.

Mr. RITCHIE rose and, stated that he had come up to the Convention to-day at a great sacrifice of feeling, on account of the indisposition of his son, and this would have to be his apology for returning home to-morrow. He came up merely to assist in the organization; and he wished to see the Convention organized to-night if possible. He hoped they would proceed with the election of the officers of the Convention, either by adopting the mode proposed by the gentleman from Hendricks, (Mr. Nave,) or by ballot. He rather thought, from the votes of some gentlemen, that they desired to adjourn in order that some action or some understanding might be had upon this subject, out of the Hall. He was in the habit of subscribing to the doctrine of caucuses, and if the Democratic party thought proper to caucus, he should be pleased to vote to adjourn for that purpose; but if not, he should prefer to proceed to the proper business of the Convention. He saw the names of a number of gentlemen placed before the body as candidates for the different places to be filled, and he believed that almost any one of the candidates for the Secretaryship, would make a good Secretary. He was not acquainted with any of them, and he should neither regret or rejoice much at the defeat or success of any. He believed that in most cases an election might be made on the first ballot.

Mr. KENT proposed to amend the original resolution by striking out all after the word "resolved," and inserting the following: "That the Convention proceed now to the election of a Principal Secretary."

Mr. NAVE said, that in order to perfect the original resolution more readily, he would withdraw his amendment, so as to give place to the amendment of the gentleman from Floyd, (Mr. Kent,) still expressing his preference, however, for a *viva voce* vote.

Mr. FOSTER proposed to amend the amendment of the gentleman from Floyd, by adding the words "two Assistant Secretaries, one Door-keeper, and one Sergeant-at-Arms by a *viva voce* vote, in the order in which they are named."

The amendment to the amendment was rejected.

Mr. KILGORE proposed to amend the amendment by adding the words: "by a *viva voce* vote;" which was also rejected.

The question being taken on Mr. KENT'S amendment, it was agreed to, and the resolution, as amended, was adopted.

Mr. KILGORE moved the adoption of the following:

Resolved, That in the election of Secretary, and other officers of the Convention, the vote be taken *viva voce*.

Mr. KELSO remarked that a proposition of that kind had been already voted down by the Convention.

Mr. KILGORE said, he did not understand this to be exactly the same proposition. It contemplated the manner of the election of officers besides the Secretary.

Mr. EDMONSTON moved to lay the resolution and amendments upon the table; but, before the motion was entertained by the Chair—

Mr. PETTIT interposed another motion for adjournment; and the yeas and nays being demanded upon this motion by Mr. KILGORE and Mr. ROBINSON, they were taken by the Secretary of State, who reported—yeas 53, nays 91.

So the Convention again refused to adjourn.

Mr. READ, of Clark, enquired: Whether, under the resolution just passed, the Convention was not compelled to go into the election of Principal Secretary immediately, unless that order was arrested by an adjournment.

The PRESIDENT replied affirmatively; but he added: That he understood that it was still competent for the body to prescribe the manner of voting, and, therefore, he had entertained the motion of the gentleman from Delaware.

Mr. KILGORE said, that in order to accommodate the views of gentlemen he would withdraw his proposition.

The Convention then proceeded to the election of a Principal Secretary; Mr. BIDDLE and Mr. KENT acting as tellers.

The votes taken, the Secretary of State reported the result of three ballottings as follows:

1st Ballot. 2d Ballot. 3d Ballot.

Wm. H. English,	- 47	64	76
Solon Turman,	- 27	41	66
Geo. L. Sites,	- 20	15*	
Jas. S. Buckles,	- 14	9*	
Francis King,	- 9	6	
And. J. Boone,	- 12	5*	
Benj. F. Myers,	- 4		
John W. Spencer,	- 6	5	
Scattering,	- 5	0	3

*The names of Jas. S. Buckles, And. J. Boone, and Geo. L. Sites, were severally withdrawn upon the determination of the 2d balloting.

The whole number of votes cast upon each ballot was 145—73 ballots being necessary to constitute an election, and it appearing, upon the determination of the third ballot that Wm. H. English, of the county of Scott, had received a majority of all the votes cast, he was declared to be duly elected to the office of Principal Secretary of the Convention, to serve in that capacity during the existence of the body.

And, therefore, Mr. English being called, came forward and, being duly sworn by the Hon. ISAAC BLACKFORD, the Senior Judge of the Supreme Court of Indiana, proceeded to the discharge of the duties of his office.

Mr. KILGORE moved to refer the election of the residue of the officers of the Convention to a select committee; pending which motion, at 40 minutes past 4 o'clock, on motion of Mr. WOLF, the Convention adjourned.

TUESDAY MORNING, Oct. 8th., 1850.

Mr. EDMUND D. TAYLOR, a delegate from the county of Laporte, appeared, produced his credentials and, being duly sworn by the Hon. ISAAC BLACKFORD, took his seat.

Mr. BORDEN introduced the following resolution:

Resolved, That Robert M. Evans, Herman G. Barkwell, and George L. Sites, be, and they are hereby appointed Assistant Secretaries to this Convention.

Mr. ROBINSON moved the following as a substitute:

Resolved, That in the opinion of this Convention one Principal and one Assistant Secretary will be amply sufficient to discharge all the duties growing out of the action of the Convention; and that the Convention now proceed to the election of one Assistant Secretary, and no more, who, together with the Principal Secretary elect, shall discharge the duties of Secretaries to this Convention.

The question being upon the amendment offered by the gentleman from Decatur, (Mr. Robinson,)

Mr. BORDEN remarked, that as another proposition had been submitted upon this subject, he supposed the Convention could proceed to

the consideration of the subject and decide upon it at the present time as well as at any other. He did not think that two gentlemen could perform all the labor which would be required at the Secretary's desk. Supposing the Convention were to approve of the amendment with an eye to economy, he apprehended it would be that sort of economy which might be described as "penny wise and pound foolish." He admitted that it might be shown that but two Secretaries had been employed at the first, in the service of some Conventions; but their numbers in most cases had subsequently been increased to five or six by the appointment of assistants; and this larger number of Secretaries had been found necessary in Conventions composed of a much smaller number of Delegates than was here assembled. Here were 150 Delegates, and he submitted whether any gentleman could seriously suppose that two or three men would be sufficient to perform all the clerical service that would be required. If gentlemen would turn to the 14th section of the act under which the Convention was organized they would find the following provision: "That the proceedings of said Convention shall be deposited by the President and Secretary thereof, in the office of the Secretary of State, who shall file the same." Here, it seemed to be contemplated that the proceedings of the Convention should be entered in a book, as a perpetual memorial of the action of the body. He apprehended that it would be necessary to employ one clerk to make this permanent manuscript record, and three others to discharge the duties at the desk. The Ohio Convention required this to be done, and so did the Convention which formed the Constitution of the United States, over which George Washington presided. It might be that two persons could do all the clerical labor here, but he did not think it possible. He had before him the journal of the Convention which formed the present Constitution of Indiana; and he found there, that Wm. Hendricks was elected Secretary, and that on the next day the Convention elected two Assistant Secretaries, Robert N. New, and Jas. A. Turnstall, and that afterwards they elected three additional Assistants, making six Secretaries in all, to serve in a Convention composed of 43 members. In view of this fact if gentlemen could be satisfied that two Secretaries could do the business, let them vote for the amendment.

Mr. ROBINSON said, that he had offered his amendment because he believed it to be right and proper that such a provision should be adopted. He thought himself sufficiently experienced in legislation to be able to decide correctly in regard to this matter. He affirmed that there would not be one half the labor devolving upon the Secretaries of this body that was required to be performed by the clerks of any legislative body sitting the same length of

time. He thought the experience of the Chair would amply confirm and corroborate this assertion. Besides it was manifest that the duty of the Assistant Secretaries was nearly all included simply in copying the journal of the Convention. It might be that the journal of this body would be swelled to some considerable extent; but the final result of the labors of the Convention, when it should all come to be condensed, arranged and printed, would hardly compose so large a volume of matter, as one of our ordinary corporation bills. The clerical labor of the Convention would consist chiefly in preparing and copying the journal, and in reading; whilst every year, in the Legislature, there were prepared and carried through all the forms of reading, engrossment, and enrollment, some twenty-five or thirty of those large corporation bills; and this was the reason why so many Assistants were required to be appointed. He considered this a correct view of the case, for he spoke more from experience than anything else. Every State in which a Convention had been held, save the State of New York, had taken precisely this course. A judicious economy could be practised here as well as in any other place.

Mr. BORDEN observed that if in the State Conventions which had been held in other States but two Secretaries had been elected, he would confess that he had been very much misinformed. But he was inclined to think that the gentleman from Decatur was mistaken. The New York Convention elected two Secretaries and in a few days authorized the appointment of one more. The Ohio Convention elected Mr. GILL principal Secretary, and Mr. CARROLTON his assistant; and, in one or two days afterwards, authorized the Principal Secretary to appoint another assistant, and then another..

Mr. STEELE moved to amend the amendment by adding the words "the additional Secretaries if required."

Mr. MILLER, of Gibson, moved to lay both the amendments on the table.

Mr. PETTIT said, that he supposed if this motion prevailed, it would carry the original resolution also to the table.

The PRESIDENT stated that such would not be the case under the rules of the Indiana Legislature.

The yeas and nays were demanded upon this question by Messrs. PRATHER and ROBINSON, and being taken, the Clerk reported—yeas 100, nays 42, as follows:

YEAS—Messrs. Alexander, Anthony, Bascom, Beach, Beeson, Berry, Bicknell, Borden, Bourne, Bowers, Bracken, Bright, Carr of Jackson, Carter, Chandler, Chapman, Chenoweth, Cookerly, Davis of Parke, Davis of Parke and Vermilion, Dick, Dobson, Dunn of Perry, &c., Duzan, Edmonston, Foley, Foster, Garvin, Gibson, Goo-tee, Graham of Miami, Graham of Warrick,

Haddon, Holliday, Hamilton, Harbolt, Hardin, Helmer, Hendricks, Holman, Hovey, Howe, Huff, Johnson, Kelso, Kent, Kendall of Warren, Kindly, Lockhart, March, Mathers, May, McClelland, McFarland, McLean, Miller of Clinton, Miller of Gibson, Miller of Fulton, Milligan, Millroy, Mooney, Moore, Morrison of Marion, Mowrer, Murray, Nave, Newman, Niles, Nofsinger, Owen, Pepper of Ohio, Pettit, Rariden, Read of Clark, Read of Monroe, Ristine, Schoonover, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Tague, Tannehill, Taylor, Trembly, Vanbenthusen, Wallace, Wheeler, Wiley, Wolf, Work, Wunderlich, Yocum, Zenor, and Mr. President—100.

NAYS—Allen, Badger, Ballingall, Barbour, Beard, Biddle, Blythe, Brookbank, Bryant, Butler, Clarke of Hamilton, Clark of Tippecanoe, Coats, Cole, Colfax, Crawford, Davis of Madison, Dunn of Jefferson, Farrow, Fisher, Frisbie, Gregg, Hawkins, Helm, Hitt, Hogan, Logan, Maguire, Mather, Morgan, Morrison of Washington, Pepper of Crawford, Prather, Robinson, Steele, Stevenson, Terry, Thomas, Thornton, Todd, Walpole, and Watts—42.

So the amendments were laid upon the table.

Mr. STEVENSON then moved to amend the resolution by substituting the following:

Resolved, That the Convention now proceed to elect two assistant Secretaries.

The original resolution, he said, contemplated a different mode from that practiced by deliberative bodies generally in the appointment of their officers. It contemplated the appointment of three at one time. If it proposed appointing only one individual, a proper selection might probably be made, but when it proposed to appoint three at one time, it would be but natural that men would be influenced in giving their votes in favor of one or more of the parties, by a desire to secure the election of their particular favorite and thus be lead to vote, perhaps, for the others without regard to the qualification or fitness for office of such others.

Thus it was that in legislative bodies sometimes an obnoxious measure was attached to a good one, in order to secure the passage of the former, which would not have passed if it had been left to depend upon its own merits. The principle was decidedly wrong. It was altogether a new one, and one which, he considered, it would be dangerous to adopt.

The business of the Convention differed materially from that of a State Legislature; there would be no memorials, petitions, or remonstrances, to be acted upon. They were called together for the purpose of forming a Constitution, an instrument occupying some ten or fifteen pages of the Statute Book. There could not then, he thought, be anything like the same amount of business to be done by the Secretary of the Convention, as by the Clerk of the General Assembly.

One hundred and fifty members would perform no more business than forty members would perform. One resolution only could be acted upon at a time, no matter what the number of members might be. In regard to the consideration of economy, he had only to say that he was not for going to extremes either way, either in extravagance or parsimoniousness.

He was of the opinion that two Secretaries were quite sufficient. He was not disposed to interfere, however, with any arrangement that had been made out of doors; and he was inclined to go for democratic appointees. He was willing that they should all be democrats; but he was opposed to adopting a new principle in reference to their elections. He trusted that the amendment would be adopted.

Mr. DOBSON said, that in his opinion the amendment did not go far enough. He moved an amendment to the effect that these officers should be elected and not appointed.

Mr. BASCOM moved to lay the amendment on the table.

Mr. KELSO hoped this matter might be compromised in such a way that the amendment by the gentleman from Owen might be adopted.—He was willing to vote for that. He hoped his friend would withdraw the motion to lay on the table.

Mr. STEVENSON said, he would accept the amendment leaving the number blank.

Mr. BASCOM withdrew the motion to lay on the table.

Mr. KELSO then moved to fill the blank with "three."

Mr. CLARK of Tippecanoe, moved to fill the blank with "two."

The PRESIDENT. The question will be first on the largest number.

Mr. FOSTER said he would remark to his Democratic friends that this would not be quite in accordance with the pledges they had given to their constituents. A great many pledges of economy had been given during the canvass.—He thought they ought to manifest their faith by their practice. He for one felt a disposition to manifest his faith by his works. But that was not all. He believed that two Secretaries were amply sufficient. He had had some experience in matters of this kind, and he believed that the clerical duties of the Convention would not be near as onerous as those of the Legislature. There was only the keeping of the journal to be done; there was no enrolling of bills, and he would venture to say that if they performed their work properly, the Constitution would not be equal in length to some of the enrolled bills of the Legislature. He should vote for the amendment.

Mr. BORDEN opposed the amendment. He could see no necessity for going into the election by ballot unless the object was to defeat those gentlemen who had been nominated. If the election were to be by a *viva voce* vote he had

no objection; but he thought the best way was to make the appointments by resolution.

Mr. NAVE was in favor of the Convention electing at once a sufficient number of officers, without making it necessary, hereafter, for the Secretaries themselves to appoint assistants;—which was known to be the case in our State Legislature.

Mr. CLARK of T. said he rose to apologize to the gentleman from Allen, (Mr. Borden) for making the motion to reduce the number of Secretaries. He was willing to concur in the edict of those who had decided on three Secretaries out of this body; but not having heard the arguments that had been advanced, he had to discharge a duty to his constituents by fixing on a number he thought sufficient. He thought a vote should be taken here on the officers, although the final decision might have been made elsewhere.

Mr. EDMONSTON favored the election of three Secretaries, as the number best calculated to advance the business of the Convention.

Mr. MILLER of Gibson, moved the previous question; which was not sustained.

The question was then taken on the motion to fill the blank with three, and it was agreed to.

The question being on the adoption of the resolution.

Mr. WATTS moved the following amendment, "that Samuel J. Johnson of Dearborn County be declared Door-keeper of this Convention."

The question being taken the amendment was not agreed to.

Mr. COCKERLY moved to amend the resolution by inserting the words "by *viva voce* vote."

The amendment was adopted.

The question was then taken on the amendment, as amended, and it was decided in the affirmative:

The question on the original resolution was then taken and decided in the affirmative.

The resolution as amended was adopted;—whereupon

The roll was called and the following gentlemen voted

FOR ROBERT M. EVANS:

Messrs. Alexander, Allen, Anthony, Badger, Ballingall, Barbour, Bascom, Beach, Beard, Beeson, Berry, Bicknell, Biddle, Blythe, Borden, Bourne, Bowers, Bracken, Bright, Brookbank, Bryant, Butler, Carr of Jackson, Carter, Chandler, Chapman, Chenowith, Clark of Tippecanoe, Coats, Cole, Colfax, Cookerly, Crawford, Davis of Madison, Davis of Parke, Davis of Parke and Vermillion, Dick, Dobson, Dunn of Perry, Dunn of Jefferson, Duzan, Edmonston, Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Gibson, Gootee, Graham of Miami, Graham of Warrick, Haddon, Holliday, Hamilton,

Harbolt, Hardin, Hawkins, Helm, Helmer, Hendricks, Hogin Holman, Hovey, Howe, Huff, Johnson, Kelso, Kent, Kendall of Miami, Kendall of Warren &c., Kindley, Lockhart, Logan, Maguire, March, Mather, Mathis, May, McClelland, McFarland, McLean, Miller of Clinton, Miller of Gibson, Miller of Fulton, Milligan, Milroy, Mooney, Moore, Morrison of Marion, Morrison of Washington, Mowrer, Murray, Nave, Newman, Niles, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Rariden, Read of Clark, Read of Monroe, Ristine, Schoonover, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Scott, Spann, Stevenson, Tague, Tannehill, Taylor, Terry, Thomas, Thornton, Trembly, Vanbenthussen, Wallace, Walpole, Watts, Wheeler, Wiley, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President.—(137.)

The following gentlemen voted for

JAMES B. RAY:

Messrs. Hitt, Morgan, Robinson and Steel.—(4.)

Those gentlemen who voted blank were Messrs. Clark, Gregg and Todd.—(3.)

ROBERT M. EVANS, of the County of Fountain, having received a majority of the whole number of votes given, was declared duly elected one of the Assistant Secretaries to this Convention, and being duly sworn by the Hon. ISAAC BLACKFORD one of the Judges of the Supreme Court of Indiana, proceeded to the discharge of the duties of his office.

The roll being again called the following gentlemen voted for

HARMON G. BARKWELL:

Messrs. Alexander, Allen, Anthony, Badger, Barbour, Bascom, Beach, Beard, Beeson, Berry, Biddle, Borden, Bourne, Bowers, Bracken, Bright, Bryant, Butler, Carr of Jackson, Carter, Chandler, Chapman, Chenowith, Clark of Tippecanoe, Cole, Cookerly, Davis of Parke, Davis of Parke and Vermillion, Dick, Dobson, Dunn of Perry, Spencer and Warrick, Duzan, Edmonston, Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Gibson, Gootee, Graham of Miami, Graham of Warrick, Haddon, Holliday, Hamilton, Harbolt, Hardin, Hawkins, Helm, Helmer, Hendricks, Hitt, Holman, Hovey, Howe, Huff, Johnson, Kelso, Kent, Kendall of Miami, Kendall of Warren, Kindly, Lockhart, Maguire, March, Mathis, May, McClelland, McFarland, McLean, Miller of Clinton, Miller of Gibson, Miller of Fulton, Milligan, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Morrison of Washington, Mowrer, Murray, Nave, Newman, Niles, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Read of Clark, Read of Monroe, Ristine, Schoonover, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Stephenson, Tague, Tannehill, Taylor, Terry,

Thornton, Trembly, Vanbenthussen, Wallace, Wheeler, Watts, Wiley, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President.—(124.)

The following gentleman voted

FOR MR. STALLARD.

Messrs. Balingall, Davis of Madison, Hogan, Morgan, Rariden, Robinson, Steel, Walpole.—(8.)

Mr. Crawford voted for Mr. Lafferty.

The following gentlemen voted blank, to-wit:—

Messrs. Brookbank, Clark of Hamilton, Colfax and Mather.—(4.)

HARMON G. BARKWELL, of the County of Perry, having received a majority of the whole number of votes given was declared duly elected one of the Assistant Secretaries of this Convention, and being sworn by the Hon. ISAAC BLACKFORD, one of the Judges of the Supreme Court of Indiana, proceeded to the discharge of the duties of his office.

The roll being again called, the following gentlemen voted

FOR GEORGE L. SITES:

Messrs. Alexander, Allen, Anthony, Barbour, Bascom, Beach, Beeson, Berry, Bicknell, Biddle, Blythe, Borden, Bourne, Bowers, Bracken, Bright, Brookbank, Bryant, Butler, Carr of Jackson, Carter, Chandler, Chapman, Chenowith, Clark of Tippecanoe, Coats, Cole, Colfax, Cookerly, Davis of Parke, &c., Dick, Dobson, Dunn of Perry, Duzan, Edmonston, Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Gibson, Gootee, Graham of Miami, Graham of Warrick, Haddon, Holliday, Hamilton, Harbolt, Hardin, Hawkins, Helm, Helmer, Hendricks, Hogin, Holman, Hovey, Howe, Huff, Johnson, Kelso, Kent, Kendall of Miami, Kendall of Warren, Kindly, Lockhart, March, Mather, Mathis, May, McClelland, McFarland, McLean, Miller of Clinton, Miller of Gibson, Miller of Fulton, Milligan, Milroy, Mooney, Morgan, Mowrer, Murray, Nave, Newman, Niles, Nofsinger, Owen, Pepper of Crawford, Pettit, Prather, Read of Clark, Read of Monroe, Ristine, Schoonover, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Ripley, Spann, Steele, Tague, Tannehill, Taylor, Terry, Thornton, Trembly, Vanbenthussen, Wallace, Walpole, Wheeler, Wiley, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President.—120.

The following gentlemen voted blank—to-wit:—

Messrs. Balingall, Beard, Clark of Hamilton, Crawford, Davis of Madison, Hitt, Logan, Stephenson, Thomas, Watts.—10.

GEORGE L. SITES, of the County of Allen, having received a majority of the whole number of votes given, was declared duly elected one of the Assistant Secretaries to this Convention, and being sworn by the Hon. ISAAC BLACKFORD, one of the Judges of the

Supreme Court of Indiana, proceeded to the discharge of the duties of his office.

Mr. READ, of Clark, offered the following resolution.

Resolved, That Samuel McKenzie be appointed Sergeant-at-arms to this Convention.

The resolution was adopted.

Mr. READ of Clark offered the following resolution:

Resolved, That Samuel J. Johnson be appointed Doorkeeper to this Convention, which was adopted.

Mr. McKenzie and Mr. Johnson were sworn by the Hon. ISAAC BLACKFORD, and proceeded to the discharge of the duties of their respective offices.

Mr. PETTIT submitted the following resolution:

Resolved, That the Doorkeeper be directed to have placed in this Hall suitable desks for the use of the Stenographers at such place and of such form as they may direct.

The resolution was adopted.

Mr. READ of Clark submitted the following resolution:

Resolved, That the Secretary confer with the Clergy of this city, and request them to make such arrangements among themselves, as that one of their number open the Convention each day with prayer.

The resolution was adopted.

Mr. PETTIT offered the following resolution:

Resolved, That three committees on the outlines of the Constitution shall be appointed by the President, to-wit:

One on the Legislative Department of the Government, whose duty it shall be to consider all matters which may be referred to it, and prepare and report provisions relative to that Department.

One on the Executive Department of the Government, whose duty it shall be to consider all matters which may be referred to it, and prepare and report provisions relative to that Department.

One on the Judicial Department of the Government, whose duty it shall be to consider all matters which may be referred to it, and prepare and report provisions relative to that Department.

Mr. BORDEN moved to strike out the resolution from the resolving clause, and insert the following:

"That a Standing Committee be appointed to consider and report on each of the following classes of subjects; and that the several parts of the existing Constitution, which relate to those subjects respectively, be also referred to said committee.

"1. The rights and privileges of the citizens and inhabitants of this State.

"2. The apportionment, election, tenure of office, and compensation, of the members of the General Assembly.

"3. The powers and duties of the General Assembly, except as to the public debt and matters otherwise referred.

"4. The election, tenure of office, compensation, powers, and duties, of the Governor and Lieutenant Governor.

"5. The election and appointment of officers of State other than Legislative or Judicial, their powers, duties and compensation.

"6. The election and appointment of all County officers, their tenure of office, powers, duties, and compensation.

"7. The Judicial Department of Government, the election of judicial officers, their tenure of office and compensation.

"8. The power of impeachment, and removal from office.

"9. The elective franchise, and the qualifications to vote and hold office.

"10. The militia and military officers.

"11. The future amendments and revision of the Constitution.

"12. The State University, County Seminaries, Education, Common Schools, and their appropriate funds.

"13. The State Bank, Currency and Banking.

"14. On such parts of the Constitution as are not otherwise referred.

"15. On corporations other than Banking.

"16. On canals and other improvements, public revenue and property, public debt and the powers and duties of the Legislature in reference thereto; and the restrictions proper to be imposed on the Legislature in making loans of money on the credit of the State.

"17. On the organization of County Boards, the granting of powers of local legislation to them, and the adoption of a uniform mode of doing county and township business.

"18. On reducing to a Code such parts of the laws of this State as may be found practicable and expedient; and also on reforming the rules and practice of the Courts of this State.

"19. On the Homestead Exemption, and on the accumulation, creation, and division of estates in lands.

Resolved, That each committee appointed under the foregoing resolutions shall consist of —members, except the committee on the judiciary, which shall consist of—."

Mr. REED of Monroe offered the following as a substitute for both resolutions:—

"That a committee of —be appointed to report a plan for the business of this Convention."

Mr. KELSO opposed all three of the propositions for the present, although the last one seemed to suit his views much better than either of the others. A committee had been appointed to draft rules for the government of this

body, and until that duty was performed, the resolutions now introduced would be premature.

Mr. REED of Monroe saw nothing in the appointment of the committee on the rules that would conflict with the proposition now before the Convention.

Before the question was taken,

Mr. COOKERLY moved that the Convention adjourn until 2 P. M.

The motion was agreed to and the Convention adjourned.

AFTERNOON SESSION.

Mr. BORDEN moved that the number of the committee on rules as proposed by him on yesterday, be fixed at thirteen—one from each judicial circuit—to be appointed by the Chair.

The motion was agreed to.

The Convention then resumed the consideration of Mr. Pettit's resolutions and amendments pending at the time of the adjournment.

Mr. BORDEN moved to refer the resolutions and amendments to a committee of the whole on the state of the Commonwealth.

Mr. BORDEN remarked, that the gentleman from Tippecanoe had offered a resolution that morning, providing for the appointment of three committees, to whom should be referred the existing Constitution of the State, for the purposes of revision and amendment. He (Mr. B.) had proposed as a substitute a *projet*, providing for the appointment of nineteen standing committees, to whom should be referred the several articles of the present Constitution, and also some other matters to which no allusion was made in the Constitution. And he thought that he could satisfy the Convention, that, under the circumstances in which they were then placed, the correct course would be to refer it to a committee of the whole Convention, as he had had the honor to propose. On yesterday a resolution had been passed raising a committee whose business it was to draw up rules and regulations for the government of this body. Now, with great deference to the judgment of others, it was his opinion that upon this committee properly devolved the duty of organizing the necessary standing committees, if it was the design of the Convention to entrust that business to a committee of the Convention rather than do it themselves. For instance, they had adopted the rules of the late House of Representatives of this State for their temporary government; and by referring to those rules, it would be seen that among them there was one providing for the appointment of seventeen standing committees: a committee on education, one on corporations, one on benevolent institutions, &c., &c. Now, the resolution already adopted included these committees, for it provided that the committee having charge of the subject of preparing rules and orders for their government, should organize these com-

mittees. A course similar to this was pursued in the late Convention in Kentucky, held to revise and amend the Constitution of that State. A committee was raised who reported the rules and regulations, and also the standing committees. The language of the resolution introduced by him and already adopted, was very similar to the resolution adopted there. He had the official report of the debates at hand, from which he could read, if required, to show that he was not mistaken. The committee there raised was composed of thirteen members. After they had reported, the Convention took up their report; some of the committees they proposed to raise being agreed to, and others stricken out, and their duties devolved on others differently designated.

Now, the proposition which he had submitted, provided, as he had already intimated, for the formation of some committees which were perhaps unnecessary. All they had to do, however, was to go into committee of the whole, and there to discuss this question. He had no pride of opinion in this matter; and if, on discussion, it was found that any of the committees proposed would be of no practical utility, they could easily be omitted. And if it was thought desirable to create any new committees, who should have charge of certain peculiar subjects which he had overlooked, that object also could be effected, by proposing resolutions to raise committees on those subjects.

The committee on rules had been ordered to consist of thirteen members, one from each judicial circuit; but, if it was thought proper, the number might be increased to two from each judicial circuit, as the committee had not yet been appointed. If the Convention had determined to send the Constitution to a committee of only a part of this body, for distribution, he could not but think that the proposition of the gentleman from Monroe, (Mr. Read,) to take the subject and refer it to another committee, would be, in effect, to revoke the order of yesterday, authorizing the Chair to appoint the first committee.

But, in his opinion, the best course now to harmonize the views of all parties, was to refer the subject to a committee of the whole, in the manner proposed by him. In submitting this proposition, he had done it with great diffidence, which arose as well from the distinguished talent by which he was surrounded, as from the fact of his being deficient in legislative experience, never before having been honored with a seat in a legislative assembly.

This Convention had assembled for great and important purposes. Their action was not to be of a temporary character, if the work of their hands was finally approved by the people. The decisions they made to-day were not to be repealed to-morrow. On the contrary, their action would, in all human probability, affect for good or evil, the interests of millions yet un-

born, who were to come after them ; and as he hoped and trusted, would, for countless ages to come, occupy this noble State. He did not design to detain them from the great duties before them, in commenting on the magnitude of the trust reposed in them by their constituents. It was sufficient to say, that theirs was the task of laying the corner stone for the future political security of the people of Indiana, and especially to remove from the Constitution those defects which thirty-four years of experience had made manifest to the people. It seemed to him that this Convention stood, as it were, upon the foundations of their political organization, charged with the high duty of reconstructing the political edifice under which they all lived. And he thought it was not only proper, but highly necessary, that even the initiatory steps which they might adopt at the commencement of the session, with the view of beginning the work before them, should be such as would tend to harmony of purpose and unanimity of action. He felt convinced, unless they all set out, not only with a desire, but with a strong determination to pursue a course of conciliation, as he had already intimated, that the Convention would fail to realize to the fullest extent that it could, if so disposed, the expectations of the people in convoking it. And for one, he could aver that he was not wedded to any particular plan, and only desired to pursue that course having for its object the most effectual mode of carrying out this design. Nevertheless, he had, since his arrival here, taken some pains to examine the manner of proceeding adopted in the Conventions that had been held in the different States of the Union ; and he was convinced that the mode he had indicated would be attended with fewer difficulties, and productive of better results, than any other course that had been suggested.

He considered that the people had sent them there to accomplish a very important business, and the question now to be decided was, in what manner they should approach the subject—where they were to begin, and how they should progress with the revision of the Constitution. Whether they referred the Constitution to the consideration of a committee of the whole or to a select committee, as proposed by the gentleman from Monroe, (Mr. Read,) was, in his estimation, merely a question of convenience. The matter to be decided was how they could best classify and arrange the different subjects embraced in the Constitution, and others upon which they would probably be called to act, so that each particular subject could be referred to its appropriate and peculiar committee. And he respectfully submitted, that the reference of the Constitution to a committee of the whole, would tend greatly to expedite the business before them. In this committee, any gentleman upon the floor, however humble his pretensions might be, could, if he

desired it, have an opportunity to bring forward a proposition to raise a committee to enquire into and report on any subject he might deem worthy the attention of his associates in this body. But if this opportunity is not now afforded, they would have, probably, proposition after proposition, down to the close of the session of the Convention, to raise committees to investigate some matter which would and could be attended to now if a full and free opportunity were afforded for discussion. He thought it important, that before the Constitution was referred to a select committee for distribution, they should have the views of the members as to the proper distribution of the whole subject ; and if they thought proper, briefly their reasons for it. By adopting this course, they would undoubtedly have a more satisfactory and proper distribution than could be obtained in any other way.

The principle never to entrust to another that which they could do just as well themselves, he thought, should influence the minds of members in deciding this question. If the Convention believed they could do the work as well themselves as if it were referred to a select committee, he presumed they would prefer to do it, as he thought it would be but a poor compliment to this body to suppose that an equal, if not greater amount of intelligence and wisdom could not be found in the whole Convention than in a fractional part of it, however able and intelligent the committee might be who should be appointed under the resolution proposed by his friend from Monroe.

The committee of the whole was a mode of legislative procedure with which they were familiar, it being much used in the legislative assemblies of our country, both in the National and State legislatures ; it being usual to refer bills of great importance to a committee of the whole, where they received their first consideration and discussion. Could not the Convention take up the Constitution of Indiana and refer it to a committee of the whole, and in that committee act upon it, in the same manner that the House of Representatives of the Union acts on the President's message, and as both branches of our State legislature do on the Governor's message ? The first article respecting the rights and privileges of the citizens and inhabitants of this State usually called the "Bill of Rights," could be read and then a resolution offered that so much of the Constitution as related to that subject be referred to a committee. So with reference to the remaining articles and subdivisions of the Constitution ; and if any gentleman was desirous of having any particular subject investigated, not in the present Constitution, he had only to move the formation of a committee to have charge of that special subject. Thus the various topics embraced in the Constitution could be dissected, if he might be allowed the use of the expression, arranged in

proper order, and by the committee of the whole reported to the Convention, and when the Convention had agreed to the report, it would then refer the various subjects to appropriate committees.

It would be recollected by gentlemen conversant with the constitutional history of the country from which they derived their language, and, to a great extent, their laws, institutions, and modes of parliamentary procedure, that the great legislative contest fought there between the friends of freedom and slavery, was in committee of the whole, then termed the Grand Committee of Supplies. And he could not but consider such a mode of procedure as one worthy of attention and respect, not only because of its antiquity, but for the good it had accomplished. For what purpose, he would enquire, had the people of Indiana, more than a year since, by an overwhelming vote, called this Convention? Was it to be supposed that they had convoked this assembly merely for the purpose of making one or two slight alterations in the organic law of the State? Certainly not. He believed that important reforms were needed in that instrument, and as in a committee of the whole, there was more freedom of debate and action, and less restraint of parliamentary forms and usages, he believed by letting it take that course every gentleman in the Convention would have an opportunity of showing to what extent, in the way of reform, his constituents desired him to go.

Another advantage resulting from the *projet* he had suggested, was, that the several subjects before them would receive a two-fold consideration, being first considered in committee of the whole and then in the Convention. Propositions would not only be freely offered, but with great freedom discussed; and they should obtain what was much to be desired, an open and free comparison of opinion. Thus, when they returned into Convention to act on the matter, they would understand each others' views much better than in any other mode they could adopt. If there was any evil to be deplored, it was that of hasty action, and this course would obviate it to some extent.

Let his suggestion be adopted, and they could commence, at once, the work they were sent there to perform.

He had heard it intimated since he had been here, that there was a proposition to be submitted by a distinguished gentleman on this floor, to raise a select committee of this body, to consist of some twenty-five or more members, to whom was to be entrusted the entire business of framing a new Constitution, and reporting it to this Convention; and the proposition now under consideration, and which he had moved to amend, proposed to raise *only* three committees, one on each of the great departments of government; and he presumed should it be adopted, not more than one-third of the members

would be attached to these three committees. Now if this grand committee was to be appointed, he would ask, what was this Convention to be engaged in while that committee was deliberating? Must they sit there with their arms folded, meeting only to adjourn until this committee was ready to report. A sense of duty to his constituents, constrained him to oppose both propositions, as he desired to begin to-day the work they were sent to execute.

There was another subject to which he would allude before he took his seat, as it might save him the trouble of rising again to speak on the matter, and that was in regard to the manner of constituting these committees to whom the Convention should order the several subjects to be referred. After the committee of the whole had reported sundry resolutions to the Conventions distributing the various parts of the Constitution to different committees, and this body had agreed to the report, the question would naturally arise how the committees should be constituted. In the Convention that formed the present State Constitution, there were twelve standing committees raised, but the State had increased in all her great interests, to such an extent, as in his opinion to render it necessary to raise some six or seven more committees than was then deemed necessary. He proposed to organize nineteen standing committees, and to add a sufficient number of members to each committee to embrace in their deliberations every member of the Convention. His reasons for this was that he presumed there were some members of this body, who, like himself, never having had the honor of a seat in a deliberative body, were consequently, young and unfledged in the business of legislation. And even of those who might have heretofore served in our State Legislature, there probably were some who, though men of clear heads and sound principles, yet might not possess what was usually termed a talent for public speaking, and, unless they were placed on some of the committees, we shall lose the benefit of their intelligence and counsel in framing the Constitution. This feature in the organization of the committees he regarded as of paramount importance. It was a position every member was entitled to occupy, and the advantage was thereby gained of the entire wisdom and prudence of the whole body being directed the consideration of the subject before them. He apologized to the Convention for having so long and, perhaps, so unnecessarily, occupied their time, and observed he did not expect to occupy much of their time in debate, and would trouble them with as few propositions, as were consistent with the interest of those he was sent to represent.

Mr. T. SMITH observed that he did not profess to understand much about legislative proceedings, or the necessary rules for the government of legislative bodies—never having

paid much attention to them—nevertheless, he considered the mode just suggested of referring the Constitution of Indiana to the committee of the whole, the most correct mode, and the one that should be adopted. The idea had been suggested to his mind some time since, by a gentleman residing in the northern part of the State, and he favored the plan because it afforded an opportunity for every member, at the outset, to present his views. It would lead to a more extended discussion, which was eminently desirable. He was opposed to any unnecessary consumption of time, and he regarded the formation of a number of large committees, as tending to that result. They could take up the Constitution, article by article, and it might be that they would agree upon those articles while in committee of the whole, thus making short work of the labor before them. It was a false idea that every resolution and subject that had been discussed in the Convention of Kentucky, and Ohio, and New York, had to be gone over again in the Convention of Indiana. He was opposed to any such course of procedure. The idea that a large book must be made of their proceedings was equally absurd; and he could not but think that if those proceedings were to go entirely unreported, the term of their session would soon be brought to a close.

Mr. BORDEN renewed his motion to refer the whole subject to the committee of the whole.

The PRESIDING OFFICER stated, that it was not in order to refer the Constitution of Indiana to the committee of the whole—that subject was not now before the Convention.—The question pending was the resolution providing for the appointment of the standing committees.

Mr. BORDEN said, he would modify his motion, and move the reference of the resolution to the committee of the whole.

The question being upon the motion of the gentleman from Allen, (Mr. Borden,) Mr. EDMONSTON said, he was far from setting himself up to be a judge of parliamentary law, but as he understood parliamentary usage, he certainly thought that upon the committee on rules and regulations, appointed yesterday, devolved the duty of drafting committees, and reporting their organization to the Convention. It then remained for the Convention to decide which were necessary and which were not.—Their number could be either diminished or increased. This had been the practice in all Legislative bodies. When these committees were appointed, then there existed something tangible to which references could appropriately be made. He trusted that under the resolution of yesterday, the chair would proceed to appoint a committee who should report rules and regulations for their government, and that he would also appoint the necessary standing committees.

Mr. KELSO said, that it seemed to be the desire of gentlemen to do up all the business of the Convention that afternoon; but for his part, he saw no necessity for being in such a desperate hurry to get through with the business before them. His friend from Allen appeared very desirous of getting into committee of the whole. This might be desirable, but as far as his experience went, he would say he had seen more frolics and waste of time occur during the sessions of such committees, than at any other time. How, he would ask, could a subject be committed, when there was no committees existing to which it might be referred. It was about as senseless a proceeding as for a man to search for the hole made by thrusting his finger into water. (Laughter.) They had adopted the rules of the late House of Representatives, and by these rules they should be governed. He would have the Chair, then, appoint the committee ordered to be raised on yesterday, and that committee report to the Convention the necessary standing committees. The Convention could then decide upon the requisite committees, and then his friend from Allen might bring forward his proposition to go into committee of the whole for the purpose of distributing the Constitution.

Mr. READ, of Monroe, said, he understood that on yesterday a committee had been appointed to draft rules and regulations for the government of the Convention; this was all the duty which that committee was required to perform. It had no authority whatever vested in it to raise the standing committees. In the New York convention, a committee was first organized who simply reported rules and regulations. So in the Ohio Convention. Then some gentleman came forward and presented a plan of action to the consideration of the Convention, which plan of proceedings was adopted. Now they had appointed a committee on rules and regulations, and thus completed the organization of the Convention. The next thing was to appoint a committee who should report a plan for the business of the Convention.—The amendment he had already offered, was not worded in the manner he would prefer; he would therefore withdraw that amendment, and offer the following as a substitute. "That a committee of — be appointed to report a plan for the business of this Convention, and to designate the number and functions of the different committees."

Mr. BORDEN said, he would withdraw the amendment he had that morning offered, for a season, in the hope that some general amendment, effecting the purpose he wished to attain, would be adopted. He would merely remark that the gentleman's attempt at ridicule was one thing, and sound argument another. The motion he had made was precisely the same in effect as one made in the Virginia Convention, by one of its most eminent members. He did not

mean that the several resolutions were such as were brought up in that Convention, but that the proposition to go into committee of the whole, and then distributing the Constitution, was of like character to one offered in that assembly.

So the amendment was withdrawn.

Mr. READ, of Monroe, moved to strike out all after the resolving clause of the resolution offered by the gentleman from Tippecanoe, (Mr. Pettit,) and insert the amendment which he had just offered, as a substitute.

The question being upon the motion of the gentleman from Monroe,

Mr. PETTIT desired to say a few words before the question was taken on the pending amendment. It appeared to him that the natural divisions of government here and elsewhere were three—legislative, executive, and judicial; and these divisions were recognized in a provision in the present Constitution. These departments embraced every subject requiring their attention; for no gentleman had as yet attempted to bring forward a proposition providing for the addition of another division of the powers of government. Almost the first provision of their present State Constitution, as also of the Constitution of the United States, and of the several States of the Union, set forth those three divisions of the powers of government. Similar divisions were to be found in the acknowledged provisions of the unwritten Constitution of Great Britain. The appointment of these three committees would not of course debar any gentleman from moving the formation of other committees, if such an addition should be thought necessary. He was prepared to vote in favor of such an addition if gentlemen thought it absolutely requisite.

With reference to the proposition of the gentleman from Allen, (Mr. Borden,) he must say that he considered it of but little practical utility. It was true that if, as the gentleman proposed, nineteen committees were organized, a number of gentlemen would be gratified in being appointed Chairmen of those committees. For one he was willing to take the tail end of any committee.

(Cries of "consent," "consent.")

Mr. PETTIT. Gentlemen say consent but it may be that a committee thus constituted would be like a Kangaroo—strongest in the hind quarters. (Laughter.) The effect of having so many different committees would be to retard action and confuse business. Each committee would be encroaching upon the proper duties of the other, for they could not fail, without mutual consultation, in reporting twenty different provisions of the Constitution, of offering some particular article that would conflict with another article.

From the statement of the gentleman from Allen, it was to be inferred that the proposition he had offered was the serpent that was to

swallow up everything. This, at least, was the purport of the gentleman's statement. Now it did appear to him, (Mr. P.) that for a gentleman who had never been in any deliberative body before, to come there and ask to be made the head and front of a committee which was to have the distribution of the various subjects embraced in this Constitution, was a tolerably officious act, and one against which might justly be raised the charge of absorption. He had had some experience in legislative bodies elsewhere, and for one he felt bound to say that such a position as that taken by the gentleman from Allen, he was not desirous of occupying.

As the practice of referring the message of the President to the committee of the whole had been alluded to, he would state that such a reference could be made with all propriety, but that when before that committee for consideration no reference of certain portions could be made directly to any other particular committee. That committee simply resolved that having had under consideration so much of the President's message, they recommended the reference of this portion and the other to appropriate committees. The reference was never made directly from the committee of the whole. They must in the first place adopt a resolution appointing committees, and then the direct reference could be made.

The resolution adopted on yesterday provided for the formation of a committee which should report rules and regulations for the government of the Convention—the Convention in the meanwhile to be governed by the rules of the House of Representatives. Now if the resolution of the gentleman absorbed the resolution of yesterday, and embraced the power to raise the committees, they must, acting under the rules of the House of Representatives, adopt the same number of committees that existed in that body. They must raise similar committees to those organized by the House.—Were they then to have a committee on enrolled bills? He took it for granted that such a committee would not be raised because it would not be applicable to the Convention; that however, would be the effect of the gentleman's proposition. On the contrary there was no necessity existing for any such committee, and the true course to be pursued was to elect only such committees as were necessary and appropriate. If the proposition for organizing three great committees were adopted and carried into effect, how then would the business proceed? A friend at his left, for instance, might desire that some provision with reference to the judiciary should be engrafted on the Constitution. Then he would only have to move that the committee having charge of that subject be instructed to inquire into the expediency of engrafting said provision; and after the report of the committee had been presented a motion would have to be made that it be laid on the

table and printed, and afterwards referred to the committee of the whole on the state of the Commonwealth. They would then come to the most interesting period of the session—the period when the deliberations of the committee of the whole commenced. At that time every member should be in his place, attentive to the duties of legislation. If the committee of the whole should adopt the provision it would be reported back to the Convention and then the question come up as to whether the Convention would concur in the action of the committee of the whole. If it was concurred in, the provision would become a part of the proposed Constitution. If any amendment was made it was then to be re-referred to the appropriate committee in order that in a smaller body it might be carefully considered.

He had heard it suggested that but one committee should be appointed to have under their jurisdiction all the topics embodied in the Constitution. He had heard several gentlemen conversing about the propriety of such a plan, but as yet he had not obtained the approbation of his own mind, that such a course should be pursued. He did not think that with propriety or justice all the subjects coming under the supervision of the three different departments of this government could be referred to one committee. It appeared to him that the persual of such a course would be drawing into a very small vortex the power of the Convention, and also that the labors of these different committees could more harmoniously and beneficially effect the purpose designed in the calling of the Convention. To undertake to dovetail together the action of nineteen different committees would be a more fatiguing task than to travel over the most old fashioned railroad in Indiana. As a matter of course the various courts of the State would be at variance in their decisions upon the true meaning of the different articles of the Constitution. They could not of necessity give them the proper construction. He trusted that the resolution he had offered would be adopted.

Mr. OWEN said, he had been from the first in favor of passing the resolution of the gentleman from Monroe, and the remarks of the gentleman who had just taken his seat, further confirmed him in the opinion that it ought to be adopted. So far as he had considered the matter he thought that the number of standing committees should be more than three and less than nineteen, and their organization could more speedily be reported to the Convention through the medium of a select committee raised for that purpose.

Mr. EDMONSTON, of Dubois, moved to fill up the blank in the amendment offered by the gentleman from Monroe, with the words "one from each Congressional District."

The question being upon the amendment offered by the gentleman from Dubois.

Mr. BORDEN said, that he wished before the vote was taken upon the question before them, to allude briefly to the remarks made by the gentleman from Tippecanoe, (Mr. Pettit.) He admitted that much deference was due to the more mature experience of Congressmen and Legislators; nevertheless, he thought that some degree of learning and wisdom might be found elsewhere than among those gentlemen who had served in Congress, and in State Legislatures. The gentleman from Tippecanoe had said that he (Mr. B.) had proposed a resolution—in character like the rod of Aaron's serpent that swallowed up all others. He did not design arousing the ire of any gentleman in the Convention, and therefore he would remind the House that in offering his resolution it was intended to operate temporarily, until the House had adopted their permanent rules. It was not his design to take anything out of the hands of the gentleman from Tippecanoe. He would bow in deference to his superior knowledge and experience, nevertheless the opinions which he entertained conscientiously he should fearlessly express. It was argued that the distribution of the subjects before them did not belong to the Committee on rules already ordered. He thought differently. It was said that we should not refer to the proceedings of other Conventions; but he would ask, with great respect to his friend from Ripley, (Mr. Smith,) if it was wrong to refer to the proceedings of the Convention which formed the instrument they were about revising. Upon the second day of the session of that Convention; Mr. Johnston submitted a resolution for the appointment of twelve different standing Committees—which committees reported the twelve different articles to that Convention that now comprise the existing Constitution of the State. Yet his friend from Tippecanoe (Mr. Pettit) had said that such a course of procedure was incongruous—that it would inevitably produce confusion. Several of the leading members of the Convention to which he had referred, and who were considered at that time very able men, among them Judges Park and Johnson, and Mr. Noble, advocated the division of the Constitution into twelve different parts, and it was thus referred, each portion to an appropriate committee, and they only raised those committees that were applicable to the business of the Convention. For one, he would say that he represented the opinions of a portion of the people of this State, and he cared not whether it pleased gentlemen or not, he intended to perform the duty he was commissioned to execute. He felt it to be his duty, however, to bow to the will of the majority.

The gentleman from Tippecanoe (Mr. Pettit) had said that every part of the Constitution was embraced under one of three heads; now he would respectfully inquire of him, to which of these heads the bill of rights appertained.

Mr. PETTIT said, he thought he could readily satisfy the gentleman on that point. The rights set forth in the bill of rights were secured by the judiciary. The violation of any of them could easily be punished in any judicial district.

Mr. BORDEN said the gentleman from Tippecanoe, in the resolution submitted by him, proposed the appointment of only three committees. Now it was admitted by all that there was a great probability that several other committees would necessarily be created. This fact was admitted by the gentleman from Tippecanoe himself. Why then delay the formation of the necessary committees? why not pass a resolution for their formation at once? The duty had to be performed and it would be better that it should be executed immediately. He was satisfied that the proper plan was to authorize the mode of distribution he had suggested.

Mr. RASCOM moved that the Convention adjourn; which motion was disagreed to. The question being upon the amendment offered by the gentleman from Dubois, (Edmonston,) to fill up the blank in the amendment offered by the gentleman from Monroe,

Mr. RARIDEN remarked, that he was of opinion that the object set forth in the proposition offered by the gentleman from Tippecanoe had been misapprehended by gentlemen who had been engaged in discussing the subject. He did not understand that it would interfere with the rights of any member of the Convention. The three several committees were to act as presiding spirits over the executive, the legislative, and the judicial departments of the government. It was a species of machinery for the purpose of bringing together in one harmonious whole, the discordant elements that prevailed in the Convention—for it was clearly evident that many of the members composing the Convention, would not be satisfied without making numerous amendments to the Constitution they were called upon to revise. There was an apparent necessity existing for the formation of a committee on elections, in addition to the three proposed, whose duty should be the examination of the credentials of the members; but if any other committee was desired, for instance a committee on banking, there was a manifest propriety in delaying its formation, until the time for action upon that subject arrived. When those gentlemen of the Convention, who were thoroughly acquainted with the various and important subjects coming under the consideration of the Convention, had become known to the President of the Convention, then would be the proper time for the appointment of other committees to consider such particular subjects as might be deemed worthy of consideration. It would be apparent to the mind of every member, that if there was anything wrong in the action of any

of these committees, that action could easily be revoked by the Convention; as the formation of those committees was merely a commission of the House to expedite business and save time. He did not think that the appointment of these three committees—as the gentleman from Tippecanoe had stated—would interfere with the subsequent appointment of any other committees that might be thought necessary. All that was contemplated in the formation of these committees was that they should exercise the work of supervision.

They were not to over-rule the action of the Convention, but were to advise and point out those plans of action which they considered most advantageous to the Commonwealth.

Mr. MORRISON of Marion said he had listened with great deference and pleasure to the speeches that had been delivered upon the subject before them; but he confessed they did not come up to his ideas of the duty which they, as delegates of the people, had to perform.

The idea of three great committees might please some gentlemen, because of the vast influence it would give those gentlemen in the Convention—if elected Chairman of those committees. He attributed no such motive to gentlemen; although such a construction might be placed upon their action. Suppose, said Mr. Morrison, that these committees be appointed and that they consist of fifty members each; I would enquire of any man who has ever done business in a committee, how so large a committee could speedily and impartially execute the business entrusted to them? If this plan were to be adopted, he said it was just as easy to organize one great conventional committee, to whom should be entrusted all the business arising before the Convention. There would be but little difference between the action of fifty and the action of a hundred and fifty men when they came to close work and scrupulous detail.

He would have the members look for instance at the subject of banking or finance. Such a subject would give ample scope to the most enlarged efforts of the ablest intellects in that body. There were fifty other subjects, perhaps not as important, but still demanding assiduous attention, which would require the investigation and attention of these committees. How could they all be deliberated upon, and reported to the Convention without jarring or confusion? There were subjects that would come up for consideration, that were not embraced in the Constitution; then why not at once organize the necessary committees of reference instead of waiting until the very moment for action had arrived? Suppose, (continued Mr. M.,) that the committees were increased to twelve or fifteen, and that each committee was composed of some nine or ten members, could not those committees act with more expedition upon the subjects referred to them, than if their number were diminished? They could report back to the Convention the

result of their deliberations, and after those reports were received they could be referred to and acted upon, in the committee of the whole, and there they could easily be made to harmonize. For one he desired to have more discussion upon the subject, so that each member might understand clearly the position he occupied in the Convention. He wished that the members of all parties should be heard in the discussion of the body, as he wanted to make the Convention as democratic as possible—he wanted to make it a democratic republican whig Convention.

Mr. PETTIT said, that he did not desire to debate the question any further at this time, believing that it would be better for members to commune among themselves in regard to it. He would therefore move that the Convention adjourn.

The question being put on the motion to adjourn; it was not agreed to.

On motion, the resolution and pending amendments were laid on the table.

Mr. RARIDEN moved, that the Secretary of the Convention be instructed to ascertain, and report, whether a more convenient hall could not be procured, for the deliberations of the Convention, and upon what terms.

The PRESIDENT stated, that in connection with the subject just mentioned he would lay before the Convention, the correspondence that had taken place between the Governor and proprietors of the Masonic Hall, respecting the hiring of said Hall, for the use of the Convention.

The correspondence was read by the Secretary, as follows:

EXECUTIVE DEPARTMENT, Oct. 7, 1850.

HON. G. W. CARR,

President of the Convention:

Please lay before the body over which you have the honor to preside, the accompanying correspondence. Having failed in procuring the Masonic Hall for the use of the Convention under the restriction of the Legislature, we have prepared the Hall of the House for their reception, leaving it to the Convention to take such action in the premises as may be deemed proper.

We have the honor to be, &c.,

JOSEPH A. WRIGHT, Governor,
JAMES P. DRAKE, Treas. of State.
E. W. H. ELLIS, Auditor of State.

INDIANAPOLIS, May 6, 1850.

WM. SHEETS, Esq.:

Dear Sir:—Under an act of the last Legislature the undersigned are authorized to contract with you for the Masonic Hall for the use of the State Convention to revise the Constitution, at a rate not exceeding one hundred dollars per month. We are authorized to close such a contract immediately if our proposition

shall be accepted. An early answer is desired. Respectfully, &c.,

[Signed] J. A. WRIGHT, Governor,
J. P. DRAKE, Treasurer of State.
E. W. H. ELLIS, Auditor of State

INDIANAPOLIS, May 9, 1850.

MESSRS. ELLIS, DRAKE, and WRIGHT:

Gentlemen:—

Your note of the 6th instant, in relation to the use of the large room in the Masonic Hall, for the sitting of the Convention, has just been received. I cannot, in justice to the stockholders for whom I act, contract for the occupancy of the room at the rate you propose, viz: one hundred dollars per month; but I will agree to prepare the room as stated in a former letter, keep it in order during the session of the Convention, for \$20 a day, or I will prepare the room for the use of the Convention, leaving the compensation to be fixed by the Convention itself.

Respectfully your ob't servant,

[Signed] WM. SHEETS, Com'r.

Mr. PETTIT moved to lay the communications just read on the table.

The motion was agreed to.

The question then recurring upon the motion offered by the gentleman from Wayne, (Mr. Rariden.)

Mr. KELSO moved to strike out the word "Secretary," and insert the words "a committee of three."

The amendment was agreed to, and the resolution as amended was adopted.

Mr. MILROY offered the following resolution:

Resolved, That there be a committee of seven appointed, whose duty it shall be to enquire into and report to this Convention upon the legality of the claim of the present State Printer to do the printing for this Convention, and that in the meantime the Secretary of the Convention be authorized to cause the necessary printing to be done at the prices usually paid for similar work done for the General Assembly.

Mr. KELSO said, he had been told by a practical printer that the printing for the Convention could be done at least twenty per cent cheaper than the public printing had heretofore been done for the State. Whenever the matter should come to be decided upon he was for giving it to the lowest bidder, compelling him to give good security for the performance of the contract.

Mr. BASCOM desired to say, that he was entirely opposed to letting out the printing by contract. The public printing as it was now executed was done for as reasonable a price as it could be with justice to the printer. The men who offered to do it at twenty per cent below the present prices would have to employ "rats," as they were technically denominated. He

would say for one that he was not there to act a parsimonious part towards any of his fellow working men. He had no intention of grinding the printers down to the lowest cent. He desired that some good Democrat should have the printing at fair prices; and as the Democrats had the majority in the Convention, the question of printing could easily be decided. He was ready to take the responsibility of electing printers at the usual rates of remuneration for printing. They might just as well let out the offices of Secretary and Doorkeeper to the lowest bidder, as to let out the printing. He thought that the Convention had a right to choose their own Printer; and that they should give him fair and reasonable wages for his services. He would move the following amendment to the resolution offered by the gentleman from Carroll, viz: "That the Convention tomorrow at 10 A. M. proceed to the election of a Printer. The President ruled the motion out of order, and it was withdrawn.

Mr. FOSTER moved, to amend by striking out all after the resolving clause, and inserting "that a committee be raised to inquire on what terms the printing can be done, and that until that be done the Secretary shall get the printing done at the prices now paid the State Printer. The amendment was decided to be out of order.

Pending the question, on motion, the Convention adjourned.

WEDNESDAY MORNING, Oct. 9th, 1850.

The Convention met pursuant to adjournment. The Chair announced the following as the committee on Rules, provided for in the resolution of Mr. Borden, adopted on Monday the 7th, viz:

From the 12th Judicial Circuit—Mr. BORDEN.
 From the 1st Judicial Circuit—Mr. PETTIT.
 From the 2d Judicial Circuit—Mr. READ of C.
 From the 3d Judicial Circuit—Mr. DUNN of J.
 From the 4th Judicial Circuit—Mr. HALL.
 From the 5th Judicial Circuit—Mr. WALLACE.
 From the 6th Judicial Circuit—Mr. SMILEY.
 From the 7th Judicial Circuit—Mr. STEVENSON.
 From the 8th Judicial Circuit—Mr. BIDDLE.
 From the 9th Judicial Circuit—Mr. WHEELER.
 From the 10th Judicial Circuit—Mr. DOBSON.
 From the 11th Judicial Circuit—Mr. March.
 From the 13th Judicial Circuit—Mr. Smith of R.

And the Chair also announced the committee of three provided for on the resolution of Mr. Rariden, on the subject of procuring a more suitable room for the sittings of this Convention, to consist of the following gentlemen, to-wit:—

MESSRS. RARIDEN, KELSO, and MORRISON of Marion.

The Chair submitted to the Convention, the following communication from CHARLES H. TEST, Secretary of State, to-wit:

OFFICE OF SECRETARY OF STATE,
 Indianapolis, Oct. 8, 1850. }

HON. GEO. W. CARR

President of the Convention—

Herewith is transmitted, unopened, the proceedings and depositions of the contested election for Delegate to the Convention from the County of Union, wherein James Osborn contests the right of Benjamin F. Brookbank to a seat in said Convention.

Respectfully,
 CHARLES H. TEST,
 Secretary of State.

Which letter and the proceedings and depositions therein referred to, were, upon the motion of Mr. Edmonston, laid on the table.

The PRESIDENT announced the unfinished business to be the resolution offered by the gentleman from Carroll, on the subject of printing.

Mr. KELSO desired to enquire if a claim had been put in by any one as being entitled to do the printing for the Convention. If there had been no such claim advanced of which cognizance could be taken by the Convention, he was for having an investigation made by a committee. Perhaps some of the delegates of this Convention, he said, could inform the Convention in regard to this matter.

Mr. CHAPMAN said, he supposed it was known to the members of the Convention generally, that he was the State Printer. And being under contract as State Printer he of course considered himself bound to be prepared to do the printing for the Convention, and if he were not prepared to do it he had no doubt he would be liable to the penalty which the law imposed for the non-fulfilment of his contract. He could make no discrimination between printing ordered by the Convention, and that ordered by the Legislature, or by any State officer under the law. He held himself, therefore, in readiness to do the printing of the Convention as well as any other printing which might be necessary to be done on behalf of the State. He desired to know whether he was in error in supposing that the public printer had rights and privileges under his contract while under an obligation on his part to perform all the duty incumbent upon a public printer. That was the question.—He wished to know whether an officer of the State, commissioned by the Governor, could be turned out of office by this Convention, or be deprived of any of the privileges appurtenant to his office. It appeared to him that they might as well undertake to turn him out of the seat which he held there as a member of the Convention, though in this he might be mistaken.

Having made this explanation, he desired also to ask the favor of the Convention, to be excused from voting upon any question relating to this matter. He did not want to give a vote upon any question in which he might be supposed to have any personal interest. If he were to vote he should of course give his vote with the same degree of conscientiousness as if he were voting upon any other question. He had thought it right to say this much, in regard to the proposition now before them, and he would not detain the Convention further than to repeat his desire to be excused from voting.

Mr. KELSO said, he was satisfied that this resolution ought to pass, and an investigation be made. It was due to those who claim the right to perform this duty, that the investigation should be made. There would be, of course, a difference of opinion about that right, and the opinion he held in regard to it, might be erroneous, and it was the more necessary therefore, that an investigation should be made. He hoped the resolution would be adopted.

Mr. BORDEN said, he had no objection to the first part of the resolution, that a Committee be appointed to enquire into the matter.— But the second part of the resolution, which directed the Secretary to employ a printer *ad interim*, appeared to him to be of more doubtful propriety under the circumstances. If they were to direct the Secretary to employ a printer, and, as had been assumed, there was already a printer legally authorized to do the work, by official appointment, then the employment of another printer by the Secretary, would be in effect a violation of the contract with the person appointed as State printer. It appeared to him, therefore, that it would be better to strike out the latter part of the resolution.

Mr. DOBSON said, he did not see the necessity of delegating the power to the Secretary of the Convention, to employ a printer. They had made no order for the printing of anything, as yet.

He hoped that so much of the resolution as authorized him to employ a printer, would be stricken out.

Mr. KELSO said, he was of the opinion that that part of the resolution ought to remain. It might be that the Secretary would not be required to perform the duty of employing a printer, but at the same time it was known to every member that there was work required to be done at this very moment. Printed lists of the names of members for taking the yeas and nays were required.

The PRESIDENT remarked, that he was informed by the Secretary that he was in want of such lists now.

Mr. KILGORE suggested, that the resolution should be modified so as to direct this work to be done at the office of the State Printer. His charges were regulated by law, whereas if the Secretary were directed to make a con-

tract with some other printer they had, of course, no means of knowing upon what terms such contract could be made. He would, therefore, move to amend the amendment according to the suggestion he had made, that the work be done at the office of the State Printer.

The PRESIDENT. The Chair would remark that the resolution provides that the work shall be done at the rate of charge fixed by law.

Mr. KILGORE. Well, sir, let it done nevertheless at the office of the State Printer.

Mr. CLARKE, of Tippecanoe, said : he had very little objection to the resolution as it stood, but he thought it would be proper that the Convention should relieve the Secretary from responsibility, in regard to this matter. If those gentlemen who were appointed State Printers were entitled to do this work, the Convention had no right to take it from them. He did not wish to decide, however, that they were entitled to it ; but he was willing to vote that they should do this printing in order to relieve the Secretary from that which he would find to be a somewhat delicate task. Besides if those Gentlemen were entitled to do the work they would have a legal claim to compensation for it. He was unwilling to disturb any vested right.

The question was then taken on the amendment of the gentleman from Delaware—and it was not agreed to.

The question recurred on the adoption of the resolution.

Mr. KILGORE proposed to amend the resolution so as to authorize the Secretary to get the Printing done where it could be done the cheapest and the most expeditiously.

Mr. MORRISON said, that being a regular bred printer, and knowing that this matter had to go among his immediate constituents, he desired to say a few words in relation to it.

He was opposed to beginning a system of economy by reducing the wages of the mechanic who had to perform this labor, in order that they might show themselves the peculiar guardians of the Treasury of the people. He intended no demagoguism in relation to this matter, but he thought the laborer worthy of his hire, and he believed that no man who was at all conversant with the business of printing would say that the prices paid to the State Printer were too high; and he trusted that the Convention would not condescend to so small a business as to undertake to make a profit out of a few day's printing. Indeed, he thought it probable that there would be little or no printing done until the committee had time to report. He would not undertake to determine whether this Convention had the inherent right to elect its own printer, or whether the law creating a State Printer was obligatory upon the Convention. Under this view of the question he should most

decidedly vote against striking out any part of the resolution.

Mr. KELSO said, that, according to his understanding, when a man made a bargain with his eyes open, his labor was worth just exactly what he undertook to do the work for, and he understood further that a printer was no better than any other mechanic, and that mechanics were no better than other people, except when they behave themselves better. It was probable that there would not be occasion for \$10 worth of printing previous to the report of the committee being made, and he thought it would be quite as well to let the Secretary make his own bargain, and get the work done where he could get it done the soonest. He was for paying a fair price, and whoever was acquainted with his course ever since he had had the honor of occupying a seat in the Legislature of the State, in this end of the Capitol and in the other, knew that he would be the last man to undertake to undervalue the services of any man, or to reduce his pay below what those services were worth. He was, however, for admitting a fair competition, and for allowing printers to make their propositions, and for permitting the Secretary to get the work done on fair terms.

Mr. NAVE said, there were several points that ought to be understood before voting upon the proposition. They ought to be informed as to the legal rights of the present contractors for the public printing. It was important, before taking any step towards the employment of a printer, to ascertain whether the existing contract for the public printing was binding upon the Convention. If it was binding upon the Convention, the Public Printer would be entitled to be paid for the work, and if this was the case he took the ground that the Convention had no right to employ any other person for a single hour than the State Printer. Until this question was settled therefore, in reference to whether the contract was binding upon the Convention, it appeared to him that no other printer ought to be employed, because if they proceeded to appoint an individual to do the printing of the Convention before that question was settled, it might prove to be a violation of the contract made by the State with the State Printer, and he would have a right to institute a suit at law for the purpose of maintaining his legal rights, and thus the State would be involved unnecessarily in litigation. He was not for interfering with the rights of individuals, either those now employed by the State or any others, and it was perfectly immaterial to him who were the persons who had been elected State Printers. This was a question which required investigation, and no man ought to be employed to print for the Convention until the question was settled.

Mr. STEELE said, he should vote for the motion to strike out, and he desired to assign the reason for that vote. He was perhaps dif-

ferently situated from almost every other member of the Convention: he had come here for the sole purpose of serving the country and had no predilection for any particular interest; he had no particular plan or scheme to advance. That being the position he occupied, he would go with his friend from Delaware, in the proposition he had made to give the printing of the Convention to the printer who would perform the work in the best manner and upon the most favorable terms. It was true that the honorable gentleman on his left (Mr. Chapman) had been appointed by the Legislature to do the State Printing; but he did not conceive that the Legislature in electing him to that office could have contemplated the performance of the work of the Convention, because in the act authorizing the call of the Convention, it was provided that the Convention should be entitled to elect their own officers. This was a Convention of the people, and it was their duty to act with a view to economy. He hoped the amendment would be adopted.

Mr. BASCOM said, he rose not to discuss the legality of the claim of the State Printer to do the printing of the Convention, but to combat in the outset, as he should do at all times, the system of letting out the public printing by contract. Gentlemen who had so great a regard for economy, were, in such a case as this, embarrassing themselves unnecessarily. He was in favor of economy, but not at the expense of the laboring community. In giving the work to the lowest bidder, they were but putting money into the hands of the contractors, at the expense of those who performed the labor. If gentlemen would turn to the House Journals they would find letters from practical printers of this State—and among others from Mr. Defrees—who appeared to be anxious to get a nibble at this printing, in relation to this subject. [Mr. Bascom read a brief abstract from one of the letters referred to.]

When they undertook to cut down the prices and to throw the printing into the market to be hawked about and given to the lowest bidder, they were acting in direct contravention of the interest of the laborer, and depriving him of a reasonable remuneration for his labor.

If the interests of any portion of the community are to be preferred to those of another, the interest of the laborer should be preferred. Wherever the contract system had been tried it had been found to be prejudicial to the laborer as well as to the Government, and the work had invariably been done in a very inferior manner—the material was necessarily inferior, and the work inferior. There was no man who understood anything about printing who would rise and say that too high a price was paid for the printing for the State. It appeared to him that it was not the proper policy to undertake to get the work done more

cheaply than the Public Printer would do it. He was entirely opposed to the proposition.

Mr. KILGORE withdrew his amendment.

Mr. STEELE enquired if the resolution was still open to amendment.

The PRESIDENT replied that it was open to amendment.

Mr. STEELE said, he would renew the amendment of the gentleman from Delaware. He desired that the work should be done where it could be done the cheapest and most expeditiously. His understanding of the act authorizing the call of a Convention, was that it gave them power to elect all their officers. That being the case he was inclined to act directly in accordance with it.

Mr. MAGUIRE said, he hoped the gentleman would withdraw the amendment for the present. He could renew his proposition if he thought proper after the report of the committee was made.

Mr. STEELE said, he had no objection to withdraw the amendment.

The amendment was accordingly withdrawn.

Mr. FOSTER said, he was sorry that the amendment was withdrawn. He had himself proposed a Buncombe resolution yesterday and unfortunately the chair had decided that it was out of order for irrelevancy or incongruity, and consequently his resolution did not appear in print. He rose now merely to express his sorrow that it was not published, so that it might go to his constituents.

The question being taken on the resolution of the gentleman from Carroll, it was adopted.

The PRESIDENT laid before the Convention the following communication from His Excellency, GOVERNOR WRIGHT:

EXECUTIVE DEPARTMENT, }
October 9, 1850. }

HON. GEO. W. CARR—

President of the Convention:

In pursuance of the act of the General Assembly, approved January 18, 1850, providing for the call of a Convention, I have appointed and commissioned HARVEY FOWLER, Stenographer, to report the debates of said Convention.

I have the honor to be,

Yours, most respectfully,
JOSEPH A. WRIGHT.

The communication having been read by the Secretary—

Mr. GREGG offered the following preamble and resolution:

WHEREAS, It is desirable to complete the work delegated to us by the people with as little delay as possible, and with an eye to the strictest economy consistent with the honor of this body, and the interest of those whom we represent. Therefore,

Resolved, That we deem it inexpedient to report and publish the debates of this Convention

at the expense of the State, and to this end we respectfully decline the services of a Stenographer tendered us by the Legislature.

Mr. OWEN offered the following as a substitute for the resolution of the gentleman from Jefferson:

Resolved, That in compliance with the provisions of the act, providing for a call of the Convention of the people of the State of Indiana, to revise, amend, and alter the Constitution of said State, which directs the appointment of a competent Stenographer by the Governor of the State, to report their debates, the appointment made by the Governor, of Harvey Fowler, of Washington City, for that purpose, be, and the same is hereby, recognized and approved.

Resolved, That the certificate of the President of the Convention, as provided in said act, be from time to time issued to the said Harvey Fowler for his remuneration, which shall be at the usual rate of compensation for reporting the debates in the Congress of the United States.

The PRESIDENT remarked, that under the 32d rule of the House the proposition of the gentleman from Posey could not be moved as a substitute for the resolution of the gentleman from Jefferson.

Mr. OWEN said he would withdraw the substitute, then, for the present, until the resolution of the gentleman was disposed of, and he thought there would be but little difficulty or hesitation about disposing of it by voting it down.

Mr. GREGG said, that, in offering this resolution, he begged leave to assure the Convention it was not intended for Buncombe, but was the result of a sincere and thorough conviction of duty. He believed that its adoption would tend greatly to facilitate our public labors here, while it would be the means of a very considerable saving of expense, and without working any, the least detriment to the public interest, or discredit to this body, either individually or collectively.

In the organization of this Convention, we have elected certain officers, whose duty it will be to keep a regular journal of all our proceedings from day to day; and this journal, together with that organic law which may result from our deliberations will necessarily have to be published and circulated at the public expense, that our constituents may know what we, their public servants, have been doing here; and if our works speak well of us, it is all that is necessary—further than this, I am unwilling to tax the public treasury for their enlightenment.

It is an old but true adage, that a man should cut his coat according to his cloth. It is equally true that a prudent man should always live within his income. This certainly holds good in matters of domestic economy, and why not apply it to public affairs? Now, the Legisla-

ture has undertaken to give us the whole cloth from which to cut the garment. They have shown us the size of our pile, and it becomes us as prudent husbandmen to graduate our expenses accordingly. They have appropriated the sum of \$40,000 to pay the whole expenses of this Convention, including the pay of a Stenographer, the necessary printing and stationery—and doubtless they conceived this to be a most munificent and bountiful appropriation, altogether adequate to the ends to be accomplished. Now let us see how far this appropriation will carry us, under the most prudent and economical system that we can adopt. The daily expenses of this Convention will be over \$500, exclusive of printing and stationery. This in sixty days will amount to \$30,000. The mileage of members will be about \$4,000 more, making \$34,000—thus leaving but \$6,000 of the appropriation to pay for printing the journal of our proceedings, a large edition of the constitution in pamphlet form, for circulation among the people, together with such other printing as may be deemed necessary in the progress of our labors; a sum which I fear will be found altogether inadequate to foot the bill.

Now this calculation, you will perceive, is based upon the supposition that our session will last but sixty days. And, although it is the opinion of many gentlemen, both in and out of this Convention, that we shall not be able to get through in less than three or four months, still, I undertake to say, that if we address ourselves to the work as we should do, without wasting too much of our time in making unnecessary speeches for home consumption, we shall be able to complete our labors in less than sixty days to the entire satisfaction of the people and to the credit of ourselves, and on the score of expense, within the appropriation made by the Legislature. But, sir, let us adopt the course plainly indicated by the Legislature. Let us admit upon this floor the Stenographer so kindly provided for us by his Excellency, the Governor, with the understanding that all the speeches made here are to be reported at large, and published in a book, for the benefit of our constituents, and the enlightenment of posterity—and I will not attempt to set bounds to the duration of our session, nor limit to its expense. I profess to be a practical printer, and know something about what it costs. And let me assure you that more than one half of the appropriation will be absorbed in paying for the publication of our speeches, and other documents, and we shall have little left to pay our current expenses here, without asking for a further appropriation, which I am unwilling to do.

But the matter of expense is not the only objection to be considered. I take it that the employment of one single Stenographer on this floor (and that is all the law provides for)

would necessarily tend to protract the session—a result I most sincerely deprecate, as my private business demands my attention elsewhere, and I doubt not it is equally so with many others.

And do you ask, why the employment of a Stenographer to report our debates should necessarily prolong the session? You know, Mr. President, and so do every one of us, that mankind are naturally garrulous, fond of controversial debate and litigation—and give them a loose rein, and a proper incentive to action, and they will talk forever. There is a wonderful proclivity in the human mind for immortality; an innate grasping after fame and notoriety; an insatiable longing for a name to live when we are dead. Such is the phantom we are now following; and to most of us it will prove as evanescent and unsubstantial, as the "baseless fabric of a vision." But still we follow it—blindly pursue it, through all the devious windings of this mortal career.

Now here are at least 150 of us, all deeply imbued with the same perhaps laudable ambition to do something to immortalize our names, and transmit them to posterity; and it is quite natural that we should seek to avail ourselves of this golden opportunity, now offered us to do so. And how is this desirable end to be attained? Why sir, each of us have got to set our wits to work, to concoct a speech—no matter on what subject, nor how irrelevant it may be to the subject matter under consideration, so it be of sufficient length, and full of sound and fury, signifying nothing. These speeches must necessarily be reported by the Stenographer, and by him written out for the Press, for no one else but he can do it. And these speeches, I take it, will occupy about one day of the session to each, provided they be of sufficient length to occupy one hour to one hour and a quarter in their delivery. I say we will not be able to get through more than one of these set speeches per day, for that will be as much as any one Stenographer can possibly manage to take down and write out, and do justice to himself, unless he has a constitution like a steam locomotive, that can go ahead forever and never tire. Like the rest of us, he must have his hours of relaxation from labor, of recreation, and of rest, or he will soon wear out—and then we will be thrown back upon our own resources, and have to do our own reporting. The necessary consequence then would be, that we must accommodate our movements to his convenience, or some of our most brilliant efforts would be wholly lost to the world—a calamity! aye, a public calamity, not to be thought of for a moment.

Thus you perceive that to make but one set speech round on the general average, would require a session of 150 days, or about six months. And I fear, sir, that many of us will not be satisfied with any thing short of the

round dozen. Why sir, I am told that in the Kentucky Convention where they employed a Stenographer to report, one member alone made 199 speeches, and would have made the even 200 if the previous question had not been sprung upon him. This was going it strong, but if some of the members on this floor, hold out to the end as they have begun, I would match them, for wind and bottom, against the best blood and chivalry of Kentucky.

Now sir, assuming that we make, during the session, the number of speeches indicated. These, when printed in ordinary sized type, will cover an area of at least 2,400 pages, making three volumes of 800 pages. The journal of our proceedings will make another volume of about the same magnitude. And thus, by following the promptings of our own personal vanity, will the names, the profound cogitations, and the wonderful works of this august assembly be forever embalmed in four huge octavos, perhaps beautifully embossed and bound in calf. And these precious documents will be distributed throughout the land, to adorn the shelves of our public and private libraries, or transmitted to our great grand children, as invaluable memorials of ancestral greatness; thus evidencing to posterity, that such distinguished bipeds as you and I were once, and that we left our mark. But at what a sacrifice of time and money will this be effected. I pray you to count the cost before you embark in it.

But seriously, Mr. President, we need not be under the least apprehension, that our constituents will be kept in ignorance of our doings, should we dispense with the services of a Stenographer, as contemplated by the resolution under consideration. Our doors are always open—our deliberations public. Many of the leading papers of the State have their reporters on the ground; and I doubt not they will be able to keep their readers well posted up in all matters essential for them to know. And should any of us be so fortunate as to make a speech worthy of being read and remembered beyond the current hour, doubt not for a moment that these ever wakeful sentinels on the watch-tower will be fully able, and altogether willing to do us justice. Away then, with your Stenography, and give us the unsubsidized jottings of the public press. Your scientific touches may do well enough for another meridian, where they can spend eight whole months in a single *Omnibus*, at \$8 per day, eating canvass-back ducks, and drinking hock and sherry. It may answer well enough for such laggards in legislation, as are found about Washington, who can talk through a whole session of unparalleled prolixity without ever losing sight of the starting point. But for a working men's Convention, such as this, who receive but \$3 per day, and live on common doings, and have no particular inducement to prolong their stay beyond the successful accomplishment of the

work committed to their hands, I say, to such an unpretending body as this, the old fashioned mode of reporting will answer their purpose quite well enough, while it will cost their constituents less.

Sir, I once took a lesson in practical stenography, that will last me as long as I live. I remember it the more vividly, because it was at the time the source of much chagrin and mortification to me. And it is this circumstance, perhaps, which has tinged my mind with a degree of acerbity towards the whole profession. It was on the occasion of Mr. Clay's visit to this city, in the summer of '42. Among the many thousands who came up hither on that occasion to see and to hear the great Commoner, were several of the leading whig editors of the State, your humble servant among the number, for I was at that time the editor of the Political Beacon, published at Lawrenceburg. We came here not only to see and hear Mr. Clay, but to report his speech as far as we were able, for the benefit of our readers. The meeting was held in a beautiful grove adjoining the city. Near the speaker's stand was a large table prepared for the express accommodation of the gentlemen of the Press who might be present, and several of us availed ourselves of the proffered courtesy. I soon found myself comfortably seated in an easy chair, with paper before me and pencil in hand, ready to commence the important work of reporting Mr. Clay's speech, while around me were several other gentlemen of the tripod in a like state of preparation. Well sir, just before Mr. Clay commenced his speech, a stranger, whose name I never knew, pressing his way through the crowd, came to me and introduced himself as a regular bred Stenographer, saying that he had reported for many years in Washington City, for the National Intelligencer and Congressional Globe, and that he had often reported after Mr. Clay, in Congress. The gentleman's appearance, it is true, was not very prepossessing. But as I had no time to stand upon ceremony, or examine credentials of character, and being withal rather an indifferent reporter, I gladly availed myself of his kind offer to take my place and report the speech for me. And so giving up my comfortable seat, I took my place behind him, and for two mortal hours I stood upon my feet, protecting him from the external pressure of the crowd, lest they should jostle his arm, and thereby cause him to lose a single word or thought of the great speech. But I felt this privation as nothing, when I reflected upon the great advantage it would give me over the rest of my cotemporaries of the Press. Through the kindly aid of this gentleman I should now be enabled to spread before my readers Mr. Clay's speech in extenso, while they would be able to give but a mere skeleton of it, a birds-eye view of some of the leading thoughts. And

big with this reflection, I stood at least three inches taller in my shoes, and looking down upon my co-editors with a sort of patronizing air, as much as to say, "I am sorry for you gentlemen, but it can't be helped. I have got the vantage ground of you this time, and no mistake." Well sir, the speech being concluded, I took my gentleman by the arm, and marched him down in town, and, after some refreshments at my expense, repaired to my room to re-write out the speech. After laboring over it for more than an hour, he finally succeeded in writing out about one page of foolscap; and on glancing my eye over what he had written, I found it but a miserable caricature of the able and eloquent address I had just been listening to. But consoling myself with the reflection that I should be able to draw upon the resources of my own memory, to dress it up and make it passable, I urged him to continue his labors. He soon, however, complained of lassitude, and of being nervous, in consequence of the heat and labors of the day, and proposed to adjourn to some restaurant or coffee house, to recruit his strength, by the application of proper stimulants. I remonstrated with him, and proffered to go myself and bring him whatever he might want. But my remonstrances were all in vain. Go he must, and go he did—but he never returned;—and that was the last I saw of him.

Now, was ever editorial wight in such a fix, before or since? There I was, with Mr. Clay's great speech before me, reported at large, by a practical Stenographer of large experience—partially written out, but the great body of it still in hieroglyphics. Of what avail would it be to me or my readers? Neither the one nor the other would ever be any the wiser for it. It was to me all Pottawattamie, and I doubt whether the genius of Napoleon himself, would have been able to decipher it, and render it into intelligible English.

The next morning I heard of my worthy friend in one of the lowest doggeries of this city, gloriously drunk, and hallooing, "hurra for Van Buren!" Being deeply mortified at the result, and knowing that I should be bored to death by my brother editors, who enjoyed the joke amazingly, I ordered my horse and buggy, and left the town, fully determined in my own mind never again to employ a Stenographer to report a speech for me.

And here, Mr. President, allow me once for all, to disclaim any other than the kindest feelings towards the worthy gentleman, who has been selected to report the debates of this convention. I would not for the world, for I could not, insinuate any thing derogatory to his character or qualifications. I doubt not he is a gentleman of eminent qualifications in the line of his profession; and that he is able to render entire satisfaction to any deliberative body, where talents of a high order, joined to a gentlemanly

deportment are properly appreciated. But somehow or other a burnt child will dread the fire, and the wary bird will shun the Fowler's net.

I hope, Mr. President, that the few desultory remarks I have had the honor to submit on this occasion, may not be construed into a desire on my part to cover up or hide from my constituents, anything that I may do or say as a member of this Convention. No sir, I have nothing to conceal from them, and in all I may do or say, will endeavor to act as though they were present, and looking in upon me from every quarter of this lobby, scrutinizing my conduct with a jealous eye. The place I occupy here was wholly unsought by me. My election to a seat in this body was the unsolicited and free-will offering of as noble and generous a constituency as any gentleman on this floor has the honor to represent. And as such I esteem it the more highly; and so long as I sustain my present relation to them, will endeavor, in all things, to prove myself worthy of their generous confidence.

And what better evidence need be adduced of their noble generosity, their political magnanimity, and as some would doubtless infer, of their sterling good sense, than is to be found in the presence on this floor of my worthy democratic colleague, now sitting on my right, representing as he does a county claiming a popular political majority of at least 500 against that party to which he belongs? And why did they send him here? Why, casting aside all political considerations, and overleaping all the great barriers of party, why did they endorse him up hither, clothed with the high and responsible functions of a representative delegate? It was, sir, because they had great and important interests to subserve, reaching far beyond and above all the mere political and party conflicts of the day. It was that they believed he would look to the subservance of those interests with the broad and comprehensive eye of the patriot, and not with the narrow and contracted vision of the mere partizan. It was that they believed, in his representative character, he would rise superior to the behests of party, and frown indignantly upon every attempt that might be made to sow the seeds of political dissension in our midst, come from what quarter it may. Sincerely do I trust, that neither he nor I, political antipodes though we are, may never for a moment lose sight of that duty which we owe to our common constituents, or forfeit that confidence which they have reposed in us, by lending ourselves here to the accomplishment of political or party ends, either present or prospective.

Now sir, I do not pretend to know what course my honorable colleague has taken in those informal meetings of the party, out of doors, alluded to on yesterday, by the honorable gentleman from Tippecanoe; (Mr. Pettit.)

nor have I any desire to penetrate the secrets of that inexorable inquisition, where the budding hopes of some of the young democracy were cut down so ruthlessly and withered in an hour. I do not know what agency, if any, my democratic colleague had in these ultra movements of the party; but this I do know, that his constituents and mine will be gratified to learn that the weight of his influence was thrown against the attempt made to rear the standard of political intolerance in the organization of this body, by which the few whigs upon this floor were virtually disfranchised in the election of our officers.

And why was it necessary for the Democratic party to meet in secret conclave, in their star-chamber court below, to determine who should or who should not be candidates before this Convention? The whigs did not pretend to offer a single candidate for any office whatever, not even as a hewer of wood and drawer of water. They were perfectly willing to concede to you all the offices of honor and profit which it was within the power of this Convention to bestow. Nor were they found acting with any degree of concert, as between the various rival candidates of the democratic party who were pressing their claims upon our consideration. Then why drive this unpretending minority into a position of political antagonism? Why treat them as though they had no political rights upon this floor, but were mere interlopers, having no interest in common with our democratic friends in the election of good and faithful officers? Why, I say, thus needlessly arouse their just indignation and resentment, by forcing them into a position where they must necessarily feel and acknowledge their political inferiority?—Nay, that is not exactly what I mean—but their *numerical weakness* on this floor, for that is all the inferiority they are willing to admit. The whigs of this body, sir, claim to be your equal in intelligence—your equal in patriotism—your equal in a high and holy regard for the best interests and honor of our common country—your equal in all the essential elements that go to make up the man. In short, sir, your equal in all and everything but mere brute force. And let me admonish you, that before this Convention closes, you may have occasion to learn that they are fully your equal in a proper vindication of their rights upon this floor.

Sir, I came up to this Convention, determined to forget, as far as it was possible for me to forget, that I was a whig. I came here determined to forget that I ever had been a warm political partizan—and to know nothing save the great and paramount interests of the people about which we have assembled here to deliberate. But, Sir, when I am met at the very threshold with the rallying cry of democracy—when the bibroch of party is sounded in my ear.

(Mr. BORDEN rose to a question of order.

He desired to know whether the gentleman's remarks were in order? Cries of go on, go on—hear him out.

Mr. GREGG continuing. Doubtless the gentleman from Allen is becoming a little restive. But I hope he will bear it patiently. When I was interrupted, Mr. President, I was going on to remark, that when I see gentlemen rising on this floor, and hear them talk about forming democratic constitutions—when I hear them talking about employing none but democratic printers, at democratic prices—which being interpreted means 25 per cent, above what it is intrinsically worth! in short, sir, when I see honorable gentlemen who have filled high places in the councils of the nation, rising upon this floor, and with unblushing effrontery proposing to take the election of our officers from this body where it rightfully belongs, and commit it to the arbitrament of an irresponsible cabal out of doors, wholly unknown to our laws and political institutions; when I see such things as these enacted in the broad light of day, I confess, sir, that it stirs the old Adam in me—it warms up my whig blood, as of yore—and I feel somewhat as did Fitz James when he encountered Rhoderick Dhu and his clan upon the mountain. But I trust that the effervescence of party, which has manifested itself here, will soon subside, and we shall hear no more of it. And although some of the old Hunkers of the party may endeavor to keep the political cauldron boiling, still I hope there may be found among the young democracy a sufficiency of genuine salt to preserve this body from political putrescence.

Before leaving this subject, allow me to make a single suggestion to our democratic friends, and that is this. They should by all means hold another grand pow-wow in the court room below, in order to settle the important matter as to who should wear the collar, and take precedence in the order of business here. Upon this subject there seems to be a very active rivalry going on, especially between the gentleman from Tippecanoe, on my left, and the gentleman from Allen, on my right. It is therefore highly important, if not necessary to the future harmony of this body, that this question should be settled at once. Let us know upon which of these rival candidates for honors present and prospective, the mantle of greatness is to fall. (Mr. Pettit remarked that he surrendered to the gentleman from Allen.) Well, sir, I think he has somewhat the advantage of you, if the frequency of his appearance upon the stage is to form any criterion by which we are to judge. In the light of the great future to which we are looking, he will doubtless have the advantage of you.—For when the antiquarian shall take down from its shelf the ponderous volume containing the debates of this Convention, and begin to turn over its ample leaves in search of the great man of this body who figured most

conspicuously, his eye will incontinently fall upon the gentleman from Allen, as not occupying a prominent position in the foreground of the picture, but throughout the whole, from Alpha to Omega, from the beginning to the end, as being singularly conspicuous in all things.

But, to return to the question under consideration. I believe, sir, the adoption of the resolution I have had the honor to present, will meet with the entire concurrence, not only of my immediate constituents, but of the whole people throughout the State. I honestly believe, sir, with me, they will regard the employment of a Stenographer here as a useless expenditure of money, and the publication of the debates of the Convention in an embodied form, as the consummation of human folly. Neither the one nor the other is at all necessary. For, as I before remarked, the newspaper press of our State, having able and efficient reporters here, will be competent to the task of keeping the people posted up in regard to our doings, and I, for one, am willing to trust my reputation in their hands.

But it may be argued that the publication of the debates of this Convention will be found eminently useful for future reference, in order to explain the meaning of certain provisions of the Constitution, which, to some, may appear dark and ambiguous. Why, sir, I would as soon think of looking into the Koran of Mahomet, or of consulting the sublime and beautiful vision of John in the Isle of Patmos, for an elucidation of the meaning of the ten commandments—a code of morals that adapts itself to the capacity of every mind, and fully explains itself without the aid of a commentator. And so I trust it will be with the instrument that may emanate from our hands. Not that I would compare the frail works of man with the perfect works of the great Law Giver of the Universe. Not that I would be so irreverent as to compare the crude and imperfect Constitution which we may deliver to the people, for their future governance, with that divine and perfect Constitution delivered to Moses amid the thunderings of Mount Sinai. No, sir, this would be like bringing down the full orb'd glories of the sun to the common level and lustre of a farthing rush-light. But, sir, speaking relatively, after the manner of men, and comparing things temporal with temporal things, may I not hope that our Constitution, when fully digested, will be found so perfectly free from all ambiguity as to require none of those factitious aids to render it intelligible? May I not hope we shall all labor, with one mind and one spirit, to make it, as it should be, so perfectly plain, and simple, and consistent, in all its parts, that any child may understand it? And he who thinks it will be otherwise pays but a poor compliment to the common sense understanding of this intelligent body.

Mr. KELSO said, he believed the proposition now before the Convention was to dispense with the services of a Stenographer.—He was inclined to the opinion, however, that the gentleman from Jefferson, was more in jest than in earnest in offering this resolution. He could not believe that a man of his well known ability, and sound understanding, and experience, would, for a moment, desire to dispense with the services of such an officer in this body; and more especially, after the appointment had been directed by law, and made in conformity with that law. He apprehended that the gentleman wanted, merely to get a sly hit at the democratic members in this hall, and sought, rather ingeniously, to whip the democrats over the shoulders of the Stenographer. He did not blame the gentleman, for he had certainly been treated somewhat badly, he would confess, in the matter of the appointment of officers of the Convention—not having been allowed to have the selection of a single officer. On that ground, he was willing to accord to the gentleman, all the satisfaction that he could derive from administering to the democrats a sound castigation.—He confessed they deserved every word of denunciation that the gentleman had bestowed upon them.

Now, said Mr. Kelso, a word in regard to the Stenographer. I am in favor of retaining that officer. I believe that we ought to have his services, and I regard it as a wise provision of the Legislature, that his appointment was provided for. The gentleman seems to think that by retaining that officer, we shall prolong the session of this Convention. I want that officer to remain here for the very opposite purpose; for I think the gentleman from Jefferson will want very few of such cayenne pepper speeches published as the one he has just made, and this, perhaps, will be the last one he will make, for I have no doubt that when he sees what he has said, published, he will be rather ashamed of it. He has done more in that speech to stir up party feeling, and set the cauldron, that he speaks of, boiling, than any other gentleman in this Convention. He may have done it, however, without feeling the force of what he was saying. Now, my opinion is that when we know that our speeches are to go forth to the public, we will be a little more careful what sort of speeches we make.

I insist on retaining this officer for a further reason. It is provided by law that the instrument which is to be the work of our hands is to go forth to the people; and that they are to pass their judgment upon it, to decide whether they will accept or reject it. It is necessary, therefore, that the people should be advised from day to day of our proceedings and of all the arguments advanced here, for or against such propositions as may be presented to us; so that they may, when the constitution is pre-

mented to them, act understandingly in regard to it. This is, in my opinion, a sufficient reason why this officer should be retained, and I hope that at an early day, provision will be made for the publication of our debates in the newspapers of this city, that they may go forth and be read by the people; so that by the time we shall have finished our work, they may be as well advised concerning it, as we are ourselves. I want him retained for that purpose, and I will risk the publication of what little I have to say, and let it go for what it may be worth.

I hope this resolution will be voted down. I would move to lay it on the table, were it not that I despise such a motion, besides I want to hear all that may be said on either side.

Mr. STEVENSON said, that the Convention had a specified duty to perform, which was to form a Constitution, and they were not called on to regulate such matters as the pay of their officers, or their own pay; that was done by the Legislature. The Legislature had also authorized the employment of a Stenographer, that Stenographer was not an officer of this body, but an officer of the Legislature, or more properly speaking, an officer of the State.—He had been appointed under authority of an act of the Legislature, and this Convention had no right to interfere in any way with that appointment. If it was right that the State should incur this expense, the Legislature alone was responsible. He did not believe that the Convention had any right whatever, to fix the amount of compensation to be given to this officer. That was a matter for the Legislature to determine. They having provided that a Stenographer should be appointed for the purpose of giving the debates of the Convention to the country; it was their act and they alone were responsible, and not the Convention. This being the case, he for one was willing that the people, should have the benefit of the services of this officer; but he contended that it was the duty of the Legislature to pay him, and he had no doubt they would do so with liberality.

The Stenographer was here by virtue of his appointment and they could not get rid of him except by expulsion. He trusted he would discharge his duties faithfully.

Mr. OWEN said, he should not have added a word to what had been said by the gentleman from Putnam, were it not that an argument had been made against retaining the Stenographer who had been appointed, on the ground of expense. The gentleman from Putnam had very properly stated that the Stenographer was a commissioned officer of the State, and that he was here in virtue of his commission. He conceived they would have as good a right to dismiss the Secretary of State or any other officer, authorized by law,

and commissioned by the Governor, as they would to dismiss this officer.

In regard to the question of economy, perhaps it would be well for them to look, as practical men ought to look, at the actual cost which this work was likely to entail upon them. Now, continued Mr. Owen, a Convention to amend the Constitution of the State does not meet every year, nor once in ten or twenty years. A generation has passed away since our present Constitution was made. A generation will, in all human probability, pass away before we make another. Without going into a close examination of the actual cost of reporting our debates at the rate that is paid for reporting Congressional debates, let us suppose that the debates of this Convention will be about equal in length to the debates of the New York State Convention;—the expense of reporting will be, according to my calculation, about twenty-five hundred dollars. Now, this sum, it will be recollected, is to be distributed over a space of at least twenty-five years—for it is not to be supposed that another Convention is to be held and another Constitution framed within a less time than twenty-five years. This will give an expense of one hundred dollars a year, to be borne by the people of this State, for a work which is to remain throughout all time, and to be read at each man's hearthstone, and in every dwelling within the State. Now, let us see how much each inhabitant of the State will have to pay for this work. There are about a million of inhabitants in this State at present, and suppose that at the end of twenty-five years there should be only the same number. One hundred dollars a year divided among a million will give to each individual the one-hundredth part of a cent. To a family of ten persons it would be the tenth part of a cent. I certainly do not think that the inhabitants of the State will regard this expense as very burthensome in view of the advantage they will derive from the proposed publication.

Besides, by paying this expense we obtain a copy-right of the book, which we may sell if we choose; and I am not sure but the copy-right will sell for one-half the price that we shall pay for the work; then, instead of the hundredth part of a cent, it will be but the two-hundredth part of a cent for each individual.

Now, I am not in the habit of recommending a thing because others have done it; on the contrary, I generally have some good reason for what I propose. But I know of no State in which a Convention has recently been held, which has not provided for the reporting of their debates; and I doubt very much whether any publication will be read with more interest by the people of this State than the reports of our debates. It cannot be denied that they will be eminently useful, as a

commentary upon the Constitution which we are about to form. The debates which occurred in the Convention that formed the Constitution of the United States, are always read with much interest. I will not say that ours will be as valuable as those debates are, but they will be as important to Indiana as those are to the United States. I repeat, sir, that I think, in the first place, we have no right to reverse the decision of the Legislature in regard to this matter; and in the second place, if we have the right we ought not to exercise it.

Mr. PETTIT moved that the resolution be laid upon the table.

The motion was agreed to.

Mr. OWEN then offered the resolutions which he had before proposed as a substitute for the resolution offered by the gentleman from Jefferson (Mr. Gregg.)

Mr. KELSO said, he doubted whether they had a right to fix the compensation of the Stenographer; he would therefore move to amend the resolution by striking out so much as related to the price to be paid for reporting, so as to leave it to the Legislature to fix the price.

Mr. PETTIT said, he would suggest that a difficulty would arise in case the proposition of the gentleman should prevail. How would the President of the Convention know how much to certify for, unless the price should be determined?

Mr. KELSO. I move, sir, to strike out the second resolution. I do not think it can be shown that we have the power or the right to fix the amount of remuneration which the Stenographer shall receive.

Mr. DOBSON said, that, from the reading of the act, he supposed the Governor had the power to make a contract for the reporting; if so, he could see no necessity for the resolution.

Mr. OWEN said, that there was no contract, as he was informed, and it was quite evident that there must necessarily be some resolution or specification in regard to the compensation to be paid to the Stenographer, for it was necessary that he should be paid from time to time as he did the work. If the gentleman considered the compensation here proposed to be too large, he would be glad to hear some proposition from him in regard to it. He would have been glad if the Legislature had determined the amount of compensation, and relieved the Convention from all responsibility upon that point; but as they had not done so, if the work was to be executed, it was certainly incumbent on the Convention to make the necessary arrangement for the payment. As to their power to do so, he thought there could be no doubt. A committee had been raised yesterday upon the motion of the gentleman from Wayne, (Mr. Rariden,) to negotiate for

hiring a more commodious hall for the use of the Convention; and if such a hall should be procured, he supposed they would have a right to pay for it under the general powers conferred upon them. If it could, without practical inconvenience, be left to the Legislature, he should have no objection; but he did not think it would be a proper treatment of this officer, who had come a very considerable distance to discharge the duties he had been appointed to perform, if the question of his compensation should be delayed. He supposed the proper plan would be, for the President of the Convention to inform himself what was the price usually paid for reporting by Messrs. Blair & Rives, and Gales & Seaton, of Washington City. So far as his own recollection went, he believed that the compensation of a stenographer for taking notes and writing out his report and preparing it for the printer, was five dollars per column of two thousand words.

Mr. REED of Clark said, he believed it would be agreed upon all hands that some action in reference to the compensation of the Stenographer should be taken, and he thought the better way would be to let the question be determined by a committee. He would move, therefore, that the subject be referred to a select committee of seven.

Mr. KELSO withdrew his motion to amend, and

The question being taken upon the motion of the gentleman from Clark, it was agreed to, and

The resolution was referred to a select committee.

Mr. BRIGHT moved to take from the table the resolution of Mr. Gregg on the subject of the Stenographer, and refer the same to the select committee of seven;

Which was decided in the affirmative.

Whereupon the Chair announced the committee of seven on the resolution of Mr. Gregg in regard to a Stenographer, and the resolution of Mr. Owen on the same subject, to consist of the following gentlemen:

Messrs. Owen, Morrison of Washington, Maguire, Pepper of Ohio, Nofsinger, Clark of Tippecanoe, and Niles.

On motion of Mr. TERRY, it was

Ordered, That three hundred copies of the Constitution of the State of Indiana be printed for the use of the Convention.

PUBLICATION OF THE AUTHORIZED REPORTS.

Mr. MORRISON of Marion offered the following resolution:

Resolved, That a committee of seven members be appointed by the President, and authorized to make such arrangements with the publishers of newspapers in this city, as will insure a correct daily published report of the proceedings of this Convention, for the use of the

members and for distribution among the people.

Mr. KELSO said, he was in favor of the proposition in the main; but before binding themselves by any contract for the publication of the proceedings, he hoped some provision would be made with regard to postage. It occurred to him that the committee appointed under this resolution could go to the Post Master of the city and make the necessary arrangements about the postage, so as to relieve members of the Convention from the burthen of paying the postage from their own pockets. Unless some such arrangement could be made he considered it idle to talk about taking the papers. He offered the following amendment:

"And that said committee ascertain and report to this Convention what arrangement can be made with the Post Master in this city concerning the postage and the payment thereof, on such letters, papers, documents, &c., as may be sent to and from the officers and members of this Convention, during its session."

Mr. MORRISON of Marion accepted the amendment.

Mr. SIMS said, he would like to know by what authority the Convention could take newspapers in this way and send them off through the mail by the cart-load, and throw the expense upon the Treasury. He would like to know what amount of light these newspapers would throw out. Not one citizen of the State, out of ten, would ever see one of them. He contended that the operation of the resolution would be partial. He knew that the Legislature, some years ago, were in the habit of buying and distributing newspapers, but the practice, he believed, had gone down on account of the objection that he had stated. But where, he would ask, was the law to authorize this thing on the part of the Convention? He knew that the Legislature had authorized the members of the Convention to receive three dollars per day, as a compensation for their attendance, but there was no more authority of law for the purchase of newspapers for the Convention, than there was for the payment of the expense of boarding. He knew that the people where he resided were opposed to this practice, not that they were wanting at all in liberality or a disposition to patronize the press, but because they were opposed to all useless expenditures; because they knew that the State was in debt, and because they believed that, like every honest man, the government should pay all its just debts. For these reasons they had instructed him to employ his influence toward clipping off and cutting down every useless public expenditure, and he was determined to go for this principle heart and hand.

Mr. MORRISON of Marion, said that as the mover of the resolution, he felt it incumbent upon him to answer the objections which had

been urged by the gentleman from Clinton, (Mr. Sims.) This resolution had been advised by many gentlemen of the Convention. The common argument in favor of it was this: Every morning, and from day to day, members would like to review what might be passing before them; and by the proposed arrangement each morning they could see precisely what had been done on the preceding day. There was an additional argument. It was provided by law that the deliberations of this Convention, in the shape of a new Constitution, should be submitted to the people for their approval or rejection, and if the Convention should go on and publish nothing but the volume of debates, not one man in a hundred, when the time for its submission should come, would be at all informed with regard to what had been done in connection with the changes and modifications of the existing Constitution; whilst, on the other hand, if they were to take such newspapers as would print the daily reports of their proceedings they would go abroad amongst the people as their work progressed, and give them opportunities by memorial or petition to make such suggestions with reference to changes and general principles as would aid them in their work, and materially diminish their responsibility. But there was another matter: Should they refuse to purchase these papers, the publishers could not afford to incur the expense of publishing the lengthy daily reports, or even an intelligible condensation of them. But past experience assured them that they would publish the reports at as cheap a rate as possible. The Legislature for twenty years past had taken this course, and the people had sent men back here, year after year, who had constantly advocated this course. He believed, also, the people every where in the State were in favor of it, except it might be, as the gentleman had affirmed, in the county of Clinton. He considered that this was not, by any means, an expensive mode of giving correct intelligence to the people. He was aware that there was no law to authorize the specific appropriation, only that there was a general fund appropriated to be used for defraying whatsoever expense might be necessarily incurred. He held the doctrine that this Convention was sovereign; that they were the people, and had a right to do, in a reasonable manner, everything that the people could do, were they here in our places. He held that the Convention had the right to call upon the Treasurer for an amount sufficient to defray every necessary expense of the body, even if it should require a hundred thousand dollars beyond the amount appropriated by the Legislature. He could not think that so intelligent a gentleman as the Delegate from Clinton would be willing to light his candle and put it under a bushel. He thought that every act here should be as open as the day to all the people.

Mr. SIMS said, he did not wish to be under-

stood as opposed to taking newspapers, but he meant to say that because we get three dollars a day, which enables us to eat and drink well while here, that is no reason why we should tax the people for our newspapers or our postage. He was not for taking money out of the treasury in this manner. He thought it might be better applied to the payment of the public debt, which he hoped would be soon in such a course of payment that we could see a clear sky. But even if we were out of debt, had we not occasion to foster common schools? He considered that the economy of the government should be as rigid as that of a man on his farm. He had a resolution which he desired to offer by way of amendment.

The PRESIDENT said, the gentleman's amendment could not now be entertained.

Mr. BASCOM said, he came here pledged to send back all the papers and documents which he could procure. He had on his desk the names of two hundred of his constituents, who were desirous of knowing what the Convention were doing. They were men who took an interest in the subject which brought the Convention together, and they wanted information of their doings. It would be impossible for him to send to all these persons at his own expense. He concurred with the gentleman from Marion (Mr. Morrison) in the opinion that there was no portion of the people in this State, except, perhaps, the county of Clinton, who would not be happy to receive the reports of the proceedings of the Convention. He had never heard, in his part of the State, any complaints about receiving too many papers; on the contrary, the complaint, as far as he had heard, was, that they did not get enough—that their members were delinquent. The people were willing that the money of the public treasury should be used for this purpose.

Mr. SMITH, of Scott, said, it occurred to him that the post-master of the city must act according to law, and that he could make no such arrangement as was proposed. As to taking the papers, he was perfectly willing to do that, and he could say that the people from his part of the State would be glad to receive them. According to the law, the postage must be pre-paid, unless sent from the publishers' office. But from the terms of the resolution, it seemed to him that the Convention was to make some arrangement for the payment of the postage, and his object was to enquire whether it was intended that this postage should be paid out of the treasury or out of the pockets of members? or whether the papers were to be sent from the publishers' office?

Mr. READ, of Clark, said, he was in favor of the resolution, and had always been in favor of taking and distributing papers; but there had been a change in the post-office laws, interfering with this matter, so that it had come to be almost wholly neglected by the General

Assembly, for the reason that members had to send round, every day, a new list to the publishers' office. He would be in favor of any arrangement by which members could send their packages directly to the post-office.

Mr. KENT suggested, that the difficulty might be obviated, in part, by requiring one of the publishing establishments to distribute all the papers.

Mr. READ, of Clark, said, that the post-master had refused to receive them in that way.

Mr. KENT. He did not refuse last winter.

Mr. MORRISON, of Marion, asked and obtained the unanimous consent of the Convention, to add to his resolution the following clause:

And that said committee report to this Convention the result of their arrangements, for approval or rejection.

The resolution, as amended, was adopted.

Whereupon the Chair appointed the following gentlemen said committee:

Messrs. Morrison, of Marion, Kent, Colfax, Owen, Gregg, Bascom, and Pettit.

On motion of Mr. EDMONSTON,

The Convention adjourned until 2 o'clock P. M.

AFTERNOON SESSION.

ORDER OF BUSINESS.

Mr. HALL offered for adoption the following resolution:

Resolved, That no part of the present Constitution of Indiana, nor any proposed amendment thereto, shall be referred to any committee other than the committee of the whole, until the same has been considered and approved by the Convention as proper to be inserted in and made a part of the new or amended Constitution.

Mr. HALL said, his object in offering this resolution was to arrive at some point in relation to the manner in which business should come before the Convention. A committee had been appointed on Monday for the purpose of preparing rules for the government of the body, and it was thought to be a part of the duty of that committee to recommend the number and character of the standing committees. He proposed this resolution as part of the ground upon which that committee might predicate their action. There were several propositions before the Convention in relation to the manner in which business should be brought up for consideration, and there were objections to all of them. He had taken this resolution from the proceedings of a late convention of an adjoining State, which he thought to be better than any other which he could select. It proposed that all general principles which came up to be considered in the formation of a constitution, should be considered in committee of the whole before they were referred to any

subordinate committee—it being more especially the business of subordinate committees to arrange the details of business than to settle general principles; for example, there was the proposition that all officers shall be elected by the people. Could any man think of inserting that proposition in the Constitution before a decision was had upon it in committee of the whole Convention? But after discussion and decision by the whole Convention, it would be proper to refer the proposition to the appropriate sub-committee, to prepare the matter in detail. Much time would be gained in this way, according to his opinion; because, after the sense of the Convention in committee of the whole had been taken, the sub-committee would have only to shape the proposition and prepare it for a place in the Constitution. But if the proposition should be first referred to a sub-committee, it must afterwards come before the Convention in the same manner as an original proposition. He had taken his resolution from the proceedings of the convention of a sister State, and it struck him with force, as a better proposition to facilitate business than any which had yet been proposed here. The Convention could not have the benefit of the discussions in the sub-committees, and the time taken up in these discussions would be comparatively lost. But in committee of the whole, each member would have a chance to express his opinion, and to give his vote, upon every proposition; and after that the several propositions would be ready for the action of sub-committees, which would be merely to perfect them in all their details.

Mr. READ of Clarke proposed a resolution similar to that offered by Mr. READ of Monroe.

He then said, he was satisfied that whatever time might be occupied in preliminary discussions in committee of the whole, would be lost to the Convention. He preferred that the standing committee should be appointed, and the Constitution blocked out by them, and reported to the Convention, and then to let these reports, as they come in, be referred for consideration to the committee of the whole. So far as legislative matters were concerned, a committee of the whole had scarcely been known in this Hall the last five years; not two hours of all that time had been occupied here in committee of the whole. It had been found that after debate for several days upon a proposition in committee of the whole, it would have to return to the House, and there the very same proceedings would have to be gone over again. If it were not that the Constitution provides that all questions embracing matter connected with revenue shall be considered in committee of the whole, he could almost say that that committee was useless in legislation, and he appealed to the experience of old members of the Legislature to say, whether the reference

of subjects to the committee of the whole, did not always induce a great waste of time.

Mr. EDMONSTON observed, that with regard to the amendment, he would take occasion to say, that he saw no necessity for another resolution upon the subject embraced in it, since the committee on rules were bound to report the number of standing committees. Then why encumber the journal with such proceedings? He desired to say one word with regard to the resolution of the gentleman from Gibson, (Mr. Hall.) He could see no necessity for referring the consideration of every question which might be presented to the committee of the whole. The chief objection against this course, to his mind, was that the action of the body in committee of the whole, was never journalized. He supposed when any gentleman introduced a proposition, it ought to be journalized, that it might be laid before his constituents. For this reason he should oppose the resolution. He supposed that the committee on rules would report the number, and designate the character of the standing committees; upon which the Convention would afterwards take its own action, and adopt, reject, or amend the proposition.

Mr. READ of Clark said, that the only difference between the committee which he proposed to constitute, and the committee on rules was, that the members of the latter committee were not taken equally from the various parts of the State, whereas the members of the committee which he proposed would be.

Mr. BORDEN, (in his seat.) They are taken one from each judicial circuit.

Mr. MAGUIRE said, he would suggest that a resolution similar, but involving rather more than the amendment of the gentleman from Clark, (Mr. Read,) was offered the other day, by the gentleman from Monroe, (Mr. Read.) It seemed to his mind not strictly in order to have two propositions of the same nature pending at the same time. The proceeding might be in order; he did not pretend to say that it was not, nor had he any objection to the proposition of the gentleman from Clark; but the proposition of the gentleman from Monroe, being a little more complete, he should give it the preference, and intended to support it.

Mr. READ of Clarke said, he was aware of the pendency of the proposition of the gentleman from Monroe; but apprehending that the proposition of the gentleman from Gibson, (Mr. Hall) might succeed, and so supersede the former proposition, he had thrown in his amendment.

Mr. DOBSON said, the gentleman from Allen (Mr. Borden) had offered a proposition which had been adopted, and under which there had been created a committee on rules. The gentleman from Monroe (Mr. Read) had offered a proposition for a separate committee to designate the standing committees. It had

been thought by some, that the committee under the resolution of the gentleman from Allen, was charged not only with the matter of reporting rules for the government of the Convention, but that they should also report the number, and designate the character of the standing committees. Herein, as it occurred to him, consisted all the difficulty. For himself, he supposed that both the proposition of the gentleman from Monroe, and the proposition of the gentleman from Clark, were entirely unnecessary. He was gratified, however, to see them brought forward, because the action of the Convention upon them would settle this difficulty. He was gratified, also, to see the proposition of the gentleman from Gibson, though he was opposed to it, because he desired the whole of the proceedings here to be open to all the people, which could not be the case with proceedings in committee of the whole. Besides, if they were to go into committee of the whole, with everything, they would have no occasion for standing committees. He thought that every subject should first be considered by the standing committees; and then the proposition which they might report could either at once be considered and disposed of by the committee, or referred to a committee of the whole. This was a question which should be determined, one way or the other, soon. Being himself named upon the committee on rules, he would be glad to have an expression of the sense of the Convention upon it, in order that they might know how to act.

Mr. NAVE said, he thought it could scarcely be possible that gentlemen were ready to determine that no proposition should be referred to any subordinate committee. If they were to decide this question in the affirmative, they might as well neglect altogether, the appointment of standing committees. If he understood the proposition of the gentleman from Gibson, nothing was to be voted upon or reported by any committee, except what the Convention had first considered the Convention was to reserve to itself the power to decide upon every thing first, as in committee of the whole. If this course were to be taken, it was his opinion that the business of the session could not be terminated in three months. He considered it the better course to refer distinct propositions to separate committees, and after they report, let the Convention act upon their report, as in committee of the whole. He would like to know who first discovered the wisdom of this proposition, depriving the Convention of the liberty of sending anything to a committee. It must have originated in the State of Kentucky, where everything was built up and sustained by stump speaking. He conceived the proposition to be contrary to the genius of our institutions—antagonistic to the free spirit of investigation; he was, therefore opposed to it. He was in favor of the

amendment offered by the gentleman from Clark, while he made no objection to the proposition of the gentleman from Monroe. It made little difference with him, which should be adopted; but, since the former was under consideration, he would like to see it adopted.

The PRESIDENT declared the proposition of the gentleman from Clark to be out of order, under the thirty-second rule for the government of the last House of Representatives.

Mr. BORDEN explained, that the resolution authorizing the appointment of the committee on rules, was in substance the same which he had read from the proceedings and debates of the Kentucky Convention. He derived the intimation that had been made, out of doors, that the committee on rules was to swallow up all other committees, and said that nothing of the kind had been thought of. He said he understood the duty of that committee to be to compile something like rules for the government of the proceedings of this body, but he perceived that the committee on rules in the Kentucky Convention, had reported the number of the standing committees. For himself, he would prefer that this matter should be referred to some other committee, especially since the proposition of the gentleman from Monroe, had been offered. This committee would naturally feel a delicacy about reporting the number of standing committees, without special instruction. He referred briefly to the immediate necessity for the formation of various standing committees. The proposition of the gentleman from Gibson, was, first to refer the consideration of every proposition to the committee of the whole; another gentleman had proposed the appointment of a committee to be composed of seventeen or eighteen members, and that all matters should be referred to it. Another gentleman's position was, that there should be no more than three standing committees.

Mr. PETTIT interposing, said, that the gentleman was mistaken. He did not propose that there should be no more than three committees.

Mr. BORDEN (continuing) asked why it was considered improper for him to propose to raise more. There are, said he, a number of conservative gentlemen here, who like the present Constitution—who think it a very good one, and who would like to make it the groundwork of action, by taking it up in articles or sections, and proceeding to improve and amend, adopt or reject them. These gentlemen might very properly go into committee of the whole, with their work. But there was another portion of the Convention, he said, with whom he himself stood, who did not think the old Constitution a very good one. A majority of the Convention had come up here from constituents who demanded important changes in that instrument; and this was the reason why they

thought the whole subject ought to be divided, and appropriately distributed amongst several standing committees, with the view of introducing such amendments as might be deemed necessary. He desired the most mature deliberation on every division of the subject; first, before the standing committees, and then in committee of the whole Convention. He relied upon the standing committee for the most important duties. He recollected a gentleman speaking to him of the Louisiana Constitutional Convention, which met several years ago, in April, at a small town somewhere in the interior of the State; and in the warm weather, rather than occupy their convention room, they were in the habit of going out by committees into the adjoining groves to hold their consultations. Reclining there in the shade, they would talk over the business before them; and, he was assured by the gentleman, that some of the best features of the Louisiana Constitution were proposed and drawn up in this way; and that when, afterwards, they spent several months in the city of New Orleans, where they were attended by Stenographers, with ready nipped pens, every thing was done for Buncombe, and nothing could be affected for the people, worthy of the occasion that brought them together.

Mr. HALL said, that he was one of the committee appointed by the Chair, to aid in drafting the rules; but he was totally unacquainted with the reasons which induced the appointment of that committee. He confessed that he neither understood the resolution under which the committee was appointed, nor the explanation just given. The gentleman from Hendricks (Mr. Nave) seemed to think that under the resolution which he (Mr. H.) had offered, they were to dispense with everything like the labor of standing committees. The gentleman was wholly mistaken; such was not the object, nor the language of the resolution. The object was that no subject should be referred to any standing committee, until after it had been discussed in committee of the whole. It was certainly contemplated by all, that there should be several sub-committees appointed by the Convention, for the purpose of taking the various matters into consideration, after they should have been considered in committee of the whole. He was not wedded to any particular proposition, but this discussion had only the more convinced him of the necessity of the rule he had suggested. He gave an instance of its operation: the people of the county of Gibson, whom he represented here, had been in convention upon the subject of amendments to the Constitution, and one of their resolutions of instruction to him was, to recommend the proposition that the Legislature should prohibit lotteries in this State; now, this proposition, under the rule he had suggested, would be referred, first, to the committee of the whole, and after their action in reference to the principle, it would be referred next to the

appropriate sub-committee to arrange the principle in its details. But according to the rule preferred by the gentleman from Hendricks, the proposition would be first referred to a sub-committee—that committee would report upon it to the Convention. After that the Convention would have to decide upon the principle, and if the principle were rejected in whole or in part, the work of the sub-committee would be useless. According to his notion, it would be a waste of time to take this course. It was his proposition, that the opinion of the Convention upon every principle should be first had in committee of the whole, in order that the standing committees might know distinctly how to act.

Mr. EDMONSTON said, he could not see the force of the reasoning of the gentleman from Gibson. Was it not the gentleman's proposition, first, that every subject should be referred to the committee of the whole Convention, then to be returned to the Convention, and then to be referred again to the standing committees?

The PRESIDENT. The Chair understands that a subject may or may not be referred. The Secretary, if the gentleman desires it, will read the resolution.

The resolution was accordingly read by the Secretary.

Mr. EDMONSTON said, that if he understood the meaning of words, the resolution proposed that, after the discussion of a proposition in committee of the whole, it was to be returned to the Convention, and then referred to a standing committee. He was unable to make anything else out of it; and this he considered would be occupying more time than there was any necessity for. He preferred the practice by which the Convention might refer any part of the Constitution to a standing committee, and instruct them particularly in relation to it; for when a committee received instructions from the Convention it became their duty to act according to those instructions.

This, it seemed to his mind, was the more correct, and it certainly was the shortest way of doing business. By the new rule proposed, the same ground might have to be fought over as many as two or three times upon every proposition.

Mr. PETTIT said, he did not intend to delay the business of the Convention, and he would detain them but a very few minutes. Before he sat down he thought he should move to lay the subject upon the table, with the view of taking up the resolution offered by him on yesterday and the amendment of the gentleman from Monroe (Mr. Read,) with reference to the transaction of business. He doubted not that the design of the gentleman from Gibson was a good one. If it had been his design that no subject should be reported upon until after the principle had been discussed and

decided by the Convention, that would have certainly been proper and correct enough. But the gentleman seemed to think the Convention should raise a committee of the whole, in which every proposition should be first considered. That would not be parliamentary. The committee of the whole could have no control over the standing committees of the Convention. The gentleman's doctrine was, that no subordinate committee should report upon any subject until it should first be discussed in Convention. That sub-committees should be organized upon various subjects and then instructed by the Convention as to the matter upon which they were to report. He took for illustration, the proposition that there should be no Grand Juries in the State. That would be a subject to be reported upon by the legislative committee. He would suppose this subject to be appropriately referred, and then that the question should come up for discussion in the Convention upon a proposition to instruct the committee upon that subject by resolution. It was not requisite that a subject should go to the committee of the whole and be there discussed and reported to the Convention and there take a tangent route and go to a sub-committee to be considered and reported again to the House? The committees were bound to act in conformity with such instructions; and after their reports were made to the Convention every subject would still be open to discussion and amendment; or they might be discussed and amended in committee of the whole, and after that go again into the Convention for final action. But he wished not to detain the Convention; he desired to have the committees organized, and then it could be determined whether it should require two-thirds or a majority vote to adopt a resolution of instruction. A majority, he supposed, should always carry a question. But this resolution was out of order at this time, entirely; he should, therefore, without intending any disrespect to the gentleman introducing it, presently move to lay the resolution and amendment on the table. He should make this motion for the purpose of taking up the resolutions to which he had before referred and which had been temporarily laid on the table on yesterday. It would be recollected that one of these propositions proposed three standing committees; it did not preclude a large number. Every one knew from the structure of this government that it was expedient to have at least three standing committees—one upon the legislative department, one upon the executive department, and another upon the judiciary. He cared not how many more there might be. This course was first suggested by the gentleman from Wayne, (Mr. Rariden,) and he thought there was great propriety in adopting this resolution, for, as it had been already suggested by that gentleman, as the business of

the Convention progresses they would become acquainted with the habits of each other, and know better the aptness and fitness of men for places upon these committees; and they would also know better how many and what kind of committees they would require. And for the purpose of taking up this resolution, to which he had referred, he moved to lay the resolution of the gentleman from Gibson on the table.

Mr. PETTIT then moved to take from the table the resolution submitted by him on yesterday, with the pending amendments, on the subject of committees; which motion was decided in the affirmative.

Mr. READ of Monroe, observed, that in offering his resolution on yesterday, it was with no desire to be appointed chairman of the select committee proposed to be raised. On the contrary it was his intention, had his motion prevailed, to have had himself excused from acting in that capacity. They had secured their organization on yesterday, and had raised a committee on rules and regulations; and as the next thing to be done was to arrange some definite plan for the business of the convention, he had brought forward the resolution that had been so liberally commented upon. He had found upon examining the proceedings of conventions held in other states, that a similar course of procedure had been adopted.

The first thing that had been done in the convention held in New York, in 1821, was to appoint a committee on rules and regulations—the committee being instructed simply to report rules and regulations for the government of the convention. This was the mode also adopted in the convention held in the same state in 1846. Another committee was then raised to determine upon the best plan for revising the constitution. This mode of proceeding was also adopted in the Ohio convention. It appeared to him, therefore, that the first business after they had secured their organization and appointed a committee to draft rules for their government, was to organize a committee who should report some definite plan of action. In the convention of 1821, this committee was regarded as the most important committee that could be raised, and its members were composed of the ablest men in the convention. It should be borne in mind, that in adopting a plan of that kind, they were determining the character and extent of the business itself, and therefore, the sooner such committee was constituted, the more speedily they would be enabled to enter upon the business they had to transact.

Mr. OWEN remarked, that he was in favor of adopting the amendment. It was true, as the gentleman from Tippecanoe had said, that three committees, having supervision respectively, of the judicial, legislative, and executive departments of the state government

must be appointed, but it was equally certain that more than that number would be required. They would require a committee on the Militia, one on Education, one on Currencies and Banking, and one on Corporations other than Banking. While acting upon the subject, therefore, he thought it would be better to pass a resolution providing for the organization of all the committees that were necessary. It appeared to him that a committee thus empowered to raise the standing committees could bring in their report easily in the course of two or three days.

While up he would suggest to his friend from Gibson, (Mr. Hall,) for whose judgment he had very great respect, that if any proposition at all similar to his were adopted, it would exclude a very laudable custom that was prevalent in all conventions, one which as far as he was concerned, he could not consent to yield or dispense with; he referred to the practice of voting resolutions of enquiry. It struck him very forcibly that there would be found to be ten subjects that were worthy of investigation to one that was worthy of adoption. To present resolutions of enquiry upon particular subjects was always customary. He would not oppose the amendment of the gentleman from Gibson, if he had made provision that no resolution should go before any of the standing committees, until it had first been submitted to the Convention. This would prevent any delegate from going to a committee with a proposition he desired to offer, so that it would come before the convention either as a resolution of enquiry or instruction. With a modification to that effect, he would be content with the gentleman's amendment.

Mr. PETTIT said, that in order to test the matter, he would move that the amendment offered to his resolution be laid on the table.

The question being taken upon the motion to lay the amendment on the table, it was decided in the negative.

The question recurring upon the adoption of the amendment,

Mr. FOSTER remarked, that a great deal had been said that day with reference to the committee of the whole; and a great deal also, that had no connection whatever with the business before them. Some fifteen or twenty years ago, said Mr. F., when Foote's celebrated resolution was under discussion in committee of the Whole in the House of Representatives of the United States, it was remarked in the course of the debate, that they might talk about anything in God's earth, above the earth, or under the earth—they might talk of anything in the animal, vegetable, or mineral kingdom, but that nothing should be said with respect to the question under consideration. (Laughter.) It was altogether out of order to touch upon the subject before the House. This

remark, he added, had been practicably exemplified in this convention on yesterday and to-day. He was considerably amazed at the observations which had been made from the path of strict argument yesterday and to-day—they reminded him very forcibly of an anecdote of a methodist preacher, a man of considerable talent, who upon one occasion, while he was traveling in Kentucky, stopped in a certain neighborhood and delivered a sermon to the white residents. In the evening he agreed to visit a meeting of negroes, where some celebrated negro preachers were to hold forth. He went there without any intention of preaching, but the negroes found out who he was and insisted that he should give them an exhortation. He accordingly took the stand and occupied the evening in a manner very acceptable to himself, for he considered that he had preached a very excellent sermon. After he had sat down, one of the negro preachers arose and made the remark "dat de white brudder had talked away a long time in a blundering manner, after a fashion." He would not undertake to charge gentlemen with talking in a "blundering manner," but he would say that they had been talking "after a fashion."

The gentleman from Tippecanoe was desirous of raising three committees; his colleague from Monroe wished to raise only one. The amendment offered by his colleague met with his (Mr. F's.) hearty concurrence. If, as was proposed, three mammoth committees were to be appointed there would be a general scramble for the office of Chairman of those committees, and, he was inclined to think that there was talent enough in the Convention to authorize the appointment of a larger number of committees and consequently a more general and equitable division of the offices. He could not but think that the best mode of expediting the business of the Convention, was, to adopt the amendment offered by his colleague.

The question was taken upon the amendment offered by the gentleman from Dubois (Mr. Edmonston) on the amendment of the gentleman from Monroe (Mr. Read) to fill the blank with the words "one from each Congressional District;" and it was rejected.

The question then recurring upon the amendment of the gentleman from Monroe to the resolutions offered by the gentleman from Tippecanoe (Mr. Pettit.)

Mr. MAGUIRE moved to amend the amendment by filling the blank with the words, "two from each Congressional District."

The question was taken upon the motion of the gentleman from Marion (Mr. Maguire) and it was agreed to.

The question then being upon the amendment as amended.

It was decided in the affirmative.

Mr. KILGORE offered the following resolution.

WHEREAS, In the opinion of this Convention, the people of Indiana, under their present wholesome Constitution, have obtained an enviable position amongst the States of this Union, and now enjoy a degree of prosperity and general happiness, of which they may well be proud: AND WHEREAS, we are admonished by the elements by which we are surrounded, and which are apparent in our midst, that there is great danger in an effort to amend the organic law, of deranging our present wholesome system, or supplanting it by one less acceptable to the people of the State; Therefore,

Resolved, That we recommend to the people of the State the present Constitution, as proposed by their Delegates in A. D. 1816, and adopted by the people. And that this Convention now adjourn *sine die*.

A motion being made by Mr. WOLFE to lay the resolution on the table; the ayes and noes were demanded by two members.

Those who voted in the affirmative were

Messrs. Alexander, Allen, Anthony, Badger, Barbour, Bascom, Beach, Beard, Beeson, Berry, Bicknell, Biddle Blythe, Bourne, Brookbank, Butler, Carr, of Jackson, Carter, Chandler, Chapman, Clark, of Hamilton, Clark, of Tippecanoe, Coats, Cole, Colfax, Crawford, Davis, of Madison, Davis, of Parke, Davis, of Vermillion, Dick, Dobson, Dunn, of Perry, &c., Duzan, Edmonston, Farrow, Fisher, Foley, Foster, Garvin, Gibson, Gootee, Gordon, Graham, of Miami, Gregg, Haddon, Hall, Holliday, Hamilton, Harbolt, Hardin, Hawkins, Helm, Helmer, Hendricks, Hitt, Hogin, Holman, Hovey, Howe, Huff, Johnson, Jones, Kent, Kendall, of Wabash. Kendall, of Warren, Kindley, Lockhart, Logan, Maguire, March, Mather, Mathis, May, McClelland, McFarland, McLean, Miller, of Clinton, Miller, of Gibson, Miller, of Fulton, Milligan, Milroy, Mooney, Moore, Morgan, Morrison, of Marion, Morrison, of Washington, Mowrer, Murray, Nave, Newman, Niles, Nofsinger, Owen, Pepper, of Ohio, Pepper of Crawford, Pettit, Read, of Clark, Read, of Monroe, Ristine, Robinson, Schoonover, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith, of Ripely, Smith, of Scott, Spann, Stevenson, Tague, Taylor, Terry, Thomas, Thornton, Trembley, Vanbenthussen, Wallace, Wheeler, Wiley, Wolfe, Work, Wunderlich, Zenor, and Mr. President.—126.

Those who voted in the negative were

Messrs. Borden, Bowers, Chenowith, Frisbie, Kelso, Kilgore, Prather, Steele, Tannehill Todd, and Watts.—11.

So the resolution was laid upon the table.

DOORKEEPER.

Mr. SHERROD moved, that the Assistant Doorkeepers be appointed by the President.

The PRESIDENT expressed the wish that he might be relieved from the responsibility of making these appointments—considering that their appointment was a power legitimately vested in the doorkeeper.

Mr. PETTIT inquired, if the Doorkeeper, under the present rules of the House, did not possess the power of appointing his Assistants.

The PRESIDENT replied in the affirmative.

The resolution of the gentleman from Orange (Mr. Sherrod) was then withdrawn.

Mr. HALL offered the following resolutions:

1st. That Judges and all other officers, shall be elected by the people.

2. That corporations shall be created under a general law, individual liability, to the extent of stock, shall be imposed. The issue of bills of credit for general circulation shall be prohibited. No banking privileges shall be granted except to a State Bank, and a limited number of Branches, properly restricted.

3. That special legislation shall be prohibited. No act shall embrace more than one subject—and that shall be expressed in the title. Upon the final passage of every bill in either House, the “yeas” and “nays” shall be entered upon the journals, and no act of the General Assembly shall be in force until after its publication in print and distribution among the people.

4. That the Legislature shall be prohibited from granting divorces, and from establishing lotteries.

5. That the Legislature shall be prohibited from borrowing money upon the faith of the State, without the consent of the people expressed through the ballot-box.

6. That the Legislature shall meet biennially, but may be convened by the governor in cases of emergency.

7. That all fines aforesaid, for any breach of the penal law, shall be applied to the support of common schools.

8. That all distinction between proceedings in courts of law and equity, shall be abolished; as also all distinction between different kinds of action.

9. That the House of Representatives shall consist of one hundred members, and the Senate shall be composed of fifty members: *Provided*, the members in either House may be diminished by Legislative enactment.

10. That all elections by the General Assembly or either branch thereof, shall be determined by a plurality of the votes given; which resolution was laid on the table by consent.

The resolutions were ordered to lie on the table.

Mr. KELSO offered the following resolution:

Resolved, That it is hereby made the duty of the President of this Convention to appoint messengers to this Convention, of whom the duty of one shall be to see and attend to mail-

ing all letters, papers, documents, &c., designed for the mails, from the members and officers of this body, and to receive and deliver to said members and officers, all matters sent them through the post office during the sitting of this Convention; which was referred, on motion of Mr. Clark, of Tippecanoe, to the committee on rules.

Mr. SHOUP offered the following resolution:

Resolved, That the State Librarian be directed to procure three copies each of the following works: The Debates or Journals of the New York, Kentucky, and Wisconsin Conventions; also three copies of the American Constitution, and when procured, to be placed and kept at the Clerk's desk in this Hall, for the use of the members of this Convention; which was adopted.

On motion of Mr. Edmonston, the Convention adjourned until to-morrow morning 9 o'clock.

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THURSDAY, Oct. 10, 1850.

The Convention met pursuant to adjournment.

A communication was laid before the Convention by the President, announcing the acceptance by the Clergymen of the city of the invitation of the Convention to open the same each day with prayer, and announcing the order in which they would attend.

The Chair announced the select committee provided for in the resolution of Mr. Read, of Monroe, adopted on yesterday, on the subject of committees to consist of the following gentlemen:

Mr. READ, of Monroe,

1st. Congressional District—Messrs. OWEN and EDMONSTON;

2d. Congressional District—Messrs. KENT and CARR, of Jackson;

3d. Congressional District—Messrs. BERRY and HOLMAN;

4th. Congressional District—Messrs. NEWMAN and TREMBLY;

5th. Congressional District—Messrs. TANNEHILL and MAGUIRE;

6th. Congressional District—Mr. TERRY;

7th. Congressional District—Messrs. COOKERLY and DAVIS, of Parke;

8th. Congressional District—Messrs. BRYANT and PETTIT;

9th. Congressional District—Messrs. NILES and MILLER, of Fulton;

10th. Congressional District—Messrs. KILGORE and MAY.

The Chair also announced the select committee as provided in the resolution of Mr. Milroy, on the subject of Printing, adopted on yesterday:

Messrs. MILROY, DUNN of Perry, BIDDLE, LOGAN, THORNTON, LOCKHART, and RARIDEN.

Mr. PETTIT gave notice that he would on Monday next, or on some subsequent day, introduce a resolution instructing the committee on the Judiciary to bring in a provision abolishing the Grand Jury system, and substituting public examinations in its place.

Mr. PETTIT offered the following resolution:

*Resolved*, That it shall not be in order to move any resolution of instructions to any standing committee requiring any provisions of the Constitution to be brought in, without first giving at least two days previous notice of such resolution.

(Objection was made by several gentlemen.)

Mr. PETTIT said, he thought that a moment's reflection would convince gentlemen of the propriety of such a resolution. If such a rule of proceeding were adopted, when an important proposition was to be introduced, it would not be sprung upon them, at a time when there would be no opportunity for reflection, but gentlemen would be apprised in advance, and be enabled to prepare themselves for opposition to it, if it were such a proposition as they disapproved. It did not prohibit resolutions of enquiry from being moved at any time, but applied only to resolutions positively instructing a committee to report certain provisions, altering the Constitution. He thought that its operation would have a wholesome effect and that it ought to be adopted.

Mr. EDMONSTON said, he agreed with the gentleman from Tippecanoe, that notice ought to be given of all propositions of that character though he was of the opinion that two days was longer than was necessary, and with the permission of the gentleman, he would move to strike out two, and insert one.

Mr. PETTIT said, that if any considerable portion of the Convention desired to change the time to one day, he would consent.

Mr. EDMONSTON suggested that his object in making the motion was to save time.

Mr. DOBSON said, that this resolution seemed to be anticipating the action of the committee which had been announced this morning, and of which the gentleman from Monroe was chairman, whose special business it was to announce the committees.

Mr. PETTIT said, if the gentleman will allow me, I will move the reference of this resolution to the committee on rules.

The question being put upon this motion it was agreed to.

Mr. DOBSON. The gentleman has anticipated me. I rose for the purpose of moving its reference to the committee of which the gentleman from Monroe is chairman. I now move that it be referred to that committee.

The PRESIDENT stated that the resolution had been referred, and that the gentleman's motion was not now in order.

Mr. PETTIT. The resolution contemplates the establishment of a rule, and I think, therefore, that it ought to go to the committee on rules.

Mr. DOBSON. I supposed, Mr. President, that I was in possession of the floor when the gentleman made his motion.

Mr. PETTIT. I am certainly willing to accommodate the gentleman by giving him an opportunity to introduce his motion.

Mr. DOBSON. I move, then, sir, to refer the resolution to the committee that I have indicated.

The question being put, the motion was not agreed to.

Mr. PETTIT then moved its reference to a committee on rules; which motion prevailed.

The resolution was referred to the committee on rules.

Mr. MILLER, of Clinton, gave notice that he would, on Tuesday next, or some subsequent day, submit a resolution instructing the committee on legislation to bring in a provision prohibiting the emigration of negroes into this State.

Mr. COOKERLY offered the following resolution:

*Resolved*, That the Auditor of State be instructed to correspond with the clerks of the circuit court in each county, and ascertain, as far as possible, the cost of each session of the court in their respective counties, inclusive of the cost of the grand jury and associate judges, and report the same to this Convention as soon as practicable.

Mr. BORDEN moved to amend the resolution as follows:

Strike out from the resolving clause and insert,

That the Secretary of State be requested to address a circular to the clerks of the several circuit courts in this State, and request from each of them immediate answers to the following questions, viz:

1st. How many terms of the Circuit Court and Court of Common Pleas were held in your county during the year eighteen hundred and forty-nine, and how many days did each court sit, naming each court and term separately.

2d. How many Chancery cases and civil and criminal causes were on the docket at each term? How many were tried or otherwise disposed of? How many were appealed from Justices of the Peace, and how many brought up on certiorari?

3d. On Probate Courts—How many terms of Probate Court were held in your county in the year eighteen hundred and forty-nine, and how many days did it sit at each term?

4th. What was the number of causes on the Probate Docket during the year, and what the total number of Probate wills, and grants of letters testamentary, administrative, and guar-

dianship? What the number of settlements made on the estates of decedents, minors, idiots and lunatics? And what the number of petitions for the sale of real estate by executors, administrators and guardians during the same period?

That the Auditor of State be requested to address a circular letter to each of the County Auditors in this State, and request them to answer the following interrogatories, to wit:

1st. What was the amount allowed during the year eighteen hundred and forty-nine, in your county, to the Probate and Associate Judges, and of the County Treasury, as compensation for their services?

2d. What amount was allowed and chargeable to the county for fees or compensation during said year in said county to Grand and Traverse Jurors, Sheriff, Bailiff, and other officers, for services rendered in the courts of said county?

That on receiving the information above requested, the Secretary and Auditor of State be requested to condense and arrange the same, and report it to this Convention in a convenient tabular form, adding thereto the whole number of polls and free white male persons over twenty-one years of age, in separate columns in each county, according to the returns made by the county Auditor in June of this year.

Which amendment was accepted by Mr. Cookerly.

Mr. BORDEN moved to lay the resolution as amended upon the table, which was decided in the affirmative.

Mr. READ of Clark offered the following resolution:

*Resolved*, That the Clerk of the Supreme Court be requested to inform this Convention of the number of causes upon the calendar for argument at each of the terms of said court during the year eighteen hundred and forty-nine, the number of such causes whose issue bears date in the year eighteen hundred and forty-nine, and the number whose issue bears date in each preceding year.

Which resolution was adopted by consent.

Mr. OWEN gave notice that he would on this day week, or some subsequent day, introduce the following resolution:

*Resolved*, That women hereafter married in this State shall have the right to acquire and possess property, to their sole use and disposal, and that laws shall be passed, securing to them equitable conditions, all property, real and personal, whether owned by them before marriage, or acquired afterward, by purchase, gift, devise or descent, and also providing for the registration of the wife's separate property.

Mr. BORDEN offered the following resolution:

*Resolved*, That the committee on the plan of business and standing committees be instructed to enquire into the expediency of re-



porting the following plan for organizing the standing committees of this Convention, viz.:

1st. The rights and privileges of the citizens and inhabitants of this State.

2d. The appointment, election, tenure of office, and compensation of the members of the General Assembly.

3d. The powers and duties of the General Assembly, except as to the public debt, and matters otherwise referred.

4th. The election, tenure of office, compensation, power and duties of the Governor and Lieutenant Governor.

5th. The election and appointment of officers of State, other than Legislative and Judicial, their powers, duties, and compensation.

6th. The election and appointment of all county officers, tenure of office, and compensation.

7th. The Judicial Departments of Government, the election of Judicial officers, their tenure of office, and compensation.

8th. The power of impeachment, and the qualifications to vote and hold office.

9th. The elective franchise, and the qualifications to vote and hold office.

10th. The militia and military officers.

11th. The future amendments and revision of the Constitution.

12th. The State University, county seminaries, education, common schools, and their appropriate funds.

13th. The State Bank, currency, and Banking.

14th. On such parts of the present Constitution as are not otherwise referred.

15th. On Corporations other than Banking.

16th. On canals and internal improvements, public revenue and property, public debt, and the powers and duties of the Legislature in reference thereto, and the restriction proper to be imposed on the Legislature in making loans of money on the credit of the State.

17th. On the organization of county roads, the granting of powers of local legislation to them, and the adoption of a uniform mode of doing county and township business.

18th. On reducing to a code, such parts of the laws of this State as may be found practicable and expedient, and also on reforming the rules and practice of the courts of the State.

19th. On the homestead exemption, and on the accumulation, creation, and division of estate in land.

That each committee appointed under the foregoing resolution shall consist of — members, except the committee on the judiciary, which shall consist of — members.

Mr. FOSTER moved to lay the resolution on the table, which was decided in the negative.

Mr. BORDEN, moved to refer the resolu-

tion to the committee "On the plan of business and the member and functions of the different committees." Which was decided in the affirmative.

Mr. MILLER of Fulton moved a reconsideration of the vote just taken, which was decided in the affirmative.

The vote being reconsidered,

Mr. HARDEN moved to lay the resolution on the table—which was decided in the negative.

So the resolution was not laid on the table.

Mr. BORDEN renewed his motion, to refer the resolution to the committee "On the plan of business and the number and functions of the different committees," which motion was agreed to; and the resolution so referred.

Mr. EDMONSTON, gave notice that he would, on Monday next, or some subsequent day, introduce a resolution instructing the committee on legislation to prepare a provision in the Constitution, providing for biennial sessions of the Legislature instead of annual sessions.

Mr. KENT gave notice, that on Tuesday next, he would introduce a resolution instructing the committee on education to insert a provision in the Constitution at the expiration of the charter of the State Bank of Indiana, that the fund set apart in the one hundred and fourteenth section of said charter, as a permanent fund to be appropriated to the cause of common school education, shall be divided in the proportion of the taxable polls among the counties of the state.

Mr. HARDIN offered the following resolution:

*Resolved*, That when the Convention adjourns this morning, it will adjourn until two o'clock to-morrow.

Mr. MAY moved to amend the resolution by striking out "two o'clock," and insert "nine o'clock, A. M.;" which was decided in the negative.

The question recurring upon the original resolution,

It was decided in the affirmative.

Mr. TAGUE gave notice, that he would on Monday introduce a resolution, requiring a provision to be inserted in the Constitution, providing for triennial sessions of the Legislature, instead of annual, as now provided for.

Mr. MORRISON of Marion gave notice, that on Monday next, or at some convenient day thereafter, he would introduce a resolution enquiring into the necessity of so amending the Constitution of this State, so as to allow an additional amount of banking capital, and providing that such a system of banking may be created as will allow a healthy competition in banking, establish a safe, direct, and judicious general banking law, under which all banking operations shall hereafter be managed in the State.

Mr. CLARK of Tippecanoe enquired, if all these notices were to be placed upon the journal. It appeared to him that there was no authority to place them there, and the journal ought not unnecessarily to be swelled with the notices; they ought to be given verbally.

The PRESIDENT remarked, that the rules of the House did not require a notice to be given of the introduction of any proposition except a motion to change the rules. The Chair would, as a matter of course, direct the Secretary to conform to whatever course the Convention might direct.

Mr. CLARK said, he had made the suggestion in order to relieve the Secretary from the labor of spreading all these notices upon the journal.

Mr. PETTIT said, he would suggest to his colleague the difficulty which would present itself. His purpose of saving the labor of the Secretary would not be accomplished by giving notices verbally; in fact, his labor would be increased, because the notices must necessarily be recorded upon the journal for the information of members, that they might not be taken by surprise; and if given verbally, the Clerk would have to write them out instead of having, as in other cases, to incorporate the written in the journal. It was necessary that the notices appear upon the journal, because a question might arise upon the introduction of a proposition, as to whether it corresponded with the notice that had been given.

The PRESIDENT remarked, that in the absence of any instruction by the Convention, it had been considered the duty of the Secretary to enter the notices upon the journal.

Mr. MORRISON of Marion said, he thought it a wrong course of proceeding, to record upon the journal notices of propositions that were intended to be introduced, for by so doing, they were duplicating every proposition.

Mr. CLARK of Tippecanoe said, that he, for one, objected to the placing upon the journal these notices. It was unauthorized by the rules. He objected upon their being recognized as a part of their proceedings. If such a rule of proceeding should be reported by either committee on rules, he would vote against it for the reason stated by the gentleman from Marion, that such a course of practice would double the size of the journal. To obviate the difficulty suggested by the gentleman from Tippecanoe, that the Convention might be taken by surprise, there was a resolution which authorized them at any time to lay the proposition upon the table. He thought, therefore, there was no danger of being embarrassed by the sudden introduction of a proposition.

Mr. TAYLOR said, that he differed with the gentleman last up. He thought that the observance of the practice of giving notice of the introduction of propositions was very essential in the progress of their proceedings. It was certainly due to those members who were op-

posed to a proposition, that they should be apprised before hand of the intention to introduce it. It was objected that it would have the effect of increasing the size of the journal. He did not consider that a sufficient objection. The people of Indiana were not averse to having the journal extended so as to include all the necessary proceedings of the Convention. There would be no objection to it on their part, and it was essential that it should be full and perfect, in order that each day's proceedings might be traced with certainty.

Mr. SMITH of Ripley was opposed to placing these notices on the journal. He thought there was no necessity for it. When a proposition was introduced, if objected to, it must lie over one day, and gentlemen would then have an opportunity of examining it.

Mr. PETTIT suggested, that the debate was out of order, inasmuch as the subject had been referred to a committee.

The PRESIDENT remarked, that the discussion was entirely out of order, but it had been tolerated by the Chair, in order that the Convention might come to some conclusion in regard to the question. The Chair understood that the Convention had decided this morning that these notices might be given.

Mr. OWEN expressed the hope, that until rules were established for the Convention, no objection would be made to the giving of notices.

Mr. CLARK withdrew his objection.

Mr. FOSTER gave notice, that on Wednesday next, or some subsequent day, he would introduce a resolution to amend our present State Constitution so that fines heretofore appropriated for the use of county seminaries, should be appropriated for the use of common schools in the different townships where such fines are assessed and collected.

Mr. KELSO offered the following resolution:

*Resolved*, That a select committee, to consist of seven members, be appointed by the President to enquire into the expediency of abolishing capital punishment by Constitutional provision; and that they report the result of their deliberations to this Convention.

Mr. COOKERLY moved to lay the resolution on the table; which was decided in the affirmative.

Mr. MOORE offered the following resolution:

1st. *Resolved*, That there shall be a provision in the Constitution prohibiting free blacks from emigrating into this State.

2. That the pay of the members of the Legislature be fixed at two dollars *per diem* for the first six weeks, and one dollar *per diem* for any length of time thereafter.

3. That no officer shall be elected or appointed for a longer time than four years.

4. That clerks, auditors, treasurers, and sher-



iffs, shall be ineligible to more than two terms in succession.

5. That the technicalities and special pleading in our courts of justice be abolished.

6. That the funds arising from the sale of all our public works, water rents, &c., be sacredly applied to the liquidation of the State debt.

7. That the grand jury system be abolished.

8. That all elections shall be by *viva voce*.

9. That our general elections be held on the first Monday in October.

10. That no man shall hold more than one office of trust and profit at the same time; which resolution was laid on the table by consent.

On motion of Mr. ROBINSON, leave of absence was granted to Mr. Kilgore for ten days.

On motion of Mr. WOLFE, the Convention adjourned until to-morrow at 2 o'clock, P. M.

FRIDAY, OCTOBER 11, 1850.

AFTERNOON SESSION.

The Convention met pursuant to adjournment, and was opened with prayer by the Rev Mr. COOPER.

The journal of the preceding day was then read.

Mr. PEPPER of Ohio offered the following resolution:

*Resolved*, That the committee on —— be instructed to report a section requiring that each General Assembly shall provide for all the appropriations necessary for the ordinary contingent expenses of the Government until the next regular session, the aggregate amount of which shall not exceed the amount of revenue authorized by law to be raised in such time: *Provided*, the State may, to meet casual deficits in the revenues, contract debts, never to exceed fifty thousand dollars, and the moneys thus borrowed, shall be applied to the purpose for which they were obtained and to no other purpose, and to no other debt except for the purpose of repelling invasion, suppressing insurrection, or defending the State in war, shall be contracted unless the law authorizing the same shall, at a general election, have been submitted to the people, and have received a majority of all the votes cast for members of the General Assembly at such election. The General Assembly shall provide for the publication of said law, for three months, at least, before the vote of the people shall be taken upon the same, and provision shall be made at the time for the payment of interest annually as it shall accrue by a tax levied for the purpose; and the law levying the tax shall be submitted to the people, with the law authorizing the debt to be contracted.

The resolution having been read,

Mr. PEPPER moved that it be laid upon the table and printed.

Mr. EDMONSTON asked for a division of the question.

The question being taken first on laying the resolution on the table, it was decided in the affirmative.

The question was then taken on ordering the resolution to be printed, and it was not agreed to.

Mr. BORDEN, from the committee on rules, submitted the following report:

"The committee to which was referred the subject of reporting rules and regulations to govern the proceedings of this Convention during its session, beg leave to submit the following report, and to respectfully recommend it for adoption:

[The report was read by the Secretary.]

Mr. BORDEN from the same committee asked leave to make another report.

The PRESIDENT remarked, that if it did not form part of the first report, it would not now be in order.

The question would be, first, on adopting the rules which had been reported from the committee.

Mr. KELSO said, he did not wish to enter upon the consideration of the rules now, for he apprehended they would give rise to some debate, and for the purpose of giving the other committees an opportunity to report, he would move that this report be laid upon the table for the present.

Mr. PETTIT said, he hoped the gentleman would withdraw that motion for a moment that he might make a suggestion.

Mr. KELSO withdrew the motion.

Mr. PETTIT said, that before acting upon the rules, he thought they ought to be printed, but first of all he would state that there was one of them that he desired to amend. He meant the rule which authorized the yeas and nays to be taken upon the demand of any ten members. He thought that number was too small to be permitted to demand the yeas and nays in a deliberative body, consisting of 150 members. He thought that it ought not to be in the power of so small a number to vex and harrass a body of that size, with repeated calls for the yeas and nays. It would be much better to say that it should require one fifth of the members present to demand the yeas and nays. He perceived that the committee had changed the rule of the House in this respect, and made it to require ten to demand the yeas and nays instead of two, but ten he thought was not enough. He would move to strike out "ten," and insert "one-fifth of the members present."

[Cries of "No," "No," "No."]

Mr. KELSO said, that about one-third of these rules, on an average, deserved the name of gag laws. About one third of all the propositions that were to be permitted by them to come before the Convention at all, were to be decided without debate. To that he did not

so much object, but he did claim the privilege, if his lips were to be sealed, at least, to record his vote. He desired that one of the two privileges should be allowed. Either that the old rule that had stood ever since the birth of the State, giving to two members the power to call the yeas and nays should stand, or the privilege of debating all propositions that might come before the Convention, should be allowed. He hoped that the motion of the gentleman would not prevail.

Mr. PETTIT said, that, to accommodate the gentleman, he would withdraw his motion and let the question be taken on the motion to print.

Mr. KELSO then renewed his motion, that the rules be laid upon the table and ordered to be printed.

Mr. CHAPMAN asked for a division of the question.

The question was, accordingly, first taken on the motion to lay on the table, and it was agreed to.

The question on the motion to print (one hundred and fifty copies) was also agreed to.

Mr. MILROY, from the committee appointed to investigate the legality of the claim of the present State Printer to do the printing of this Convention, made the following report:

"The undersigned, members of the committee appointed under the following resolution, viz.:—

*Resolved*, That there be a committee of seven appointed, whose duty it shall be to enquire into and report to this Convention, upon the legality of the claim of the present State Printer to do the printing for this Convention, &c.,

Beg leave to report that they have had the matter referred to them, under their consideration, and are unanimously of opinion that the State Printer is not *ex officio* the Printer to this Convention, and has no legal claim by virtue of his office to do the printing for this Convention.

R. H. MILROY,  
H. P. THORNTON,  
JOHN P. DUNN,  
HORACE P. BIDDLE,  
EZEKIEL D. LOGAN,  
JAMES LOCKHART,  
Committee."

The report having been read,

Mr. NAVE said, as it involved a legal question, in order that members might have an opportunity of examining it, he moved that it be laid on the table for the present.

Mr. KELSO desired permission to enquire of the chairman of the committee whether any documents connected with the contract had been laid before the committee? If so, he desired that copies should be furnished to the Convention, that they might be examined.

Mr. MILROY replied that there had been some documents before the committee.

The question was then taken on the motion to lay the report on the table, and upon a division—ayes 61, noes 63—it was not agreed to.

So the report was not laid upon the table.

The question then being upon concurring in the report,

Mr. BORDEN said, he supposed there was no desire on the part of the Convention to hasten the decision until a full opportunity for examination had been afforded, and it appeared to him, therefore, that it ought to be permitted to lie over until to-morrow. He hoped that by unanimous consent it would be permitted to lie over.

The PRESIDENT remarked to the gentleman, that he might accomplish his object by moving to postpone the further consideration of the resolution.

Mr. BORDEN then moved to postpone its further consideration until 10 o'clock on Monday.

The motion was agreed to.

Mr. BORDEN, from the committee on rules, made the following report:

Mr. PRESIDENT: The committee, to which was referred the subject of reporting rules, &c., for the regulation of the proceedings of this Convention, and to whom was also referred a resolution proposing "that it shall not be in order to move any resolution of *instruction* to any standing committee, requiring any provision of the Constitution to be brought in without first giving at least two days previous notice of such resolution," have had the same under consideration, and have directed me to report rule 37, of the rules this day reported to the Convention, in lieu of said resolution, and respectfully ask to be discharged from the further consideration of the subject.

The report was concurred in, and the committee discharged from the further consideration of the subject.

Mr. BORDEN, from the same committee, submitted the following report:

Mr. PRESIDENT: The committee on rules, &c., to whom was referred a resolution of this Convention, requiring them to enquire into the propriety of appointing messengers whose duty it shall be to attend to the mailing of all letters, papers, &c., of the members and officers of this body, and to receive and deliver to said members and officers, all matters sent them through the Post Office, would respectfully report, that your committee have enquired of the Doorkeeper of this Convention and from him ascertained that he has already appointed eight persons to assist him; your committee have not been able to find any authority vested in the Doorkeeper to make such appointments; should this number be retained, we are unable to see the necessity for the appointment of messengers, and are of the opinion that the number appointed is already too large.

He would respectfully suggest to the Convention to take immediate measures to deter-



mine the number of assistants the Doorkeeper shall have, and who shall make the appointments.

We respectfully recommend the adoption of the following resolution, and ask to be discharged from the further consideration of the subject:

*Resolved*, That the Doorkeeper be authorized to employ one assistant doorkeeper, one messenger, one attendant on the committee rooms, and one person to make fires in the Hall.

The question being upon the adoption of the resolution.

Mr. BASCOM moved to lay it upon the table. The motion was not agreed to.

The question recurring upon the adoption of the resolution.

Mr. KELSO opposed its adoption. There was an absolute necessity, he said, for the services of all these messengers. They could not be dispensed with without serious inconvenience. As to the assertion of the committee that no power was vested in the Doorkeeper to make the appointments, he would ask to whom the power did belong, if not to him.

Mr. BORDEN observed, that it was proper that he should state that he did not himself entirely concur in the resolution, but that he had submitted it in obedience to the instructions of a majority of the committee. He would state, however, that he was satisfied that too many officers were employed.

Mr. KELSO moved that the resolution be laid upon the table.

[Cries of "No!" "No!"]

Mr. KELSO withdrew the motion.

Mr. FOSTER said, he was decidedly of the impression that there were too many persons employed. He rose however, he said, for the purpose of moving to amend the resolution by adding two additional messengers.

After some conversational debate the question was taken on the amendment of the gentleman from Monroe, and it was not agreed to.

The question recurred on the adoption of the resolution reported by the committee.

Some further conversation ensued, and the yeas and nays being demanded, were taken with the following result, yeas 84 nays 47, as follows:

**AYES.**—Allen, Anthony, Badger, Balingall, Beach, Beard, Beeson, Berry, Bicknell, Biddle, Blythe, Bracken, Brookbank, Bryant, Carr of Jackson, Chandler, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Colfax, Crawford, Davis of Parke, Dick, Dobson, Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Gibson, Gordon, Graham of Miami, Graham of Warrick, Gregg, Haddon, Hall, Holliday, Harbott, Helm, Helmer, Hendricks, Hiatt, Hogin, Hovey, Howe, Huff, Kent, Kendall of Wabash, Kendall of Warren, Logan, March, Mather, Mathis, McFarland, Miller of Gibson, Milroy, Moore, Morgan, Morrison of Washington, Mowrer, Murray, New-

man, Niles, Nofsinger, Owen, Pepper of Crawford, Read of Clark, Read of Monroe, Robinson, Shannon, Sherrod, Shoup, Sims, Smiley, Spann, Steele, Stevenson, Tague, Taylor, Terry, Thomas, Todd, Trembly, Vanbenthussen, Walpole, Wheeler, Wolf, Work, Wunderlich, Yocum, and Mr. President—yeas 84.

**NAYS.**—Alexander, Bascom, Borden, Bowers, Butler, Carter, Chapman, Chenoweth, Davis of Madison, Davis of Vermillion, Dunn of Perry, &c., Duzan, Edmonston, Gootee, Hamilton, Hardin, Hawkins, Holman, Johnson, Kelso, Kindley, Maguire, May, McClelland, McLean, Miller of Clinton, Miller of Fulton, Milligan, Mooney, Morrison of Marion, Nave, Pepper of Ohio, Pettit, Prather, Ristine, Ritchey, Schoonover, Snook, Smith of Ripley, Smith of Scott, Thornton, Wallace, Watts, Wiley, and Zenor—nays 47.

So the resolution was adopted.

#### ORDER OF BUSINESS.

Mr. READ, of Monroe, chairman of the committee on standing committees, made the following report:

"The committee appointed to report a plan for the business of this Convention, and to designate the number and functions of the different standing committees, beg leave to make the following report:

That the standing committees shall be the following, to whom shall be referred all such matters touching the Constitution as properly belong to each, and that they report, without argument, the provisions, alterations, or amendments required."

[The list of committees was here read by the Secretary.]

Mr. READ of Monroe moved, that the report be laid upon the table and printed.

It was suggested by several members that there should be three hundred copies printed.

Mr. BORDEN said, that in view of the fact that the report might be amended when it should come to be considered, he thought a hundred and fifty copies would be enough.

Mr. KELSO desired that the motion to lay on the table might be withdrawn; and the motion being withdrawn accordingly, he said: If the Convention were satisfied with the report, as he was himself, perfectly, it would be well enough to print the three hundred copies proposed, but if a majority should demand alterations and amendments, then the printing of any number would be an entire loss. He did not know but it would be proper at this time to put the question upon the adoption of the report.

Mr. COOKERLY. It seemed, to his mind, that the Convention ought to adopt or reject the report at once. It seemed to him to be high time for the Convention to be getting to work. They had been sent here to work, and he was weary of idleness.

Mr. WOLFE. He also hoped the Convention would either adopt or reject the report now. He was himself agreed to it in every particular, except as to the number of members of the committee on phraseology, which was to be composed of the chairmen of all the other committees. He thought the number too great entirely, but would give way to the opinion of others.

Mr. OWEN said, he thought the printing could surely be obtained by to-morrow morning; and, as there were some gentlemen who had doubts about the propriety of adopting the report now—and as it was, in fact, a very important one, for upon it, to a considerable extent, depended the after-business of the Convention—he thought it prudent to postpone final action. Assured, as he was, that the printing could be had in the morning, it seemed to him that the Convention would be ill-advised if they were to increase the number of copies. He thought that the report which proposed to carve out the business of the Convention, should be printed and examined with the utmost care. He found that, in New York, they did not get through with this report until they had been in session some ten days; and than it was some fifteen days afterwards before they proceeded to consider it. He believed that he should be disposed to favor this report, with one single amendment, and that was: he thought he should propose to transfer to a special committee the consideration of the matter of apportionment of representation. He considered this question of apportionment to be one of the most important in the government. But if the printing could be had to-morrow morning he would rather wait. He had great confidence in the select committee; but the report had been drawn up in a hurry. It was a very important report—certainly the most important report which had been made to the Convention; therefore, every man, as he thought, should carefully read and consider it before adopting or deciding upon it. After getting through with the consideration of the report, then he would be in favor of printing more, but now he thought a hundred and fifty copies would suffice.

Mr. READ of Monroe then renewed his motion, which was agreed to, and accordingly it was

*Ordered*, That the report lie on the table, and that one hundred and fifty copies be printed for the use of members.

#### PUBLICATION OF THE PROCEEDINGS AND DEBATES.

Mr. MORRISON of Marion, from the select committee to which had been referred the subject of furnishing newspapers containing the proceedings and debates of the Convention, made the following report:

The report was here read by the Secretary. It concluded with recommending the adoption of the following resolution:

*Resolved*, That the principal Secretary order,

from the publishers of the Indiana State Journal, the Indiana State Sentinel, the Indiana Statesman, the Indiana Volksblatt, and the Locomotive, such numbers of each as are named in the foregoing estimate, and that the Convention hereby authorize the payment of the postage on such of the above named papers as may be sent by mail, and upon all public documents ordered to be printed by this body and mailed at the Indianapolis post office.

The PRESIDENT stated the question to be upon the adoption of the resolution, and the yeas and nays were demanded thereupon.

Mr. WATTS said, he did not like to oppose the resolution, yet he could not vote for it. He had some experience in this newspaper business. He had seen wagon loads of packages which had been ordered in this way, in the cellar of the Post Office in this city. He had passed coffee sacks full of them in the mud-holes on the Michigan road, which the stage could not carry away. But he had another objection: If these papers were taken and distributed at the expense of the State, a paper would be sent to one man to-day, containing a detached portion of the business of this body—say the business of one day—and he would not get another paper, perhaps, during the session of the Convention, and of course by this means alone he could know nothing about the proceedings here. Whereas, if the papers were given to him during the session, at the close he would know something about what had been done; but in the way they were proposing: to send to one man to-day and another to-morrow, and perhaps no one getting more than two or three papers during the session, the knowledge of their proceedings would amount to absolutely nothing. If arrangements could be made to send correct accounts of their proceedings to the various county papers, he thought that might be a better plan. At all events he felt bound to go against this proposition; and he thought it due to himself to say thus much.

Mr. KELSO said, he was desirous that we should get as much information as possible before the people; the only question was whether we could get the same amount of valuable information before the people on any cheaper plan than the one proposed. He did not like the proposition so far as it respected those publishers who proposed to furnish only a part of the proceedings. It occurred to his mind that their papers would be almost entirely useless upon our hands; but there were three papers proposing only to publish the debates as prepared by their own reporters. He would take only those papers which published the debates as prepared by the authorized reporters.

Mr. SHERROD was opposed to the adoption of the resolution as reported. He admitted that the people ought to be furnished with the proceedings of the body, but he was opposed to the plan here proposed. He considered it anti-Democratic; for how could all of their constitu-



ents be furnished with these papers? In the district which he had the honor to represent there were three thousand voters. How many of these would he be able to furnish? Last winter he took three papers and distributed them as well as he could among his constituents, and when he returned home they complained that they had scarcely received any papers at all.— Besides this, he contended, that if there ever was a deliberative body that should practice economy, it was this body. They should set an example that would last for years to come. He thought the people would be better satisfied with the publication of these reports in the various county papers throughout the State.

Mr. MURRAY said, he considered that there had been no period since the adoption of the present Constitution, in which the dissemination of information with respect to the affairs of the State was more imperiously demanded. This information should be sent forth, in order that they might have the will of the people expressed with regard to their proceedings, in time to direct their action. For when the Constitution should have been perfected, then there would be but one issue before the people. The work would then have to be either adopted or rejected. Errors could not be corrected then. But now, whilst the body were in session, if their constituents should be dissatisfied with their action, they would be able to hear from them, and be corrected by them. For this reason, he thought it altogether expedient that they should send abroad their daily proceedings as early as possible.

Mr. BASCOM said, that the committee was not a little astonished when they came to look at the cost of publishing the reports in these papers. They had first made their calculation to take ten papers of each publisher for each member; but the cost appeared so great that they were constrained to cut it down to the lowest estimate possible. He was in favor of adopting the resolution, for the reason that the people wanted information of our doings; they wanted knowledge upon every subject likely to be considered here. If it was anti-Democratic to diffuse knowledge among the people, he would renounce the name; if such a thing was going to break down the party, he would not belong to it. But he looked at the matter in a different light. If the people had made any demands of him he was bound to comply; and that he was doing when he supported the report of the committee. The people wanted not only the results of the deliberations here, but they wanted the whys and the wherefores. And if gentlemen were diligent in distributing the papers proposed to be taken, by the time they were through, he had no doubt that the people would be pretty well informed of our doings. The gentleman from Orange, (Mr. Sherrod,) gave his preference to the plan of publishing our reports in the papers generally throughout the

State. But need that gentleman be told, that, without the resolution, these country papers could never get those reports? But when published in the city papers here, the full reports would go forth, and copies would be multiplied in every part of the State, so that the people could not but be well informed of all that was done. Their acts should not be kept from the people. They should be spread broad-cast over the land, that every man might see and judge for himself, and judge understandingly. How could he act understandingly unless the light of knowledge be placed before him? But the wonder with him was, how any man here could be so parsimonious as to refuse four thousand dollars for that light. He could not but think that gentlemen would be standing very much in their own light if they refused to support this resolution.

Mr. SHERROD said, he had no wish to continue the debate, but desired merely to reply to a reference which had been made to him. He had remarked that, in his opinion, it would be anti-democratic to support the report of this committee, and he would still contend that it was anti-democratic to tax the many for the benefit of the few.

Mr. EDMONSTON said, he was in favor of taking the papers, but he thought the number proposed might be reduced to three for the daily papers. That would be eighteen papers weekly for each member from each of the daily publishing establishments, and he thought that number would be sufficient. With respect to the distribution of his share, instead of sending to lawyers, and doctors, and leading politicians, as had been intimated, he intended to send his papers to the hard-fisted yeomanry of the country. He would move to strike out "five," wherever it occurred in relation to the Journal, Sentinel, and Statesman, and insert "three" in lieu thereof.

Mr. READ of Clark said, he was in favor of the amendment. He should have voted, however, for the adoption of the resolution without the amendment, but he would have done so with some objections relative to the amount. Like the gentleman from Orange, he had concluded never to vote for taking the papers in this way, as long as the arrangement of which he complained should be continued in the Post Office Department. But since that difficulty was removed he was ready to support the proposition.

Mr. SHOUP thought it but right that all the papers in the State should be allowed the same price that was allowed the city papers here for publishing the proceedings of the Convention. The city publishers had already pledged themselves in their prospectus that they would publish these proceedings—they were obligated to do so. Where, then, was the propriety of coming in and paying for that service. He would move the following amendment to the amendment offered by the gentleman from Dubois

(Mr. Edmonston): to insert in the proper place that all the local press within the State be allowed the same rates for publishing the proceedings of the Convention.

Mr. MORRISON of Marion said, that, as chairman of the committee raised under the original resolution, perhaps he might, from his intimacy with the question, be able to give some information which would be of service to gentlemen in determining their votes. He would say that he was neither anxious nor interested about the matter, any more than as he considered it a public duty to give to the people the needed information. If the correspondence sent up with the report had been read, the reasons would have been apparent why the Convention should give a considerable amount of money to enable these publishers to print the report of the proceedings of this body. These publishers proposed to give detailed reports, literally, of what transpired in this body, on the succeeding day. To do this they would have to fill seven columns of print, of three thousand ems each, in their several papers daily. This amount of labor it was impossible for any set of printers to perform without additional compensation or subscription. But if the publishers did not proceed to make these detailed reports, he would ask how were the country papers to get hold of correct copies of their doings here? Not a single speech, perhaps, would appear in their columns. They would barely give such an amount of proceedings as would show that the members were here engaged in the performance of their duty. That being the case, the sources of information to the local press would be very limited.

Hence, continued Mr. M., when we pay the city publishers for this amount of printing, we multiply one hundred fold the amount of reports of our proceedings here, to be sent to the papers throughout the State. It had been said that it was anti-democratic to take the people's money to do the people's work. Why no Democrat or Whig in the State would hesitate to do so when it was demanded by the people. The committee had not blinked the argument. They thought the enterprize was worth the expense. For, what substitute would gentlemen furnish for the plan of the committee? Would they set in, all of them, and write their own reports in the shape of letters, and send them all over the State? Or would they ask the local editors to send up reporters to do this work? If such counsel was followed, upon returning home, gentlemen would meet their constituents asking them—"what have you been doing?" and they would have to reply, each for himself—"Why, don't you know? then I will tell you." And they would find it a story that would take up a good deal of time. The common cry would be—"They stayed there till they got all the pay they could, and then came home without doing anything." He was for removing the cause for such a cry, as far as this small expendi-

ture of money would go. If the compensation proposed in this amendment of the gentleman from Dubois (Mr. Edmonston) would be sufficient to remunerate these editors, he would go with him, for it did not curtail the item of compensation. He was for acting reasonably in regard to this matter.

Let us, said he, calmly and coolly consider whether it would be doing well by the people not to furnish them with the proceedings, or whether it would not be acting the part of demagogueism. Would gentlemen say to the people—"We were so careful of your interest that we were constrained to vote against sending you these papers?" He would like to meet such economists before their constituents in any part of the State, for he believed the people of Indiana to be a reading and intelligent people.

The committee had submitted the project which they thought to be the most feasible. They considered neither the amount of papers too large, nor the price too high. It was precisely such a course as the people of Ohio and Kentucky had pursued, only they carried it to a much greater extent; and was it to be conceded that our people were less liberal or less intelligent than the people of Ohio or Kentucky?

Mr. HOVEY said, he was opposed to the resolution and amendment. He represented a county containing about 2,300 voters, and under the resolution before the Convention, the papers that would be given to him for distribution, would scarcely furnish one apiece for his constituents. Such, he thought, would be but poor light to guide them in forming their opinions in regard to the instrument the Convention might frame. Such broken parts of their discussions would have a tendency to mislead rather than enlighten. He was opposed to the amendment and resolution for other reasons. A Stenographer to the Convention had been appointed, whose duty it was to report their debates in full, and those debates, he understood, were to be published for distribution among the people. The opinions of members, thus circulated, would be far preferable to the fragments that might reach their constituents through the medium of the newspaper press. The gentleman from Marion (Mr. Morrison) had affirmed that opposition to the resolution and amendment might do well enough for the demagogue upon the stump, but that it was out of place here. With due deference to the opinion of that gentleman, he thought it savored more of demagogueism to pay \$4,300 of the public money for the paper and postage mentioned in the report, to be used by delegates for the purpose of courting political favor at home. If the resolution should be adopted, the wind-worth of this Convention, including the Stenographer, stationery, publishing debates, &c., &c., will cost nearly \$20,000. He should vote against any proposition of a character similar to that now before the Convention.



Mr. BORDEN said, it struck him that there was a question behind this subject of publishing, which ought to be considered and decided first; and that was the subject of reporting. For if the Convention did not retain the reporters, of course they need have nothing to do with printing the debates. If he understood this matter aright, it was arranged in the Ohio Convention so that the types used for printing the proceedings and debates in the newspapers, were transferred from the columns of the newspaper, to the page of the library edition of the proceedings, which very materially lessened the expense of the volume. But urging, again, that in his opinion the question of reporting should be decided first; he moved that the Convention do now adjourn.

The motion was not agreed to.

So the Convention refused to adjourn.

Mr. KELSO moved to lay the report, resolution, and pending amendments on the table.

The motion was agreed to.

Mr. BORDEN moved an adjournment,

Which motion was decided in the negative.

Mr. MORRISON of Marion, from the select committee appointed to enquire into the practicability of providing a more comfortable and convenient house for the use of the Convention made the following report.

[The report and accompanying correspondence was then read by the Secretary.]

Mr. KELSO moved to lay the report and communications on the table.

The motion was agreed to.

Mr. GREGG submitted the following resolution:

*Resolved*, That a committee of five be appointed to ascertain whether a room can be obtained in the city of Madison, of sufficient capacity to accommodate the sessions of the Convention—and if so, upon what terms—together with such other information on the subject as may be of interest to this body. And that said committee report all the facts in relation thereto, as early as practicable.

Mr. PETTIT offered the following amendment:

Insert after the word "Madison," as follows: "or any other town in the State."

The question was then taken upon the amendment offered by the gentleman from Tippecanoe, (Mr. Pettit).

And it was rejected.

Mr. BORDEN moved an adjournment.

Which motion was decided in the negative.

Mr. KENT offered the following amendment. Strike out "Madison," and insert "New Albany."

The amendment was rejected.

The question then recurring upon the original resolution of the gentleman from Jefferson, (Mr. Gregg,) it was adopted.

The CHAIR appointed the following gentlemen as members of the committee:

Messrs. Gregg, Bright, Wheeler, Kelso, and Bourne.

Mr. PEPPER of Crawford submitted the following resolution:

*Resolved*, That this Convention adjourn *sine die* on the 7th day of November next.

Mr. CARR of Jackson moved to lay the resolution on the table.

The motion was agreed to.

Mr. SIMS submitted the following resolution.

*Resolved*, That the committee on Legislation be instructed to enquire into the expediency of so amending the Constitution that one branch of the Legislature shall consist of only seventy members, and the other branch, to-wit: the Senate, shall consist of only thirty members.

Mr. MILLER of the Gibson moved to lay the resolution of the gentleman from Clinton (Mr. Sims) on the table.

The motion was agreed to.

On motion of Mr. BORDEN the Convention adjourned until to-morrow, 9 o'clock.

#### ~~~~~ SATURDAY, OCTOBER 12, 1850.

The Convention met, pursuant to adjournment, and was opened with prayer by the Rev. C. L. Mills.

The journal of the preceding day having been read,

Mr. STEELE submitted the following resolution:

*Resolved*, That a provision be incorporated in the Constitution of the State of Indiana, to restrict the Indiana Legislature from granting a license to vend spirituous liquors in the State.

*And be it further resolved*, That a provision be incorporated in the Constitution of the State of Indiana, to instruct our representatives to provide, by law, the right of petition to all white females, of the age of eighteen and upwards, to the Indiana Legislature, for such laws as will tend to protect their best interests, and that of their posterity.

Mr. EDMONSTON moved to lay the resolution on the table. The motion was agreed to.

Mr. S. JONES, a delegate from the county of Bartholomew, appeared in the Convention, produced his credentials, and was sworn according to law, by the Hon. HORACE P. BIDDLE, one of the Circuit Judges of the State of Indiana, and took his seat.

Mr. BORDEN submitted the following resolution, which was laid on the table by consent:

*Resolved*, That the committee on elective franchise inquire into the expediency of providing in the Constitution for the exercise of the right of suffrage, so that in no instance shall the exercise of that right depend upon the nat-

uralization laws of Congress; and, also, to inquire into the propriety of allowing persons of foreign birth, who shall have resided one year in this State, declared their intentions to become citizens of the United States, (or denizens of this State,) and taken the oath of allegiance to our own, and abjuration of all foreign governments, the privilege of voters.

Mr. DICK submitted the following resolution, which was laid on the table by consent:

*Resolved* 1st. That no State bank shall hereafter be created, nor shall the State, directly or indirectly, ever become a stockholder in any incorporation or association, created for the purpose of issuing paper money of any description; nor shall the State give or loan her credit, in aid of any individual or incorporation, for banking purposes.

2nd. That no person, association of persons, or corporation, shall put in circulation any bill, certificate, promissory note, or other paper, or the paper of any other bank, to circulate as money, without first having satisfied the Legislature, with good and sufficient pledges, that such paper money shall be redeemed in specie, on demand. And every such person, association, or corporation, shall be individually liable for the redemption of the whole amount of such circulation; nor shall any such person, association of persons, or corporation, issue note or paper money of less denomination than ten dollars.

3d. That the Legislature shall have no power to pass laws for the suspension of specie payments, in behalf of any individual, association or incorporation, issuing paper money of any description.

Mr. READ of Clark submitted the following resolution, which was laid on the table by consent:

*Resolved*, That the committee on currency and banking be instructed to inquire into the expediency of inserting in the Constitution, the following sections, to-wit:

SEC. 1st. The Legislature shall have no power to pass any act, granting any special charter for banking purposes; but corporations, or associations may be formed for such purposes, under general laws.

SEC. 2. The Legislature shall have no power to pass any law sanctioning, in any manner, directly or indirectly, the suspension of specie payments, by any person, association, or corporation, issuing bank notes of any description.

SEC. 3. The Legislature shall provide by law, for the registering of all bills or notes, issued, or put into circulation as money, and shall require ample security for the redemption of the same in specie.

SEC. 4. The stockholders in every corporation and joint stock association, for banking purposes, issuing bank notes, or any kind of paper credit, to circulate as money, after the first day

of January 1852, shall be individually liable to the amount of their respective share or shares, of stock in any such corporation or association, for all its debts and liabilities of every kind, contracted after the said first day of January.

SEC. 5. In case of the insolvency of any bank or banking association, the bill holders thereof shall be entitled to preference in payment over all other creditors of such bank or association.

Mr. FOLEY submitted the following resolution, which was laid upon the table by consent:

*Resolved*, That the following reforms ought to be engrafted in the new Constitution:

1st. A provision for biennial, instead of annual sessions of the Legislature.

2nd. All officers to be elected by the people.

3d General elections to be held on the first Tuesday in October, instead of the first Monday in August.

4th. The Legislature to commence its session on the first Monday in January.

5th. The Gubernatorial office extended to a four years term, and a Governor to be ineligible for a second term.

6th. No person to be allowed to hold two offices of honor and profit at the same time, as is now the case to the clerk's and recorder's office.

7th. Associate judges of circuit courts dispensed with.

8th. Local and special legislation wholly prevented.

9th. No tax to be levied by an act of the Legislature, except to carry on and support the State Government, unless such tax is first submitted to a separate and direct vote of the people, and by them authorized; existing charitable institutions to be excepted from this rule.

10th. An express provision against allowing the Legislature to borrow money, excepting in time of war, or for public defence, without first submitting it to the people.

11th. Fines and forfeitures, now appropriated to county seminaries, to be distributed for common school purposes.

Mr. HOLMAN submitted the following resolution; which was laid upon the table by consent:

*Resolved*, 1st. That the legitimate object of a constitution is to declare the natural and inherent rights of the citizen, to fix and establish the several departments of government, and declare and limit the powers to be exercised by each.

2d. That no subject of a merely legislative character, and not fundamental in its nature, should be engrafted on the Constitution.

3d. That it is anti-republican to restrain the exercise of the public will, through the Legislature, by unnecessary restraints on the legislative department of the government.



## STANDING COMMITTEES.

Mr. READ of Monroe moved, that the report of the committee on the organization of standing committees, be taken from the table by consent.

The motion was agreed to.

Mr. READ of Monroe stated, that, by a mistake of the copyist, a standing committee on the elective franchise and the apportionment of representation to consist of nine members, had been omitted. He would move that it be inserted among the committees as No. 10, and that the numbers named be changed so as to correspond with the increase of one.

The motion was agreed to.

Mr. EDMONSTON moved that the Convention proceed to consider the organization of the standing committees, in the order in which they were numbered in the committee's report.

The motion was agreed to.

The question being taken upon the adoption of committee number one, on the rights and privileges of the inhabitants of this State, to consist of nine members,

It was decided in the affirmative.

The question being upon the adoption of committee number two, on the legislative department, to consist of nine members,

Mr. BORDEN moved to strike out the whole provision, and insert the following substitute :

On apportionment, election, and tenure of office of the Legislature, to consist of ten members, one from each congressional district.

On the powers and duties of the legislative department, except matters otherwise referred, to consist of nine members.

The question being taken on the motion of the gentleman from Allen, (Mr. Borden,)

It was decided in the negative.

The question recurring upon the adoption of number two,

It was decided in the affirmative.

The question being taken upon the adoption of committee number three, on the executive, to consist of nine members,

It was decided in the affirmative.

The question being taken upon the adoption of committee number four, on the State officers other than executive and judiciary, to consist of seven members,

It was decided in the affirmative.

The question being upon the adoption of committee number five, on the organization of courts of justice, to consist of one member from each judicial circuit,

Mr. PETTIT said, that as the subjects embraced in this resolution and the two following were properly connected, and could be more appropriately acted upon by one committee, he was in favor of the question being taken upon them unitedly. He was of opinion, that in proportion as the committees were increased, in the same ratio the final consummation of the

object of their formation would be retarded and embarrassed. This was more particularly the case when a division was made of subject matter that was necessarily combined, as in the three resolutions before them, the fifth, sixth, and seventh. There was no possibility of making a clear line of demarcation with reference to this subject, one department being so necessarily interwoven with the other. This, of course, would lead to embarrassment in the action of the committees. He was very glad to see that the committee on rules had reported a committee on the legislative department, also one on the executive department. But so far as the judiciary was concerned, other committees had been proposed to be raised upon that subject. In view of this fact, he would respectfully inquire of gentlemen whether the organization of the courts and the practice of law were not as naturally connected as were the various duties and powers of the Governor? They might as well have a committee on the election, a committee on the tenure of office, one on the veto power, and one on the pardoning power of the Governor, as to have a committee upon every branch pertaining to the judiciary. The division thus made was one that would lead to the formation of a half a dozen committees that might more properly be consolidated into one.

He would ask if the organization of criminal courts did not involve the exercise of criminal law in these courts? And with reference to law reforms and the practices of law, were they not necessarily connected with the organization of courts. It was very desirable that a provision should be made in the Constitution with reference to reform in the practice of law; but this object could be accomplished by a committee organized as he had suggested. All these legal subjects should be under the jurisdiction of one committee, as they were necessarily connected together. Law reforms could not be carried out if courts were not organized in which those laws could be put in practice. The division of these legal subjects among three committees would inevitably produce confusion. The question would arise: how far shall one committee go upon the practises, and how far should another go with reference to law reforms, and how far should a third go with regard to the organization of courts? These committees would be deliberating in different rooms as so many different bodies, without any mutual harmony in their action. It was for the purpose of consolidating these subjects, and having them harmonize, that he had proposed bringing them under the jurisdiction of one committee.

But with reference to law reform, he would enquire if there was any gentleman in the Convention who supposed that anything more than a clause of a few lines would be added to the Constitution? Who was going to dovetail into the Constitution provisions having reference to

law reforms and practices. All that it was proposed to do was to insert a clause in the Constitution, making it the duty of the Legislature to provide for the appointment of three or five of the ablest lawyers in the State as commissioners to simplify the practice of law. Was it necessary to raise a committee for that purpose? With regard to criminal law, it was not expected that a committee should report an elaborate and learned code on the subject. The subject of the grand jury would probably be considered, but that subject also properly belonged to the judicial department. He had heard it mooted here and elsewhere, that in the matter of a prosecution, where the whole power of the State was brought to bear upon the one prosecuted, it was designed to make a provision whereby the defendant shall have the privilege of the closing argument to the jury. He was willing to consider the question, and to what committee could it be more appropriately referred than an old-fashioned judicial committee?

In what body, he would enquire, had this subject ever been so divided?

A VOICE—In Ohio.

Mr. PETTIT. It was a piece of great folly.

Mr. P. concluded his remarks by saying that, believing it would tend to harmony in the action of the Convention, he would move to strike out the fifth, sixth, and seventh provisions, and insert the following:

"On the judiciary, to consist of one member from each Judicial Circuit."

Mr. EDMONSTON asked for a division of the question.

The PRESIDENT decided the question could not be divided.

Mr. REED of Monroe said, that it was plainly evident to him, that a committee on the organization of courts of justice—a committee that should fix the organization of the supreme court, which performed *nisi prius* duties, and, also, the organization of the probate courts, would have as much business before it as it could properly attend to; and such a committee should be composed of the ablest lawyers in the Convention. With regard to the committee on matters pertaining to criminal law—the sixth—he would say, that the subjects of the grand jury, the abolition of the death penalty, and a house of refuge, would all go to that committee, and any one of them would be sufficient to occupy the attention of a committee.

How was it in regard to the committee on the practice of the law and law reform? What subjects would go to that committee? Gentlemen would probably bring forward resolutions for the abolishment of special pleading; also for the doing away with the distinction between law and equity proceedings. There were other subjects, also, to be acted upon, and he had no doubt there would be plenty of work for the three committees. The gentleman from Tippecanoe had said that no such divisions, as now

proposed, had been made in other Conventions. He would inform the gentleman, that in the Michigan Convention, which was composed of only ninety members, there were twenty-four committees; in the New York Convention numbering one hundred and twenty-eight members, there were eighteen committees; and in the Ohio Convention, numbering one hundred and eight members, there were eighteen committees. The gentleman from Tippecanoe had further stated that the organization of these committees would tend to produce confusion, and that they would intrench one upon the work of the other. Allowing this to be true, what difficulty would arise? Had they not provided for a committee of revision and arrangement? These three committees he was of opinion should be retained and in fact, with great propriety, another committee having charge of legal questions not otherwise provided for, might be added to the number already proposed. At all events he should be very reluctant to have either of these committees at present proposed stricken out.

Mr. NAVE said, that it appeared to him that the proposed organization of so many committees, was only a plan for conferring honor upon gentlemen desirous of being made chairmen of those committees. Gentlemen should consider seriously of the embarrassment in the business of the Convention, that would result from the organization of so many committees. There was an act passed in the reign of Charles II, of England, drawn up by one of the ablest jurists of the land, Lord Bacon, and was known to all lawyers as the Statute of Frauds. That statute had been incorporated in the laws of the State of Indiana, as it had been in the laws of every other State of the Confederacy. And he would respectfully ask, how the different branches of that statute could be acted upon with celerity and without perplexity, if it was parceled out among different committees. He merely cited this as an illustration of the difficulties that would arise from the division of subjects that properly came under one head. He was in favor of having as few committees raised as possible.

Mr. NILES stated, that he was a member of the committee to whom was referred the organization of the standing committees, and that he had acquiesced in their report, in opposition to his first impressions respecting it. He thought there was evidence of a disposition among the members of the Convention, to raise only those committees that were strictly proper; and he would here express his regret that the gentleman from Hendricks (Mr. Nave) had seen fit to throw out insinuations with reference to the motives of the gentlemen who advocate the organization of a large number of committees—insinuations that appeared to him wholly unjustifiable. He was fully satisfied that the committee in preparing the report presented, had done so with no desire of pandering to the ambition of



any other member of the Convention. He had no doubt that such was the opinion of the Convention, and that such would be the opinion of the people. He was of opinion, that the organization of two of these committees could very properly be consolidated into one; and he would suggest to the gentleman from Tippecanoe, a modification of his resolution, viz.: To strike out the proposed committee on the organization of courts of justice, and insert a committee "on the organization of courts of justice, the practice of law, and law reform." This would leave the committee on matters pertaining to criminal law still standing.

Mr. PETTIT would accept the gentleman's amendment as a substitute for his resolution.

Mr. PETTIT would simply state to gentlemen, that he had been informed that in the Kentucky Convention, three committees were raised similar to those now proposed, but finding upon trial, that they worked incongruously, they were consolidated.

Mr. BASCOM remarked, that perhaps it was useless for him to contend with the ablest lawyers of the Convention in reference to this matter of organizing committees; but, notwithstanding all the arguments that had been advanced, he could not see any necessity for consolidating these committees. It appeared very plain to him that the committee on the organization of courts of justice, should be retained. This committee would decide as to the number of judges to be employed in the supreme and probate courts, and the number of circuits, &c. These subjects bore no analogy to the subject of law reform. They were of a different character and should be kept separated; and he further desired that they might be so divided out to appropriate committees as that they might receive a thorough investigation.

He could not see how the views of the several committees were going to conflict with each other, when their duties were plainly laid down, viz.: one to have charge of the subject of the organization of courts of justice—one to consider matters pertaining to criminal law, and a third to consider upon the practice of law and law reform.

The question being taken upon the resolution of the gentleman from Tippecanoe (Mr. Pettit,) as amended by the gentleman from Laporte, (Mr. Niles,) it was rejected.

The question recurring upon the adoption of committee number five, as reported by the select committee,

It was decided in the affirmative.

The question being taken upon the adoption of committee number six, on matters pertaining to criminal law, to consist of seven members,

It was decided in the affirmative.

The question being taken upon the adoption of committee number seven, on the practice of the law and law reform, to consist of one member from each judicial circuit,

It was decided in the affirmative.

The question being upon the adoption of committee number eight, on special and local legislation and uniformity of laws, to consist of seven members,

Mr. EDMONSTON moved to amend by striking out the word "seven," and inserting the word "nine," so that the committee should consist of nine members.

The amendment was rejected.

The question then recurring upon the adoption of committee number eight, as reported by the select committee,

It was decided in the affirmative.

The question being taken upon the adoption of committee number nine, on impeachment and removals from office, to consist of five members,

It was decided in the affirmative.

The question being upon adopting committee number ten, on the elective franchise and the apportionment of representation, to consist of nine members,

Mr. BORDEN moved to amend, by striking out the words "nine members," and inserting the words "one from each judicial circuit."

Mr. FOSTER said, that he was in favor of augmenting the number composing the committee because he regarded the committee as a very important one, and he would state his reasons for so thinking. Our Congressmen would be elected only one term more on the basis of the present apportionment of representation. After that term had expired they would be elected in accordance with the apportionment of representation furnished by the census taken last June. Congress had passed a law changing the present form of Congressional Districts, making so many Congressmen for the State, instead of dividing them in proportion to the number of inhabitants. The number of Congressmen had been fixed at two hundred and thirty-five, thus making the Congressmen the divisor instead of the inhabitants. This subject then would appropriately come under the consideration of this committee, and to them would fall the duty of dividing the State into Senatorial and Representative districts.

In view of the importance of the committee, therefore, he thought it should consist of thirteen members, one from each judicial circuit.

Mr. BORDEN said, that the gentleman from Monroe (Mr. Foster) had fallen into a very great error in supposing that the Convention would district the State for Congressional purposes. That was a power conferred upon the State Legislature, and he apprehended that they would exercise it at the proper time. He concurred with the gentleman from Monroe, however, as to the propriety of an increase in the number of the committee. In the Ohio Convention, a committee of like character to this consisted of twenty-one members. After the subject of taxation, the most difficult question to

settle was the one fixing upon a proper representation; and he would remark that, in his opinion, they were not confined in their apportionment of the representatives in Congress to the census taken in June last. Congress had fixed the number of Congressmen for all the States, to be sure, but it was for the Legislative bodies of the States to decide upon the mode of apportionment among their citizens.

He was in favor of increasing the committee to thirteen members, one from each judicial circuit.

Mr. FOSTER said he wished to make a few remarks in reply to those just delivered by the gentleman from Allen (Mr. Borden.) Either that gentleman or himself, had made a very great mistake. The act of Congress, upon this subject, as gentlemen could readily see upon examination, provided that whenever the subject of apportionment was taken up, that apportionments should be made upon the basis of the census taken last June.

Now, if the Convention had the right to make an apportionment of State Senators and Representatives, they had the same right to apportion their Representatives in Congress. This was a precedent that had been established by other States heretofore; at least, when they emerged from territories into States, this had uniformly been the practice. They were to be governed, then, in the apportionment of representation by the census taken the first of June last.

The question was then taken upon the amendment of the gentleman from Allen (Mr. Borden) and it was concurred in, and committee number ten as amended was adopted.

The question being taken

Upon the adoption of committee number eleven,

On county and township organization, power and officers, to consist of one member from each Congressional District;

Of committee number twelve,

On currency and banking, to consist of eleven members;

Of committee number thirteen,

On corporations other than banking, to consist of nine members; and

Of committee number fourteen,

On state debt and public works, to consist of seven members;

They were severally adopted by consent.

The question being upon the adoption of committee number fifteen,

On finance and taxation, to consist of seven members,

Mr. HOLMAN moved to strike out the word "seven," and insert the words "thirteen, one from each judicial circuit."

The amendment was concurred in, and committee number fifteen as amended was adopted.

The question being taken upon the adoption of committee number sixteen,

On the militia, to consist of five members;

Of committee number seventeen,

On education, to consist of nine members;

Of committee number eighteen,

On future amendments to the Constitution, to consist of five members;

Of committee number nineteen,

On public institutions of the State, to consist of five members;

They were severally adopted by consent.

The question being upon the adoption of committee number twenty,

On salaries, compensation and tenure of office, to consist of five members,

Mr. BORDEN enquired if this committee on the tenure of office would have charge of the subject of biennial sessions of the Legislature? Also, if it would fix the time the judges would serve, and the tenure of state and county officers—or were these matters to be referred to other committees? Unless these references were made clear, the committees would be encroaching one upon the other.

Mr. CLARK of Tippecanoe was of opinion, that the Convention could settle the question of these references when the proper time arrived.

Mr. WATTS said, he regarded this one of the most important committees on the catalogue. It was one that absorbed the greatest portion of the revenue of the State, and should therefore be increased. He would move to strike out the word "five," and insert "nine," so that the committee should consist of nine members.

The amendment was agreed to.

The question recurring upon the adoption of the committee, number ten, as amended,

Mr. HOLMAN of Dearborn moved to strike out after the word "compensation," the word "and tenure." The committee on the organization of committees of courts of justice, he said, would, as a matter of course, fix upon the number of judges, and the tenure of office of each one; and the committee on State officers would have the same duty to perform with reference to State officers.

The amendment was concurred in, and committee number twenty, as amended, was adopted.

Mr. BORDEN here moved the appointment of the following additional standing committee: On the rights of married women and exemptions, real and personal.

Mr. READ of Monroe remarked, that he would prefer raising a committee having a wider jurisdiction than over the two subjects the gentleman from Allen had referred to. He would have a committee raised on legal questions not otherwise provided for, and upon the divisions and limitations of the powers of government. To such a committee the subject of Homestead Exemption was properly referable, as was also the subject of the legality and validity of claims against the State, and several other matters of that description. He was particularly desirous, also, of having a committee that would define the limitation of the powers of the govern-



ment. He wanted that the State should be confined to the simple duty of government. He did not wish it to become a banker, or a hotel keeper, or a builder of canals and other works of internal improvement. He would move to strike out all after the resolving clause of the resolution offered by the gentleman from Allen, and insert the words "on legal questions not otherwise provided for, and on the division and limitations of the power of government, to consist of seven members."

Mr. PETTIT said, that the subject of homestead exemption, to his obtuse mind, appeared more properly referable to the Legislative committee, because they would instruct the Legislature to pass laws exempting certain property, real and personal, from execution. Here was an evidence of the absurdity of so large a number of committees, for one gentleman was stating that it was the duty of a committee to do this thing, and another gentleman to do that, and the consequence was that the business of the Convention would be greatly embarrassed.

Mr. OWEN remarked, that whatever course was taken with reference to that matter they ought not to adopt the first proposition, that of the gentleman from Allen. (Mr. Borden.)

It seemed to him that homestead exemption and the rights of married women were subjects entirely incongruous. In several States of the Union married women had certain rights of property guaranteed to them, and whether they adopted a similar course or not, they should be incorporated in the bill of rights. The subject of homestead exemption was an entirely different one. He favored the committee proposed by the chairman of the committee on rules.

The question being taken upon the amendment of the gentleman from Monroe (Mr. Read) to the amendment of the gentleman from Allen, (Mr. Borden,) it was rejected.

The question recurring upon the additional standing committee proposed by Mr. Borden, It was decided in the negative.

The question being taken upon the adoption of committee number twenty-one, on miscellaneous provisions, to consist of five members;

Of committee number twenty-two, on revision, arrangement, and phrasology, to consist of the chairmen of the twenty-one preceding committees;

Of a committee on elections, to consist of five members;

Of a committee on accounts, to consist of five members;

They were severally adopted by consent.

Mr. COOKERLY moved to take from the table the resolutions submitted by him, on the subject of a correspondence, by the Secretary and Auditor of State, with certain county officers, for information.

The motion was not agreed to.

The Chair submitted the following communi-

cation, which was laid upon the table, by consent :

#### TO THE PRESIDENT OF THE CONVENTION :

The undersigned, Printer to the State, having been excused from participating in any action, in regard to the subject of his claims and responsibilities as State Printer, respectfully asks the privilege of having the question argued on his behalf upon its legal and equitable merits, before the Convention, by his Attorney.

J. P. CHAPMAN,  
State Printer.

Mr. PETTIT moved, that the Convention adjourn until 9 o'clock Monday Morning; whereupon,

The Convention adjourned.

MONDAY, Oct. 14, 1850.

Convention met pursuant to adjournment, and was opened with prayer by Rev. Mr. BABE.

The journal of the preceding day having been read,

Mr. BOWERS asked leave of absence for Mr. Robinson of Decatur, for one week; which was granted.

The PRESIDENT announced the following standing committees of the Convention :

1. *On the Rights and Privileges of the Inhabitants of this State.*—Messrs. Owen, Graham of Miami, Niles, Haddon, Prather, Coats, Murray, Chapman, and Berry.

2. *On the Legislative Department.*—Messrs. Bright, Smiley, Clark of Tippecanoe, Schoonover, Walpole, Emerson, Duzan, and Beach.

3. *On the Executive.*—Messrs. Morrison of Marion, Stevenson, Beard, Sherrod, Gordon, Wolfe, Morgan, Bascom, and Barbour.

4. *On State Officers other than the Executive and Judiciary.*—Messrs. Read of Clark, Moore, Bicknell, Bracken, Farrow, Mowrer, and Frisbie.

5. *On the Organization of the Courts of Justice.*—First circuit, Mr. Pettit; Second circuit, Thornton; Third circuit, Dunn of Jefferson; Fourth circuit, Lockhart; Fifth circuit, Nave; Sixth circuit, Rariden; Seventh circuit, Davis of Vermillion; Eighth circuit, Biddle; Ninth circuit, Anthony; Tenth circuit, Terry; Eleventh circuit, McClelland; Twelfth circuit, Howe; Thirteenth circuit, Smith of Ripley.

6. *On matters pertaining to Criminal Law.*—Messrs. Kent, Davis of Madison, Mooney, Hawkins, Chandler, Carter, and May.

7. *On the Practice of Law and Law Reform.*—Twelfth circuit, Mr. Borden; First circuit, Ristine; Second circuit, Gibson; Third circuit, Kelso; Fourth circuit, Hall; Fifth circuit, Wallace; Sixth circuit, Newman; Seventh circuit, Cookerly; Eighth circuit, Kendall of Warren; Ninth circuit, Mather; Tenth circuit, Reed of

Monroe; Eleventh circuit, March; Thirteenth circuit, Holman.

8. *On Special and Local Legislation, and Uniformity of Laws.*—Messrs. Newman, Helmer, Miller of Gibson, Allen, Snook, Crumbacker, and Pepper of Crawford.

9. *On Impeachment and Removals from Office.*—Messrs. Rariden, Biddle, Garvin, Mathes, and Brookbank.

10. *On the Elective Franchise and the Apportionment of Representation.*—Fourth circuit, Mr. Graham of Warrick; First circuit, Miller of Clinton; Second circuit, Smith of Scott; Third circuit, Pepper of Ohio; Fifth circuit, Vanbenthusen; Sixth circuit, Thomas; Seventh circuit, Davis of Parke; Eighth circuit, Harbolt; Ninth circuit, Anthony; Tenth circuit, Foster; Eleventh circuit, Clark of Hamilton; Twelfth circuit, Wunderlich; Thirteenth circuit, Berry.

11. *On County and Township Organization, Powers and Officers.*—Third Congressional District, Mr. Smith of Ripley; First district, Alexander; Second district, Prather; Fourth district, Beeson; Fifth district, Hendricks; Sixth district, Gootee; Seventh district, Barbour; Eighth district, Clark of Tippecanoe; Ninth district, Kendall of Wabash; Tenth district, Hugin.

12. *On Currency and Banking.*—Messrs. Hamilton, Taylor, Dick, Colfax, Mooney, Dunn of Perry, Hardin, Helmer, Watts, Todd, and Shoup.

13. *On Corporations other than Banking.*—Messrs. Reed of Monroe, Dobson, Kindley, Wiley, Gregg, Johnson, Simms, Badger, and Butler.

14. *On State Debt and Public Works.*—Messrs. Hall, Milroy, Zenor, Ritchey, Maguire, Trembley, and Chenoweth.

15. *On Finance and Taxation.*—Eleventh circuit, Mr. Kilgore; First circuit, McFarland; Second circuit, Logan; Third circuit, Tannehill; Fourth circuit, Hovey; Fifth circuit, Hendricks; Sixth circuit, Balingall; Seventh circuit, Bourne; Eighth circuit, Miller of Fulton; Ninth circuit, Niles; Tenth circuit, Conduit; Twelfth circuit, Work; Thirteenth circuit, Foley.

16. *On the militia.*—Messrs. Pepper of Ohio, Spann, Steel, Huff and Kilgore.

17. *On Education.*—Messrs. Morrison of Washington, Bryant, May, Hitt, Foster, Stevenson, Nofsinger, Milligan, and Blythe.

18. *On Future Amendments to the Constitution.*—Messrs. Ritchey, Crawford, Edmonston, Wheeler, and Murray.

19. *On Public Institutions of the State.*—Messrs. Wallace, Bryant, Colfax, Nofsinger, and Jones.

20. *On Salaries, Compensation, and Tenure of Office.*—Messrs. Dobson, Pettit, Howe, Bright, Lockhart, Miller of Gibson, Maguire, and Taylor.

21. *On Miscellaneous Provisions.*—Messrs.

Walpole, Holliday, McLean, Hawkins, and Robinson.

22. *On Revision, Arrangement and Phraseology.*—Messrs. Owen, Bright, Morrison of Marion, Read of Clark, Pettit, Kent, Borden, Newman, Rariden, Graham of Warrick, Smith of Ripley, Hamilton, Read of Monroe, Hall, Kilgore, Pepper of Ohio, Morrison of Washington, Ritchey, Wallace, Dobson, and Walpole.

*Committee on Elections.*—Messrs. Kelso, Shannon, Robinson, Fisher, and Cole.

*Committee on Accounts.*—Messrs. Wheeler, Helm, Yocum, Bowers, and Tague.

On motion of Mr. EDMONSTON, the list of standing committees was laid upon the table and ordered to be printed.

Mr. HALL moved to take from the table the resolutions submitted by him on Wednesday last, on the subject of ———.

The motion was agreed to; when, on motion of Mr. HALL, the resolutions were referred to the committee respectively named.

Number one was referred to the committee on salaries, compensation, and tenure of office.

Number two, or so much thereof as relates to a State Bank and branches, referred to the committee on currency and banking.

And so much of said resolution number two, as relates to creating corporations under a general law, was referred to the committee on corporations other than banking.

So much of number three, as relates to special legislation, to the committee on special and local legislation and uniformity of laws.

And so much of number three, as provides that no act shall embrace more than one subject, and that shall be expressed in the title; and upon the passage of any bill in either House, the ayes and noes shall be entered upon the journals, and that no act of the General Assembly be in force until after its publication in print and distribution amongst the people, was referred to the committee on the legislative department.

Number four was referred to the committee on the legislative department.

Number five was referred to the committee on finance and taxation.

Number six, to the committee on the legislative department.

Number seven, to the committee on education.

Number eight, or so much thereof as provides that all distinctions between proceedings in courts of law and equity shall be abolished, referred to the committee on the practice of law and law reform.

And so much of said number eight, as provides that all distinctions between different kinds of actions, also referred to the committee on the practice of law and law reform.

Number nine, referred to the committee on the elective franchise and the apportionment of representatives.

Number ten, referred to the committee on the legislative department.



On motion

Of Mr. EDMONSTON, the papers heretofore submitted, in relation to the contested seat in Union county, were taken from the table, and referred to the committee on elections.

On motion

Of Mr. EDMONSTON, the credentials of members heretofore presented, were taken from the table, and referred to the committee on elections.

Mr. OWEN submitted the following report:

MR. PRESIDENT:

The committee on the employment and remuneration of a stenographer, to whom were referred certain resolutions on that subject, have unanimously instructed me to report, that by the twelfth section of the act providing for the call of this Convention, it is provided that a competent stenographer shall be appointed by the Governor, and that the pay of the said stenographer, shall be certified by the President, and shall be paid by the Treasurer of State, on the warrant of the Auditor of Public Accounts.

That in accordance with the provisions of the above section, Mr. HARVEY FOWLER, of Washington City, was appointed by the Governor to the office of stenographer to this Convention; and that the Convention has been duly notified of said appointment. Thus by the act in question, the manner of appointment and the mode of payment, are to be fixed; the rate of remuneration alone, remains undetermined.

The reasonable inference, your committee think, is, that the Legislature intended he should receive the compensation usually paid elsewhere, for similar services. More, your committee has understood, he does not demand; less, having engaged his services, the Convention cannot, in the opinion of your committee, properly offer him.

Your committee telegraphed to Messrs. BLAIR & RIVES, and also to Messrs. GALES & SEATON, both of Washington City, as to the rates of compensation paid by them to a stenographic corps for reporting and writing out, ready for the press, the debates of Congress. Their replies are herewith submitted for the information of the Convention. It may be proper to add, that in a column of the Intelligencer, in bourgeois type, there are, on an average, two thousand words.

Your committee report back the resolution declining the services of a stenographer, and recommend that it be laid on the table.

They also report the resolutions recognizing and approving the stenographer appointed by the Governor, and providing that he be paid at the rates of compensation usually paid for such services in Washington City, and recommend its passage.

And they ask to be discharged from the further consideration of the subject.

WASHINGTON CITY, Oct. 11.

ROBT. DALE OWEN:

We have paid for reporting debates two last sessions four dollars a column of the Intelligencer—bourgeois type.

GALES & SEATON.

WASHINGTON CITY, Oct. 11, 1850.

ROBT. DALE OWEN:

The Globe and Intelligencer of this city charged three cents per line of printed matter, or four dollars twenty-five cents per column.

J. C. ROBB.

The report was concurred in.

Mr. PEPPER of Ohio moved to take from the table the resolution submitted by him on the 11th inst., in relation to the expenses of the Government, &c., which was decided in the affirmative, but before action thereon, was again laid upon the table by consent.

#### RULES AND REGULATIONS.

Mr. MAGUIRE moved to take from the table the report of the committee on orders and rules.

The motion was agreed to, and the Convention proceeded to the consideration of the report of the committee on orders and rules for the government of the Convention.

The question being separately taken upon the adoption of the rules—

Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13 were adopted by consent.

The question being upon the adoption of rule fourteen, which read as follows:

"Any ten members shall have a right to call the yeas and nays, provided they shall request it before the question is put,"

Mr. TAGUE moved to strike out the word "ten" and insert the word "two." The adoption of this amendment, he said, would give a full opportunity for members who might be in a minority upon some important question under consideration to call for the yeas and nays, whereby their constituents could understand the positions they had occupied when such questions were finally settled.

Mr. DOBSON would state to the gentleman from Hancock, that the thirty-second rule provided that, upon the third reading of all important questions, the yeas and nays should always be taken and recorded. If the proposed amendment was adopted, any two of the members who chose to persist in demanding the yeas and nays would have them ordered.

Mr. TAGUE was satisfied with the explanation of the gentleman from Owen, and would withdraw his amendment.

The amendment was accordingly withdrawn.

Mr. STEEL said, that he felt it to be his duty to renew the motion of the gentleman from Hancock (Mr. Tague) to strike out the word

"ten" and insert the word "two." It appeared to him that the good sense and wisdom of the members would dictate prudence in regard to calling the yeas and nays. For one, he was inclined to afford the utmost latitude for the expression of opinion, and for the public record of the votes of the members whenever they saw fit to speak or vote during the sittings of the Convention. He wanted no gag law that would influence the action of that body in the slightest degree.

Mr. OWEN observed, that he considered this privilege of demanding the yeas and nays to be one of the most important that could be guaranteed in any legislative body—and if he really thought that this privilege was curtailed by the present phraseology of the rule, he should certainly vote to strike out the word "ten" and insert the word "two," as proposed by the gentleman from Wabash (Mr. Steele). He would remark to the Convention, however, that the uniform practice in Congress during his term of service—which practice had not been changed since that term had expired—was not to permit the calling of the yeas and nays unless one-fifth of the members demanded that they should be ordered. In that Convention one-fifth of the members would amount to thirty, but he would not vote for the adoption of this rule by the Convention, because he knew, from the feeling apparent among members, that that number would be regarded as too large. It did appear to him, that the committee, in making ten the necessary number for the calling of the yeas and nays, had struck upon the just medium. Ten members were but the one-fifteenth part of the body, and if only ten members voted for a call of the yeas and nays, it fully proved that fourteen-fifteenths of them considered such a call a waste of time. Not more than four or five calls of the yeas and nays could be taken in the course of an hour, and as a saving of time, he thought the rule, as at present constructed, commended itself to the favorable consideration of members. It would be well for gentlemen to recollect, that they were, every day of their sitting, at a moderate estimate, putting the State of Indiana to an expense of over six hundred dollars. At this rate the taking of the yeas and nays would cost considerable. He would not vote for this rule were it not for the fact already alluded to, that the thirty-second rule provided, that upon the final passage of every article proposed to be engrafted into the Constitution, the yeas and nays were imperatively ordered to be taken. The intermediate questions that would arise before the final passage of the articles of the Constitution, would be of no comparative importance.

Mr. HALL wished, before the vote was taken upon the question before them, to state that he was a member of the committee who drafted this rule, and that there was considera-

ble difference of opinion in regard to it—some contending that thirty, others twenty, and others ten, should constitute the number of members necessary to demand the yeas and nays. As a matter of compromise, the committee had finally fixed the number at ten.

Mr. BASCOM stated that he differed with gentlemen as to the propriety of its requiring ten members to have the yeas and nays taken. The argument of the gentleman from Posey (Mr. Owen) was a very good one, but was by no means satisfactory or conclusive, to his mind. He considered some questions that would come before that body—intermediate questions—as important as those voted upon finally. Every member knew very well that there was always a kind of manœuvring practiced in legislative bodies for the purpose of preventing the yeas and nays from going upon the journal. Under the rule as it now read, if there were only nine members who should rise to call the yeas and nays—and in his part of the State nine delegates would represent a large portion of the country—the voice of the constituency of these nine members could not be heard in that Hall. Those delegates were deprived of the power of showing to the people they represented, the vote they had given. He could see no reason why two members of the Convention should not have the right of placing their names upon the journal for the purpose of showing the vote they had given upon any particular measure.

Mr. SMITH of Ripley remarked, that he was a member of the committee who had reported this rule, and he believed that it was upon his motion that the number of members necessary to demand the yeas and nays—"ten," was incorporated in it. This was after the last clause of the thirty-second article providing for a call of the yeas and nays on the final passage of every article of the Constitution, had been adopted. Originally he had been in favor of the Congressional rule, requiring that one fifth of the members of the House, only could have the yeas and nays ordered. It was easy enough to get ten members to raise and demand the yeas and nays, especially if the system of manœuvring, to which the gentleman from Wells (Mr. Bascom) had referred, was carried into effect. It would require but little manœuvring to have the yeas and nays recorded on the journal. If it was the gentleman's desire to record his name upon every vote that was given, a rule could easily be adopted by the Convention making provision for the record of the gentleman's name, or the name of any other gentleman who might be desirous of so doing, on the journal, in the form of a protest.

The question was then taken upon the amendment offered by the gentleman from Wabash (Mr. Steel) and it was rejected.

The question then recurred upon the adop-



tion of rule fourteen as reported by the committee.

Mr. MORRISON of Marion moved to amend by adding the following:

"But every member shall have the right to enter his protest upon the journal without argument."

The amendment was concurred in, and rule fourteen as amended was then adopted.

Rules 15, 16, 17, 18, 19 and 20, were then adopted by consent.

Mr. BORDEN moved to amend rule 21, by inserting after the word "Convention" and before the word "upon" the following: "so far as the same may be applicable, except the rules limiting the times of speaking," but no member shall speak twice on any question until every member choosing to speak shall have spoken. The motion was agreed to and Rule 21 as amended, was then adopted.

Rules 22, 23, 24, 25, 26, 27, 28, and 29, were adopted by consent.

Mr. BRACKEN moved to amend Rule thirty, by striking out the words "to vote on the question;"

Which was decided in the affirmative. And the rule as amended, was adopted by consent.

Rule 31, was then adopted by consent.

On motion, the word "Convention" was substituted for the word "committee" between the words "the" and "shall" in Rule No. 32, and the Rule as amended was adopted.

Rule No. 33, was adopted by consent.

Rule No. 34 was amended by adding the words "of the whole" after the word "committee" and before the word "or" and the rule as amended was adopted.

The question being upon the adoption of Rule 35, which reads as follows:

"When a motion has been made and decided in the affirmative or negative, it shall be in order for any member of the majority at any time to move for the reconsideration thereof. But the question shall not be taken on the same day, unless by unanimous consent; and if lost shall not be renewed, or any vote taken on a reconsideration a second time unless with the consent of the Convention. If the motion to reconsider is not made on the same day, three days' notice shall be required of the intention to make it.

Mr. PEPPER of Ohio, moved to insert the word "unanimous" in the sixth line after the word "the" and before the word "consent."

The amendment was concurred in.

The question recurring upon the adoption of Rule 35 as amended,

Mr. MORRISON of Marion, said he wished to call the attention of the Convention to a provision contained in this Rule, upon the subject of reconsideration. By this rule, if a motion to reconsider was not made on the same day, the subject proposed to be reconsidered

would lie over for three days. Now he would ask with this Rule in operation, if a subject might not be staved off until there was an impossibility of reaching it?

Mr. BORDEN stated that the object of the Rule was simply to prevent any unjust exercise of the motion to re-consider. It was a well known fact in regard to legislative bodies that often times there were questions arising, that in a moment of excitement were passed and a motion to reconsider made immediately, and laid on the table, thus preventing any further action on the question. Whereas, if after a question was passed, a day or two was allowed to elapse before the motion to re-consider was made, there could be no complaint of hasty and unjust legislation.

Mr. PETTIT was inclined to think that the clause "and if lost shall not be renewed or any vote taken on a re-consideration a second time unless with the consent," should be stricken out entirely. As so far as he was concerned, he had never heard of moving a reconsideration a second time.

Mr. CLARK of Tippecanoe, thought that no possible evil could result from this clause of the rule. On the contrary, it would have a good tendency because it would prevent, as had already been remarked, any hasty or immature legislation. It only gave the Convention an opportunity to retrace its steps if it were thought advisable—and to do that the unanimous consent of the Convention would be requisite.

Mr. EDMONSTON hoped that the suggestion of the gentleman from Marion, would be carried out. As no gentleman had as yet, made the motion he would move that on the last line of the Rule the word "three" be stricken out and the word "one" inserted.

The amendment was concurred in and Rule 35 as amended was then adopted.

Rules 36, 37, 38, 39, 40, 41, 42, and 43, were then adopted by consent.

Mr. GRAHAM of Warwick, moved the following as an additional Rule:

"Any resolutions or propositions introduced by any delegate for the purpose of referring the same to any standing committee, shall embrace one subject only."

Mr. SMITH of Ripley, moved to amend by substituting the following:

"That no member shall offer more than one Resolution on the same day, and that each Resolution shall embrace but one subject."

The question being taken on the amendment of the gentleman from Ripley, it was decided in the negative.

The question then being upon the adoption of Rule 44, it was decided in the affirmative.

Mr. Zenor offered the following as an additional Rule:

Any member submitting any matter which

may be referred to any of the standing committees, shall be considered a member of the committee during the investigation of the subject."

Mr. HARDIN moved to amend by adding "but shall have no right to vote in such committee."

The amendment was accepted by Mr. Zenor.

The question then remaining upon the rules as amended, it was rejected.

Mr. BORDEN submitted the following resolutions:

*Resolved*, That three hundred copies of the "Rules and Orders" adopted to-day, together with the Constitution of the State heretofore ordered, be printed and stitched together for the use of the Convention.

Also that three hundred copies of the list of the standing committees be printed for the use of the Convention,

Which was adopted by consent.

On motion, Mr. CHAPMAN had leave to withdraw the communication submitted by him on the 12th inst., on the subject of State Printer.

On motion of Mr. MILLER of Gibson, the Convention adjourned until 2 o'clock, P. M.

#### AFTERNOON SESSION.

#### ORDER OF BUSINESS.

The PRESIDENT submitted the following as the daily order of business for the Convention:

*FIRST*.—Prayer by the Reverend Clergy.

*SECOND*.—Reading the Journal.

*THIRD*.—Petitions, Memorials, and Remonstrances.

*FOURTH*.—Reports from Standing Committees:

*First*.—On Elections;

*Second*.—Rights and Privileges of the Inhabitants of this State;

*Third*.—The Legislative Department;

*Fourth*.—The Executive;

*Fifth*.—State Officers other than Executive and Judicial;

*Sixth*.—The Organization of Courts of Justice;

*Seventh*.—Matters pertaining to Criminal Law;

*Eighth*.—The Practice of Law and Law Reform;

*Ninth*.—Special and Local Legislation, and Uniformity of Laws;

*Tenth*.—Impeachment and Removal from Office;

*Eleventh*.—The Elective Franchise and the Apportionment of Representation;

*Twelfth*.—County and Township Organization;

*Thirteenth*.—Currency and Banking;

*Fourteenth*.—Corporations other than Banking;

*Fifteenth*.—State Debt and Public Works;

*Sixteenth*.—Finance and Taxation;

*Seventeenth*.—The Militia;

*Eighteenth*.—Education;

*Nineteenth*.—Future Amendments of the Constitution;

*Twentieth*.—Public Institutions of the State;

*Twenty-first*.—Salaries, Compensation, and Tenure of Office;

*Twenty-second*.—Miscellaneous Provisions;

*Twenty-third*.—Revision, Arrangement, and Phraseology;

*Twenty-fourth*.—Accounts.

*FIFTH*.—Reports from Select Committees.

*SIXTH*.—Resolutions of the Convention.

*SEVENTH*.—Orders of the Day.

On motion by Mr. DOBSON, it was ordered that the foregoing order of business be printed with the Constitution, rules, and list of standing committees.

#### STATE PRINTER.

The PRESIDENT announced the first business in order, to be the consideration of the report of the select committee, appointed under the resolution of Mr. Milroy, to enquire into the legality of the claim of the State Printer to do the printing of this Convention.

[The report having been read by the Secretary,]

Mr. NAVE rose and said, he would ask the indulgence of the Convention while he submitted a few remarks in reference to this report. The question involved here was purely a legal question—a question that must be determined, if properly determined, with reference to the legal right of the individual who claimed to be printer to the Convention by virtue of his appointment as State Printer, by the authority of the State Legislature. But looking at the question in a legal point of view, it became necessary to settle the question irrespective of the applicants before the Convention, not looking to the interest either of the incumbent of the office of State Printer, or of any applicant for his place. It became necessary to trace the history of the election of the State Printer, (Mr. J. P. Chapman,) and the law under which the Legislature proceeded in his election. It seemed, from the state of facts presented, that Mr. Chapman was elected State Printer in the month of January, 1850, for a term of three years.

[Mr. N. here proceeded to read from the Revised Statutes as follows:]

"There shall be elected triennially, counting from the month of January, one thousand eight hundred and forty-one, by the General Assembly, on joint ballot, a State Printer, who shall serve for three years, from and after the first day of August next, after his election; and such printer shall, within twenty days after his said election, enter into bond with sufficient surety to the satisfaction of the Secretary and Treasurer of State, and Auditor of



Public Accounts, with conditions for the prompt, accurate, and workmanlike execution of the public printing, and the faithful performance of all the duties required of him by law."

It seemed that Mr. J. P. Chapman had been elected under this statute. It was enjoined upon him by law to give a bond for the faithful discharge of the duties of his office. It seemed that he had done this, and had informed the Convention that he was ready to do the printing for the State. The question then was this: was Mr. Chapman an officer of the State, or a mere contractor. If he were an officer, the Convention could have no control over him in that capacity; but if he were a contractor they could not annul a contract between him and the State of Indiana. To determine this question he would look into the decision of the court upon the subject, from which it was clear that the printer was a contractor with the State, and not an officer. He was, therefore, beyond the reach of the Convention. According to the definition of the courts, the public printer was to do all the printing that was to be executed on account of the State of Indiana, and such printing was to be paid for out of the public money.

[Here Mr. N. again read from Sections 63 and 65, Revised Statutes, 1843, as follows:]

"The prices to be paid such public printer are hereby established, as follows: For composition, per thousand ems, plain matter, forty-five cents; figure work, per thousand ems, sixty-five cents; rule and figure work, per thousand ems, eighty cents; press work, per token, common forms, forty-five cents; broad sides, per token, sixty cents; folding reports and bills, per thousand copies, on each signature, (distinct tables to be considered as signatures,) twelve and a half cents; stitching reports and bills, per hundred copies, twenty cents.

"The Secretary of State shall superintend all the printing done for the State, and see that the same is well executed, and shall measure and estimate the same, and certify under his hand and the seal of his office, the amount and kind of work done, together with the cost; which certificate shall authorize the Auditor of Public Accounts to audit the same, and the Treasurer shall pay the amount out of any moneys of the State in his hands not otherwise appropriated."

It became necessary for him, in the next place, to notice the powers of the Convention: The Convention could never have been called into existence, except under the existing law and Constitution of the State, according to the doctrine of the Supreme Court of the United States, held in the celebrated *Dorr* case. In that case it was held that no Convention of the people was legitimately a Convention, unless it were called for some purpose, by express legislation, and a vote of the people. Therefore, in order to show the powers of this Con-

vention, it was necessary to look into the Statute of 1850, by which the body was called into existence.

He now read from the General Laws, page 29, as follows:

"The Delegates, who shall be elected as aforesaid, shall assemble in Convention at the Capitol, in the city of Indianapolis, on the first Monday in October next, and organize by electing a president and all other officers necessary."

It was plain that the public printer was not an officer of the Convention. Nor was it necessary for the organization of the Convention that they should have a printer. Why? Because, in the Convention of 1816, for the formation of the Constitution which this Convention was assembled to alter and amend, there was no printer appointed; neither was there appointed a printer to the California Constitutional Convention. Moreover, it was plain that the Convention was to be governed by the laws which brought the body into existence. They could not go beyond the powers therein prescribed. As far as power was conferred upon the Convention, they were limited to the powers conferred by law. But with respect to the power of proposition to amend the existing Constitution, they were without limitation. As far as everything else was concerned, with respect to organization and the appropriation of money, the Convention had no power beyond what was conferred by the act bringing the body into existence.

Further, the debates of the Convention were to be recorded by an officer of the Legislature, appointed by the Governor and by him commissioned. Therefore, he was not accountable to the Convention, and they had no right to direct the publication of the debates, as prepared by the Stenographer. The Legislature placed it in the power of the Governor to appoint some suitable person for the purpose of reporting the debates of the Convention, and the Statute went on to prescribe further in this matter, that the Constitution, when amended, was to be deposited, with all the proceedings, in the office of Secretary of State; and the Legislature, at some subsequent time, would have the power to control the publication thereof. [He referred to sections 14 and 15 of the act of last winter, from which he read as follows:]

"SEC. 14. The roll containing the draught of the amended Constitution adopted by said Convention, and the proceedings of said Convention, shall be deposited by the President and Secretary thereof in the office of the Secretary of State, who shall file the same, and cause said Constitution to be entered of record in his office; and said Convention may submit one or more of the amendments which they may propose to the Constitution, as distinct propositions, to be voted upon by the people

separately or together, as to them may seem expedient.

"SEC. 15. It shall be the duty of the Secretary of State, so soon as the same is recorded in his office, to deliver to the Governor of this State a certified copy of said amended Constitution, who shall, on the meeting of the General Assembly of this State at its next session, lay the same before them; and it shall be the duty of the said General Assembly to pass all laws necessary and proper for submitting the same to the qualified voters for their approval and rejection; and also for organizing the government under the amended Constitution, in case it should be adopted and ratified by such voters."

It was plain, then, that as far as the proceedings of the Convention were concerned, the Legislature had reserved by law the entire control of this whole matter, after passing from the hands of the Convention. All of the debates of the Convention were thus to be deposited; and being thus deposited, it seemed to him that the Convention had no right to order the printing of the proceedings by any other than the officer which had been provided by the State.

He would now pass to another branch of the question—the expediency of taking this course. A similar question to the one now before the Convention, had been adjudicated upon by the Supreme Court, in the case of *Osborn & Chamberlain* against the State. In this case it was held that State printers were contractors with the State, and if the Legislature take the State printing out of the hands of the legal contractors, and place it in the hands of a third person, the contractors can recover in damages the amount of the price of printing so taken away from them. The measure of the damages was the value of the printing. This question had been settled. If, then, the Convention had determined that they would elect another printer to do the printing of the body, they might mark his words, that no sooner than this thing should be done, Mr. Chapman could, by authority given to him, institute a suit against the State of Indiana, and recover to the last cent the price of all the printing of the Convention. There was no question upon this point. It seemed to him, with deference to the opinion of the committee, that this matter could not have been investigated by them. For it was as clear to him as the noon-day, that if another printer should be appointed by the Convention, it would involve the State in a double payment of the bill for printing for the Convention. And here he would again call attention to page 170 of the Revised Statutes of 1843, from which he had already read.

Again, almost all of the printing of the Convention would have to be done after the adjournment, so that it would be out of the power of the President to measure the work, and sat-

isfactorily audit the account of the printer whom the Convention might appoint. It was for this reason that the Legislature reserved the right to do this work by the hand of the State Printer. He referred to the fact that the Convention of New York, which met in 1846, elected a printer under a law of the State, passed in 1845. The law calling that Convention together expressly provided for the election of a printer. The printing of the Kentucky Convention was also provided for by Statute; and the Ohio Convention, also, adopted the State Printer as printer to that body. In fact, from all the examinations of precedents which he had been able to make, he had not found a single instance to support the report of the committee. He confessed that his researches had been limited—very limited—but he had not found a single instance. He desired to be understood as entertaining no personal preferences whatever, either for the State Printer or any other individual, lesirous of being elected printer; but he did not wish to see the people of Indiana taxed double for work which the Legislature had already appointed an agent to do. He had submitted these few remarks, because he was satisfied that, if this printing were done by any other printer than Mr. J. P. Chapman, they would be paying twice for the same work, out of the Treasury.

He would now turn to another matter. He found in the proceedings of the General Assembly of 1843, a law which was passed after the settlement of the matter between *Osborn & Chamberlain* and the State, which was enacted in order to place the subject of public printing beyond all cavil thereafter. And since that time it had been required of the printer to execute a bond for the faithful discharge of his duty, within a given time. Thus carefully had the Legislature reserved to themselves the power to do all the public printing by this agent; describing particularly, when, and where, and how, the work should be done, and out of what fund the agent should be paid. But now the Convention could not vote the appropriation of one cent of money toward the payment of any man for this service. Then how was the printer to be paid? He was to be paid by the Legislature. But, he would ask again, upon what principle, and how he could receive his pay? He maintained he could not get his pay at all.

He had submitted these few remarks, under a sense of duty which he owed to the people whom he represented, and to the State at large; and, as a reason for the vote which he should give upon the final action of the body upon this question. He should be careful, in this matter, to avoid that course by which the Treasury might be doubly drawn upon for the same service.

Mr. BIDDLE said, that having participated in the action of this committee, he was unwilling that the vote should be taken without some



expression of the views which governed them. He had hoped that some member of the committee better able than himself to answer the gentleman from Hendricks, (Mr. Nave,) would have done so. But, as it seemed the question was about to be taken, he could not let it pass without a word. He was not prepared to answer the gentleman in the shape in which his authorities were put; nor did he think they bore at all upon the question. Although the gentleman set out by defining the question and examining into its legal bearings, it seemed to him that his remarks were not wholly confined to that point. Although the authority which the gentleman quoted, might be good and binding upon the Legislature, he denied that it was binding upon this Convention; nor was he prepared to adduce any authority. The gentleman, himself, had declared that he could find none to suit. The reason was, that a Convention like this was not a thing of frequent occurrence—Conventions were seldom called, and when they were convened they were so much above every other authority in the State, that he hardly knew where to find authority which could bind them. He should deny also, that any precedent, taken from the Convention of another State, was good authority and binding upon the people of the State of Indiana. Not that he would speak disrespectfully of other States of this Union; but, as authority, he would deny, in positive terms, that their action could be binding here. And, of course, it could not have a particle of weight upon a question purely of a legal character.

In the committee he had voted for the report which was made to this body. And he still thought he was right in so voting; although the subject had not received from him very mature deliberation. He was convinced of the correctness of the report by a few general reasons which struck him so forcibly, that he had contented himself without looking particularly into the legal authorities.

In this inquiry it became a material point to ascertain what was the meaning of the term "the State." It had many qualifications; there was the Geographical state, the Topographical state, the Physical state, the Political state, &c. He apprehended that it was the Political state that had made the contract, if any was made, with Mr. Chapman, and to that the State Printer must look. But he denied that this Convention constituted any part of the Political State. It was a very different question whether one Legislature could take away their printing from an agent employed by a preceding Legislature, from the question whether this Convention could do it. It was a very different question to alledge that Mr. Chapman was bound to execute the printing of a legislative body, and that he was printer to this Convention. It was a very different proposition, that the Legislature was compelled to give their printing to Mr. Chapman, and that this Convention was compelled to do

so. By virtue of law, the political functions of the State of Indiana were merely Legislative, Executive, and Judicial. The State spoke by the Legislature; she had no other voice. Her judgment was pronounced by the Judiciary, and every other department were bound by that; and the hand of the State was the Executive. But where is there to be found in either or all of these departments authority to call a Convention? Did we not understand from this fact, then, that the Convention rose above all authority in the State? He did not wish to be understood as affirming that the Convention were without the restraint of any authority; but he affirmed that they were bound by the authority of no human compact, except the Constitution of the United States, which they had all sworn to support. He denied that the State could make a single letter or line, that could bind the action of this Convention. Neither were the officers or the police of the Convention any part of the political state. They found no place in the old political state. This Convention was the conception, the beginning, of a new Constitution, or government, if you please, and in that character it necessarily rose superior to all the power of human compact, except that which its members were sworn to support. As between Legislature and Legislature, the argument of the gentleman from Hendricks (Mr. Nave) was probably true; but, as between the Legislature and this Convention, it had no application whatever.

One word more. The gentleman had stated that this State Printing was involved in a contract. That might be the case. It was not necessary to this discussion to affirm or deny that. He should probably incline to a different opinion, but he did not care, here, whether it was considered as a contract or not. One thing was certain, that the Convention Printing was not a matter of contract between the Convention and Mr. Chapman. Mr. Chapman was elected under a law enacted before this Convention was authorized, or even in contemplation. How then was it possible that they could be bound to accept of a printer elected or appointed when the Convention had no legal existence? We could not disturb any existing contract. Let the question be decided between Legislature and Legislature. One thing he knew—the Convention never made the contract for the State Printing, and therefore, they could not break it.

He denied that the Legislature could elect a printer, and bind the Convention to receive him, for if the Legislature could elect their Printer, they might also elect their President and Secretary. He denied that there was any power on earth that could fasten a single officer upon this Convention, or bind the mind of one member of this body. For if this could be done, it would be idle to talk of their power to re-organize the Constitution, and re-model the organic law. Such a doctrine would trammel at once,

and most effectually set at naught, the primary rights of the people in their representative character, and also, in their character as citizens, to meet together and mould the government according to their wishes. Whenever gentlemen could show that the Legislature had power to elect a Doorkeeper or Secretary for this Convention, and compel the body to take them, then he would be willing to believe that the State Printer was Printer to the Convention.

The gentleman had cited the case of the appointment of the Stenographer: but he denied, in positive terms, that the Governor, however much he respected his person and his office, and the wisdom of the act of the Legislature authorizing this appointment, could appoint a Stenographer whom they could be compelled to accept. It was the whole purpose of the act of the Legislature to convene and organize this body. Further than that it could not go. He denied the power of the Legislature to go further than that; for, if they could advance but one step farther, it would be to subvert the primary right of the people. The moment the Convention came here, as a body, they were endowed with power to do every thing necessary (in the language of the act) to their complete organization, and hence if they wanted a printer they could elect him.

Mr. PETTIT [interposing, and Mr. B. giving way,] said, he understood the gentleman from Cass, to say, than this body possessed sovereign power; he desired then, to ask him, whether they could appropriate money? or whether they could increase or diminish their own pay?

Mr. BIDDLE said that was not now the question before the Convention.

Mr. PETTIT [In his seat]. It is embraced in the idea of sovereignty.

Mr. BIDDLE said, it would be time enough to debate that question when it should come properly before the body. He denied that there was any power on earth that could fasten upon this body any of its officers. He did not say that he would vote against Mr. Chapman for Printer; he would as readily vote for Mr. Chapman as for any other man, but with reference to the legal question, he repeated that no power on earth could fasten upon this body any of its officers. The moment the Convention had met, that moment they possessed the inherent power to do all reasonable things to effect the end for which they were called together. Even the old Constitution imposed no obligation here. The summoning of this Convention was a primary act of the people, designed to change and remould the elementary powers of government; and this was a body which could recognize no human authority except what was within these walls and belonged to the members thereof, and the Constitution of the United States. He looked upon the appointment of the Stenographer as a wise provision of law, and he doubted not that the Governor had exercised a sound discretion

in the appointment; but he denied the power to fasten a Stenographer upon this body, if they did not choose to accept of such an officer. Why, as he recollected, the very first thing after the organization they went to debating the question, whether they would accept of the services of a Stenographer. The same law of the Legislature provided that the Convention should sit in this Hall, and there was now pending a question whether this body should not remove to some other place.

He hoped these remarks would not be taken as subversive of law. It was purely a law question which was referred to the committee, and, as far as his judgement extended, it was decided judicially—not that Mr. Chapman was not a good printer, but that he was not the Printer to the Convention.

The gentleman's argument was more in reference to the right, than to the expediency, of having such an officer: although he went on to show that the Convention of 1816 had no Printer. He (Mr. B.) was not arguing whether the Convention ought to have a Printer, or whether they ought not. The simple question was whether there was a Printer already appointed that the body was bound to receive as their Printer.

But it did not seem to be hard to answer the gentleman's notion of a contract, in this place. The Supreme Court of this State had decided that an office considered merely as an office, was not a contract. But the Court did not decide that an office might not involve a contract. Mr. Chapman had given a bond to the State, and what was in that bond? Why, he simply undertook to do the printing for the State. His bond was analogous to the Treasurer, or Auditor's bond, and it could not be contended for a moment that these latter offices involved either the essence or the terms of a contract.

When they come down to the question whether Mr. Chapman was the Printer, he agreed with the report of the committee. But whether Mr. Chapman ought to be the Printer was another question. It seemed to him that he ought. But he was arguing nothing but the legal principle, and, in doing so, he had looked only at a few broad principles; and he had seen that if the Convention should allow the State to interfere in one thing, they must necessarily have the right to interfere in other matters, which would be absurd. He had seen that they must contend for the right to protect themselves. The right to elect their own officers was as inherent in that body, as the right to the air he breathed was to his natural body, or as it was the right of any man to employ his good right arm to defend himself. The Convention might have as many officers as they pleased; they might elect them as they pleased, and for any purpose; and if the Legislature should undertake to give them one officer, they might give them another. The moment this right was conceded, there was a violation of the very first principle of self-government.



He did not expect there would be much difference of opinion with respect to the legal question; but when he came to the election, that was quite another question; while he remained in the performance of his duty as a delegate, he would not consent by his vote, to shackle any right which he considered to be inherent in the Convention. If he were arguing the question as to the right of one Legislature to repeal what had been done by another Legislature, involving a matter of this kind, he should take quite a different course.

He desired to notice another thing. Though he could not lay his hand upon the page, he had been referred to an expression of the opinion of the last Legislature upon this very subject; he did not cite this as authority; but he had been told that, after the election of Mr. Chapman last winter, there was a resolution introduced into the Legislature the substance of which was to confer upon Mr. Chapman the right to do the printing for this Convention, and that, upon the motion of some gentleman, it was laid upon the table. From this it would seem that testimony could be taken from the floor of the Legislature itself, that they did not even pretend to fasten their officers upon this body. He made this citation with diffidence, and not at all as a matter of authority; for there was not a particle of force in it, even if it were true. But aside from this, he would not yield to the Legislature the right, in any manner, to raise their authority above the primary act of the people; for that would be to restrict the popular power—the primary right of the people to establish and maintain such form of government as they may think proper. These were his views upon this question, hastily thrown out, and but illy digested, for he had no time to put them into book shape.

Mr. HOWE said, he should trouble the Convention with but few remarks in reference to this question. He had been waiting to hear from some gentleman of the committee the grounds upon which the committee had based their report. The gentleman from Cass had now stated those grounds. This would supersede the necessity of arguing anew the question arising from the construction of the act of last winter, authorizing the call of a Convention, as to the right of this Convention, under that act, to elect a printer.

As gentlemen had argued, a question might arise whether the printer was to be regarded as an officer or a contractor. It was clear to his mind, that he ought to be considered a contractor. That he possessed none of the elements of an officer, and was therefore only a contractor, and if a contractor the question was, what was the subject matter of his contract? How far did it extend? Why, clearly, to all the printing of the State. It was all required to be done by the very nature of the bonds which he had given, and those bonds for the performance of his duty, constituted a contract, which

neither the Legislature nor that body could supersede.

These questions, however, were now considered immaterial on the ground upon which the gentlemen of the committee had seen proper to place their report. In justice to the gentleman from Cass, he was willing to admit that his argument contained all that could be said on that side of the question; but at the same time he could not coincide with him in the proposition, that this Convention, embodying the sovereignty of the State, was not bound by the act of the Legislature, or any other public body in the State. With all deference to the gentleman, he must be permitted to say, that the proposition was fallacious and unsound.

The Convention, according to his understanding of the matter, did not represent the sovereignty of the State, for there was a State Constitution already in existence under which this Convention was called. The gentleman's proposition, continued Mr. Howe, can only apply if we go back to a chaotic state, a state of political disorganization, when the people would have a right to assemble together either by themselves, if their numbers were not too great, or by their delegates, if they pleased, and form a government to suit themselves. I say, if that were the state of things, there would be some force in the gentleman's argument; but such is not the case; we have already got a Constitution which is valid and binding upon us, and must continue to be so until set aside in the proper and legitimate manner. Now, the gentleman, in this case, is driven into a dilemma. He is either compelled to admit that the Constitution is yet in existence, or that it is not. If it be in existence, as a matter of course, all legal rights that have accrued under it are valid and binding, and cannot be set aside; if it be not in existence, they run on without a government. But the Constitution of the United States itself, which we have sworn to support, would prohibit us from setting aside vested rights. We were sworn to support the Constitution of the United States, and nothing was said about our own Constitution. Why? For the manifest reason that we have come here to revise and amend it. I say, then, that the proposition is unfounded that we represent the sovereignty of the State. As there is a Constitution already in existence, those rights that have been acquired under it are binding upon us. We are the mere delegates of the people, assembled here, not to make an original Constitution, as though none were now in existence, for we have a government, a Constitution, and we have a code of laws and public officers that have been brought into existence under it. All these are valid and binding upon us, and all that we have to do is to alter or amend the organic law of the State. We have no more authority than a set of commissioners,

whether consisting of one hundred and fifty men or a dozen, or even a smaller number, having a specific duty to perform. So, at the time when it was considered necessary to revise the old code of laws, two gentlemen were appointed as commissioners for that purpose. What power had they? They had power to write out a new code and submit it to the Legislature. So we are here for the purpose of revising the Constitution, and submitting that revised Constitution to the people. We have assembled here by virtue of an act of the Legislature. We have not assembled under the Constitutional provision, which requires that the Constitution shall be remodeled every twelve years; but under an act of the Legislature. We therefore acknowledge the authority of the Legislature. We have no right to disavow its authority. We are morally and legally estopped from setting aside the act under which we are assembled, either in whole or in part. We must acknowledge its authority. We are, then, mere delegates, under the authority of the Legislature, assembled here for the purpose of revising the Constitution, which, when revised, is to be submitted to the people, and if they are satisfied with it, our work will be approved, otherwise it will have no validity.

So far as the appropriation of money is concerned, we have no power to act. We have only the power to spend what has been appropriated for us. And in my judgment, we have no right to go beyond the amount which has been appropriated by the Legislature for our use; and if we do go beyond the amount so appropriated, we shall be at the mercy of the next Legislature to make good the deficiency. Thus we are morally and legally estopped from denying the binding force of the act of the Legislature upon us, and this, I think, shows the fallacy of the gentleman's proposition.

Mr. STEELE said, that having had something to do with the report which was now before the Convention, he desired to say a very few words in relation to it. He concurred entirely in the views of the gentleman from Cass. The sentiments which that gentleman had announced to the Convention, had impressed themselves upon his mind from the first introduction into the Legislature of the law authorizing this Convention.

During the canvass, said Mr. Steele, and before I announced myself a candidate for election, a large portion of the journals of my county represented to the people that I was ineligible to a seat in this Convention, for the reason that I held the petty office of Recorder. I called their attention to so much of the act of the Legislature as provides for the eligibility of any person who possesses the right of suffrage—the right to vote for a member of the Convention. They produced the old Constitution, which prohibits any one from holding two lucrative offices at one time. And in reply, I asserted that the

hands of the Legislature were not tied by the old Constitution, the Constitution had nothing to do with it. It had vested in the Legislature the power to pass a law to organize this Convention by the election of delegates. Such was my opinion, and I entertain that opinion at the present moment, that the law, so far as it extends beyond the mere assembling of the Convention, is nothing more nor less than surplusage. For instance, we see clearly that the powers delegated in the old Constitution—the one adopted in 1816—gave to the Legislature no other right than to provide a law to organize the Convention. That is the whole extent of the authority which the Legislature possesses. The moment we become organized under the law, I hold, with the gentleman from Cass, that we transcend every law except the Federal Constitution. That only is binding upon us. We are here to consult the interests of the people, and it is one of our chief duties to avoid a profuse expenditure of the public money. It is our duty to practice the most rigid economy, not only for the sake of the immediate interests of the people, but for the sake of the example that we shall thus set. So far as the selection of a Printer is concerned, I have no particular choice. I have the best of feeling towards the present State Printer, and I believe he ought to be selected, provided he will do the work as well and at the same prices as other printers; and I am informed that he has procured the materials and is prepared to do the work, but I contend that if he does do it he must be appointed by us—his power must come from this body. But it is suggested to me that there are printers in this place who will do the printing for twenty-five per cent. less than the prices now paid to the State Printer; if so, I desire that the work shall be done by them. Mr. Steele added, that he should vote in favor of the report of the committee, and he should give that vote, not from any feeling in regard to any printer, but from an honest conviction that the conclusion at which the committee had arrived, was the correct and proper conclusion.

Mr. BASCOM said, he did not rise to make a speech upon this question, but he could not resist the inclination he felt to say a few words, when he saw gentlemen who were foremost in debate upon almost every unimportant question, as soon as a question came up upon which some talent might be displayed, sitting as mum as the day they were born. (Laughter.) The whole question, said Mr. B., resolves itself into this: The patronage of this Convention is to be given to a printer, and gentlemen here who are aspiring to higher places, are afraid to show their hands. (Renewed laughter.)

The PRESIDENT. It is not in order to allude to the motives of gentlemen.

Mr. BASCOM. I do not impugn the motives of any gentleman.



The PRESIDENT. The Chair would ask the gentleman to explain what he does mean.

Mr. BASCOM. I mean, sir, that there are gentlemen here who give us their views very freely in regard to unimportant matters, such as the appointment of a doorkeeper, but when a legal question of any importance arises, we are not favored with their opinions. Well sir, the whole question is precisely this, who shall do the printing for this Convention? Now when I am called upon to vote upon this question I want to vote understandingly, and I hope therefore, to be favored with the opinion of those who have some legal knowledge. I was glad to hear the gentleman from Cass express his opinion. He did so, fearlessly, and in the main I agree with him. I do not think that we are bound by any law in regard to the appointment of our officers, but if I am wrong on this point I wish to be better informed by legal gentlemen before I am called upon to vote.

Mr. PETTIT said, he had no desire to detain the Convention with any remarks, but if the gentleman over the way had any allusion to him, in the remark that he had made, he had a word to say in reply. Sir, said Mr. P., I am very far from holding that this Convention possesses entire sovereignty. We sit here with limited powers. We were called together for a specific purpose, and I maintain that the only point in which we have unlimited power is that of making propositions. We have unlimited power to propose to the people of Indiana a form of government, an organic law, which, if adopted by the people, shall be the basis of their future government; that is all the power that we have. How would it operate if we conceive ourselves occupying a different position.

If we can elect our printer, then he must be an officer of this body, but it is contended that he is not an officer, because he is not required to take an oath of office. If then the printer be not an officer of the Convention, we have no power under the law to elect such a person, for we have only power to elect our officers, the law clearly contemplating the Secretary, Doorkeeper, Sergeant-at-Arms, &c.; these officers we have to elect, but the printer is employed by contract. Well, sir, I fully concur with the gentleman from Hendricks, that the printer is a contractor and not an officer, and that as such we have no power to interfere with his contract; but we are sitting here to propose to the people of the State to set the old Constitution aside and adopt a new one in its stead. Sir, if we consider him either as an officer or a contractor we have no power over him. It is said that we have power to elect all our officers, and our printer among the rest; but how will that tally with a proposition of this kind. The Attorney General for your State is an officer of the State. Is it necessary to appoint a new Attorney General for every set of cases that may arise? Or shall that officer be at liberty to prosecute and

defend all suits that may arise, as well as those in which the State is engaged at the time of his appointment? You have a Secretary of State and you impose certain duties upon him. Shall he only perform those duties which existed when he was elected, or shall he perform all the duties that belong to that department? You have already called upon the Secretary of State to perform services, and you may yet have occasion to call upon him to perform other services. You may have occasion to call upon the Auditor, and upon the Treasurer for reports. Shall we say that it is necessary for us to elect all those officers, because we have occasion to avail ourselves of their services? Will you turn Mr. Test out of doors and put another man in possession of the Record and Seal of the State because you came here with sovereign authority. I believe that no man will go so far as that, yet you tell me that because you require certain services to be rendered by the printer, it is necessary that you should elect him. You want the printer to send in here certain printed matter, therefore, you must elect him. But you also want the Secretary of State to furnish you with copies of documents, you must therefore elect him as well as the other.

If the present State Printer should fail to be in readiness to perform the work required by this Convention, there is no doubt he would be liable on his bond for the non-performance of his duty to the State. Sir, we are not above the State of Indiana; we are not above the Legislature of the State, and let me say to gentlemen, that if the people can at any time, resolve themselves into a Convention for the construction of a new form of government, they may also draw the sword and perpetrate revolution whenever they please. I know it is argued that might gives right, and in that view all communities have the right to assemble in Convention, turn out old officers and elect new, but that is not the American idea. The idea is that one Government grows out of another as naturally as the new shoot grows from the seed that is planted. This doctrine was most ably canvassed in the great case of Rhode Island alluded to by the gentleman from Hendricks. I happened to hear the arguments in that case in the Supreme Court. The issue was directly brought up as to the validity of the Dorr government, and it was argued with great plausibility that the people possessing the original sovereignty, have a right to resolve themselves into a new form of government, and to abolish the old, without any preliminary steps having been taken by the old government. The Supreme Court denied this doctrine in the roundest terms. They held that even a majority of the people of Rhode Island could not have put in force any such government.

Well sir, let me ask the gentleman from Cass, by what authority are we privileged from arrest? Are we, as members of this Convention, privileged from arrest or not? I perceive that the

law provides that we shall be privileged from arrest to the same extent that members of the Legislature are. Now, without that provision of the law, how could we avoid the ordinary or usual arrest of our persons here? We are not the Parliament of Great Britain, we are not the Congress of the United States, nor are we the Legislature of Indiana, in all of which exemption from arrest prevails.

Mr. BIDDLE. I do not deny that as citizens we are not liable to arrest, but I deny that by virtue of being members of such a body as this, we would necessarily be privileged from arrest. As citizens we are exempt by the law of the State.

Mr. PETTIT. I know, as citizens, we are exempt by the law of last winter. But I will put this question: Suppose we pass a resolution declaring that members of this body shall be exempt from arrest, not only to the extent that members of the Legislature are, but further. Is there any judge or lawyer in this room who would hesitate for a moment to say, that such an act of ours would be a nullity, as transcending our authority? If we had not been privileged by law, we could not privilege ourselves. We might by force protect ourselves from arrest, but it would be a lawless act. There can be no question that we are amenable to all the laws that are in force in this State. We can neither make nor suspend the operation of any law. If we can do that we can just as well order ourselves to be paid six dollars a day, or any other sum we please. The present Constitution of the State provides that money shall not be drawn from the Treasury, except in accordance with an appropriation made by law, and it is the same Constitution under which we are living, for our meeting here has not abrogated it. Can it be said then, for a moment, that we are without the shield, the protection of the Constitution of the State of Indiana? No one, surely, will entertain such an idea, or undertake to enforce it. The same Constitution says too, that no law shall be made, abrogating or impairing the validity of contracts. Mr. Chapman is at present the State Printer. He entered into a contract to do all the printing of the State. Shall we, a body sitting in accordance with the command of the Legislature, undertake to do that which those who created us could not do? Is the agent greater than the principal? Is the created greater than the creator! Yet the doctrine is propounded here, and argued with some degree of assurance, that we should take upon ourselves to impair the obligation of a contract.

Now I have made these remarks at the suggestion of the gentleman over the way, and after, it seems to me, that every gentleman here had said every thing he desired to say. I disclaim any thing like feeling in regard to this question. I am told by those who are entitled to respect, that the entire profit to be derived

from the printing of the Convention, cannot exceed seven hundred and fifty dollars, and it does seem to me that that is a matter not worth a great deal of scrambling after. Sir, I am glad of the opportunity which is accorded me in the debate, of avowing my opinions upon the subject. They explain the vote that I shall give. I shall vote against concurring in the report, believing that a printer is provided for us. Nor do I agree with the gentleman as to the appointment of another officer. I mean the Stenographer, who was appointed to report the debates of this Convention. And, I ask, is it in our power to reject this officer? I hold that we have no such power. The Legislature created that office, and the Governor commissioned the officer. It is not for us to remove him. We cannot even enquire into his right to hold office. I will put a case: Suppose the Legislature had said that the Governor should appoint an individual to sit here from nine o'clock in the morning until nine o'clock in the evening, and keep a vigilant eye upon our proceedings, and take down, in Stenographic notes, every articulate sound that was uttered. Could they not have done so? It appears to me they could, and that we would have no right to interpose. The Legislature directed the Governor to appoint and commission a Stenographer; the Governor did so, and he is as necessarily a portion of this Convention as any man on this floor, and we have no power to remove him if we desired to do so, except for such cause as I will not suppose will ever occur, namely, disturbance or disorder, on the part of that gentleman; but in such case only, would we be at liberty to expel him or any other officer of this Convention. I take it that we sit here, as I have said, with limited powers in all respects, except one—we have the unlimited power of making propositions. But who pretends that we can adopt a Constitution, and make it binding upon the people of this State, without their concurrence. Is it not provided that our work shall be submitted to the people? Can we revoke that provision and enforce obedience to the instrument we may frame? No one will pretend it. Yet if we had the Sovereignty that it is alleged we possess, we could unquestionably do this. No Sir; we have been sent here to devise a plan or form of Government, to be submitted to the people, to be by them decided upon, and it will be for them to determine whether they will risk their fortunes and their future lives under it, or not.

Mr. NILES said, that as a mere abstract question of law, he thought the report of the committee correct. It might be most proper to employ the State Printer to do their printing, but he did not think that he was necessarily and *ex officio* printer to the Convention. He did not claim that the Convention was above law or could disregard the act under which it was called into existence. With the gentleman



from Tippecanoe, (Mr. Pettit) he concurred in the argument of Mr. Webster, and the opinion of the Supreme Court of the United States, in the case of Dorr, that under what may be called the American political system, changes in the form of a government cannot be effected by violence. While he sympathized with progress and reform, he deprecated revolutions; and he was glad to know that were anything of the kind attempted, not only the people, but the courts, would place their seal of condemnation upon it. He admitted that had the Legislature designated the person by whom or pointed out the manner in which, their (the Convention's) printing should be done, it ought to be conclusive.

The gentleman from Tippecanoe—continued Mr. Niles—insists that we were bound to employ the State Printer, merely because he is a State officer; and inquires whether we have power to increase our own pay, as if the answer to that question settled the other point. But I answer, we have no such power, simply because our rate of compensation has been fixed by the Legislature. We have no discretion on that subject. But we are allowed the widest discretion upon many subjects, including the incidental expenses. The twelfth section of the act providing for the call of this Convention, in part reads thus: "The members of said Convention shall receive three dollars per day while actually attending upon the sittings of said Convention, and shall be allowed the like compensation for their travel as members of the General Assembly are allowed by law; and their secretaries, officers, and attendants shall be paid the same compensation as the officers of the General Assembly of this State are paid for similar services; which pay together with the pay of a competent stenographer to report the debates; which stenographer shall be appointed by the Governor for that purpose, *with the other expenses of the Convention*, shall be certified by the president of the Convention, and shall be paid by the Treasurer of this State, on the warrant of the Auditor of Public Accounts." Now suppose we should employ additional clerks and direct them to make duplicates of papers, to be distributed upon the desks of members, would not the expense be paid on the order of the President? We might, in this way, supersede any absolute necessity for a Printer. So, I apprehend, we may employ any printer we choose, to do the same work, or we may let it out to the lowest bidder. I do not conceive that this Convention is in any sense the State, as that term is used in the law relative to a State Printer. Neither would our entire population, if now assembled *en masse* to remodel their organic law, be the State in any such sense. It is the government proper which represents the State, and it is the printing for that government, which the State Printer is appointed to do.

Suppose the Legislature at its last session, had

appointed a board of commissioners to look after any of the public interests, with the same discretionary powers which the act under which we are convened, confers upon us. And suppose that board were now in session here or elsewhere, and in need of the services of a printer, is it not clear that they could employ one or another at their discretion? If such a body could, so can we.

The gentleman from Tippecanoe asks whether we propose to dismiss the Secretary of State, and other State officers, and employ other persons in their stead. I answer, that they are doubtless the proper persons at the seat of government with whom we should communicate as occasion requires. If we need information from the clerks and auditors of the various counties, it is unquestionably proper to apply for it through the proper State officers. But we might in our discretion, employ other persons to procure such information, and make them compensation for their services. Mr. N. thought this a matter perhaps of little practical importance, but he was inclined to concur in the opinion expressed in the report.

Mr. HOLMAN remarked, that in order to arrive at a satisfactory adjustment of the question, it should first be decided whether the State printer was really an officer of the State, or not. By referring to the Revised Statutes, page 100, it would be found that the election by a *viva voce* vote was there provided for by law, of a prosecuting attorney, a State Printer, and other officers. Thus, there was a direct provision of law under which this officer was elected. He was an officer of the State—so recognized by the law of the State. He took it for granted then, that if this State Printer was an officer of the State, they must look at the law providing for his election, to ascertain the purpose of the Legislature in his election. If he was elected for a specific purpose, why then, in the exercise of the power delegated to him, he must be confined within the limits prescribed by the Legislature. It would be observed, on referring to the Revised Code, that this officer was to be elected triennially, and that among other things it was provided that he should discharge the duty of printing for the State. In connection with this provision, there were two other sections stipulating as to the manner in which the work should be done. The only question to be decided then, was, what was the design of the Legislature in creating the office of State Printer? As he had before said, the Revised Statutes prescribed the duties of this officer, viz.: that he should execute the printing of the two Houses of Assembly and of the principal officers of the State—but nowhere was it stated that his duties extended any further. The office of State Printer was created seven years ago, and the duties that devolved upon him were clearly laid down by the State Legislature. Inasmuch, then, as the

printing of this Convention was not then contemplated, and no provision had been made for the printing of the Convention in the routine of duties prescribed to the State Printer, it must undoubtedly be concluded that the printing of that Convention was not a part of the duties of the State Printer, prescribed to him by the State.

Mr. FOSTER said, that as it was his intention to vote to concur in the report of the committee he should briefly give the reasons that influenced him in pursuing such a course. Being no lawyer, he would not attempt to reply to the legal arguments of the gentleman from Hendricks, (Mr. Nave,) who had spoken in opposition to the report of the committee. But, with all due deference to the opinions of gentlemen who had spoken, he must be permitted to say, on the present occasion, that he differed with them materially in regard to the rights and powers of this Convention. For one, he did not consider this Convention as a mere creature of the Legislature, although such an opinion had been advanced in certain public prints of this city and elsewhere, and also by members of the Convention. He regarded the Legislature as one of the agents of the people of the State of Indiana, and an agent, too, which, in establishing all the forms that preceded the election of the Delegates to the Convention, only acted in accordance with the will of the sovereign people. In like manner this Convention was an agent of the people. He had been greatly amused on reading the act of the Legislature with regard to the Convention, to observe the condescension with which they provided that the Convention might elect a president, and such other officers as they deemed proper. Why sir, said he, this Convention possesses the inherent power of electing all its officers, a public printer among their number.

The celebrated case of Dorr had been cited by the gentleman from Hendricks, (Mr. Nave,) to sustain by inference, the position he had taken, that the Legislature exercised a supreme controlling power over a Convention chosen by the people. He could not but think that gentlemen had misapprehended the celebrated decision of the Supreme Court on that point, because the point they sought to sustain was not taken into consideration by that Court. Gentlemen would not contend for a moment that the adherents of Dorr had assembled peacefully and lawfully in Convention. Yet had not the people of Indiana assembled peaceably and lawfully, and sent Delegates here to revise the Constitution? The Dorrites in Rhode Island were in a state of anarchy; they were revolutionists. Not so with the action of the people of Indiana in raising this Convention. They had invested them, as a Convention, with the power of revising the Constitution, and, for one, he, as a Delegate from the people of Monroe, intended

to exercise fully and fearlessly the power invested in him.

There were one or two facts having a bearing upon the question before them, to which he would briefly allude. In the State of Ohio, the Legislature had passed an act convening the Convention that had assembled there to revise the State Constitution—similar in effect to the act authorizing the assembling of this Convention. When the question came up before that Convention upon the election of a State Printer, what did they do? [Mr. F. here quoted from the proceedings and debates of the Ohio Convention at some length, to prove that the State Printer there was elected Printer to the Convention, not because he was the State Printer, but from the fact that the Democratic party had a majority in the Convention, and also because they knew him to be a good printer. An express provision was made in the stipulation entered into with him, that the printing should be done at fair and reasonable rates, those rates being clearly defined.] They thus elected their own Printer, and he contended that this Convention had a similar right. Some gentleman, however, had said, that they could not annul the contract made with Mr. Chapman. This statement he would emphatically deny. An example of high authority was to be found in the case of Blair & Rives, who were formerly printers to the United States Senate, and who had a contract made at one session of the Senate rescinded at the succeeding session of that body. Yet Blair & Rives did not attempt to sue for damages. In connection with this point, he would read the opinion of a legal gentleman who, with all due deference to the learned gentlemen around him, had not his superior—if he had his equal—upon that floor; he referred to Judge Hitchcock of the Supreme Court of Ohio. [Mr. F. here read from the debates of the Ohio Convention, a summary of Judge Hitchcock's views upon the question of the election of a Printer to the Convention. Judge H's position was, that the Convention was authorized to make use of a certain sum of money for the expenses of the Convention, and as they could not get along without having a printer they had the right to elect a printer, and compensate him out of the contingent fund from which were defrayed the other expenses of the Convention.] Thus, continued Mr. F., I have given some of the reasons that will influence me to vote for the report of the committee. Common sense teaches me that we derive our power directly from the people, and that we, as members of this Convention, are delegates of the people. Why, sir, it is a common thing to be elected a member of the Legislature, but it is an uncommon thing to be elected a delegate to a Convention raised for the purpose of revising a State Constitution. Here are assembled able and learned gentlemen from various parts of the State, who, I doubt not, would reject with contempt the offer of be



ing made a member of a body that met once a year to enact laws for the "dear people." (Laughter.) Here are assembled grave congressmen and learned judges who have been rustica-ting for a season, and who have now come here to give us the benefit of their more matured wisdom, and their great legislative experience.

With regard to the arguments of gentlemen on this floor, who have endeavored to obtain the election of the present State Printer as Printer to this Convention, I must say, briefly, in reply, they cannot come it over me. Their efforts put me in mind of an incident that occurred in the town of Augusta some years since, when there were not so many temperance men or temperance societies as there are now. It was customary there, when an individual wished another to drink with him, to say, "Come, won't you go it?" A gentleman, on the point of graduating had got in the habit of "going it" at rather an extensive rate; at the same time, he was paying his addresses to a very amiable and sprightly young lady, a resident of the town. This young gentleman, as I remarked, got in the habit of "going it," and while in full career, he graduated at the college. After graduating, reflecting that he had been courting the young lady for some time, he thought he would pop the question. So one day, with a palpitating heart, and with all due ceremony, he put the interesting query, "Will you have me?" "Ah! Billy, Billy, Billy," replies the young lady, "while you 'go it' you can't 'come it.'" (Great laughter.) Notwithstanding all that gentlemen have said, I have only to reply, that they can't "come it" over me. (Laughter.)

The question being taken on concurring in the report,

It was decided in the affirmative.

So the report was concurred in.

After the presentation of various petitions, on motion,

The Convention adjourned until to-morrow morning at 9 o'clock.

## TUESDAY, Oct. 15, 1850.

The Convention met pursuant to adjournment, and was opened with prayer by the Rev. Mr. MYERS.

After several resolutions had been read and referred,

Mr. WOLFE of Sullivan offered the following preamble and resolution.

WHEREAS, the people of the State of Indiana, in calling this Convention, did not intend to abolish but to amend the present Constitution, and the Convention being now fully organized; therefore

Resolved, That the Convention now proceed to take up the Constitution, article by article, and section by section, until it shall have

made the few but necessary amendments thereto, as asked for or contemplated by the people.

Mr. WOLFE said, that it did appear to him, that they should endeavor to fix upon some plan for proceeding at once to the revision of the Constitution. He took it for granted that it was generally understood by the members, that the people desired but few amendments made to the present Constitution. He conceived that there was great danger to be apprehended that they would do too much, and it should be borne in mind that if there were too many amendments made to the Constitution, when it went back to the people it might be rejected. The Convention might alter and amend the Constitution as they pleased, but the people were not bound to accept it thus altered. From the course that had already been pursued in the Convention, he was afraid that the great struggle was not to simplify the proposed amendments to the Constitution; but to secure the prominent positions in the Convention so as to obtain the praise of the people. Perhaps these gentlemen who were attempting to do so much would find upon returning to their constituents that they would be blamed in proportion to their labors. If they took up each article of the Constitution and acted upon it section by section, in regular order, they would know what was done as they went along, and when they came to the end of the articles they could add such as were necessary.

Mr. STEVENSON moved to amend the resolution offered by the gentlemen from Putnam, as follows:

"That the Convention will on each day at 2 o'clock, commencing on to-morrow, go into committee of the whole to consider the Constitution of Indiana and take it up by articles and by sections, until they have gone through with it."

Mr. S. said he was not willing to disturb the present order of business—an order which had been formed by committees appointed for that purpose and had been adopted by the Convention. Nevertheless, he was inclined to think that this suggested order could be adopted without interfering with the arrangements already made. In the forenoon the Convention could act upon the resolutions that had been referred to committees. In the afternoon they might take up the Constitution section by section and examine it. They could thus ascertain the sense of the Convention in regard to the character of the new Constitution, for he had no doubt that a large majority of the Convention had determined what kind of a Constitution was necessary. This could readily be done if the Convention resolved itself into committee of the whole. The propositions that were there recommended, and agreed upon could in Convention be referred to the appropriate committees, by them to be engrafted in the article of the new Constitution. There was no use in keeping the Convention there all day receiving mere resolutions of enquiry. They gave no indications of the sense

of the Convention, but left them just where they were before.

Mr. WOLFE accepted the amendment of the gentleman from Putnam, and the resolution as amended lies over one day under the rule.

Mr. PETTIT moved to make the resolution offered by him on the subject of Grand Juries, the special order for 10 o'clock A. M., on Monday next,—

Which was decided in the affirmative.

#### STATE PRINTER.

Mr. BORDEN moved that the State Printer be designated as the Printer to this Convention.

He remarked that he did not propose, after the long and able discussion upon the subject of the printing of the Convention that had taken place on yesterday, to detain the Convention with any lengthy remarks of his own.

His object in offering this resolution was simply that an opportunity might be afforded for entering their names upon the journal, so that it might be known to their constituents who it was that took upon themselves the responsibility of taking the contract for the printing of the Convention, from the State Printer, thereby subjecting the State, to the alternative of paying twice for the same work.

It would be recollected by gentlemen that Messrs. Osborn & Chamberlain, formerly printers to the Legislature, owing to a similar violation of contract, recovered some eight hundred or one thousand dollars damages. He apprehended that the only question at issue was whether they should pay twice for the same work, and such a course he regarded as unjust and derogatory to the interests of their constituents. If authority to sue the State was asked of the Legislature it could not refuse the right to carry it forward, and he was satisfied that judgment could be obtained against the State. By referring to the proceedings of the New York Convention, held in 1821, it would be seen that a resolution similar to the one he had offered was there presented in order to arrive at a settlement of the question. The resolution thus presented was adopted. If any gentleman wished to strike out the name of Mr. Chapman and insert the name of some other person, it could easily be done, and then the record upon the Journal could testify who had taken upon themselves the responsibility of depriving Mr. Chapman of the contract.

Mr. GRAHAM of Warrick observed, that the gentleman from Allen (Mr. Borden) did not argue the propriety of the adoption of the resolution, but simply stated that it was offered for the purpose of showing by the yeas and nays who would take upon themselves the responsibility of voting against Mr. Chapman. Now, he had voted for Mr. Chapman to be State Printer, and he might do so again; but when a resolution was brought forward declaring him Printer to the Convention with the threat of a

call of the yeas and nays appended, if it was not passed, he for one was not afraid of taking the responsibility of having his name appear to his constituents in the list of nays. Was it to be supposed for a moment that any member of that Convention would change the vote he intended to give upon this question merely because that vote was to appear on the journal? He believed not. But there was a proposition contained in that resolution which had already been decided in the negative. That proposition was to elect an officer of the Convention by resolution. This had been attempted with reference to the election of their President, but had signally failed.

Mr. BORDEN (interposing). All that I desired by my resolution was to relieve those members of the Convention who favor its object, from the responsibility which will attach to every gentleman who votes against it.

Mr. GRAHAM enquired what responsibility would attach to gentlemen if they thus voted?

Mr. BORDEN replied, that if the contract for the printing of the Convention was taken from the present State Printer, an additional sum might be taken from the treasury to pay for the work twice, and upon returning home their constituents would desire to know who took upon themselves the responsibility of this extra expense.

Mr. CHAPMAN objected to the resolution, stating that it would represent him as being in an attitude which he did not wish to occupy. He had already been placed in a false position. In some respects, and did not wish to be gibbeted before the community. Personally, so far as he was pecuniarily interested, he was indifferent how the matter was decided; but the gentleman could better attain the object which he sought by moving a reconsideration of the former vote, instead of pressing his present resolution.

Mr. BORDEN said, if the gentleman from Marion desired it, he had no objection to having it withdrawn.

The resolution was accordingly withdrawn.

#### REFERENCE OF THE CONSTITUTION.

Mr. FOSTER offered the following resolution,

*Resolved*, That the Constitution be committed to a committee of the whole, and made the order of the day for Thursday, at 2 o'clock.

Mr. PETTIT objected to the Convention going into committee of the whole on the old Constitution. If they went into that committee they could not refer any subject to any other committee. No one would contend that in one committee they could refer a subject to another. The course that should be pursued was to take up the Constitution in Convention and read it section by section, and as each section was read, move its reference to an appropriate committee. The standing committees would then have be-



fore them each portion of the old Constitution, and all the imperative resolutions that had been referred, and would be prepared to proceed with the work of drafting the articles of the new Constitution.

He would move to amend the gentleman's motion by striking out all after the enacting clause, and inserting, "That at 2 o'clock on tomorrow the Convention will take up the present Constitution of this State, and read it by sections, and as each section is read it shall be referred to the appropriate committees."

The question being upon the adoption of the amendment offered by the gentleman from Tippecanoe, (Mr. Pettit,)

Mr. DOBSON said, he supposed that all the resolutions offered that morning would have to be recorded on the journal, thus increasing greatly the labor of the Secretaries, and also the expense of their printing, for every resolution that was referred had to be printed and paid for.

Now, in committee of the whole, this extra expense and labor would be saved. No journalizing was done in that committee. They could not refer resolutions or amendments to other committees while in committee of the whole, but they could agree upon certain references, and when they came back into Convention the Chairman would report that the committee of the whole had had certain references and amendments under consideration, and on motion they could be referred to appropriate committees. It could all be embodied in a few lines at a great saving of expense.

Mr. FOSTER confessed he was very much astonished at the singular acuteness of the argument of the gentleman from Tippecanoe (Mr. Pettit). It had always been customary in legislative bodies, with any public document that was intended to be distributed and acted upon, as for instance the Governor's or President's message, after the standing committees were appointed, to go into committee of the whole upon it. And he thought it rather discourteous that the glorious old Constitution under which they had lived so long and so happily, and prospered so greatly, should be treated with not half so much respect as a common Governor's message that was delivered every year. They had met there for the purpose of amending the Constitution, and now that the committees were organized, he contended it was altogether parliamentary to go into committee of the whole upon it.

Mr. RITCHEY remarked, that he had the honor of a seat in the Legislature, and from his experience in that body on the subject, he was not very favorable to the committee of the whole. He regarded it a useless waste of time for the Convention to resolve itself into that committee. The discussions that arose during its sessions would be repeated over and over again in the sessions of the Convention. He preferred going

into the committee of the whole as seldom as possible.

He had been much pleased with the sensible resolution and remarks of the gentleman from Sullivan (Mr. Wolfe) that morning, with reference to the action of the Convention upon the Constitution. He believed if the gentleman had made his suggestion last week, before any order of business was decided upon, its adoption would have saved the Convention a great deal of labor, and the State considerable expense. If, instead of having those committees, the Convention had taken the old Constitution and appointed a committee on each article as they went along, the work of revision and amendment would have been carried on more speedily, and with less confusion than in the present straggling way. He did not know whether they could retrace their steps and commence anew or not; perhaps some gentleman would offer an amendment to that effect.

Mr. REED of Monroe suggested, that after the committees had reported upon the subjects referred to them, then it would be an appropriate time for the Convention to go into committee of the whole. He presumed that in three or four days after the reference of the Constitution and resolutions to them, some of the committees would be able to report.

The question was then taken upon the amendment offered by the gentleman from Tippecanoe (Mr. Pettit) to the resolution offered by the gentleman from Monroe, (Mr. Foster,) and it was concurred in; and the resolution as amended was adopted.

Several other resolutions having been read and referred,

On motion, the Convention adjourned until 2 o'clock, P. M.

#### AFTERNOON SESSION.

#### PROCEEDINGS AND DEBATES.

Mr. MAGUIRE moved to take from the table the resolution upon the subject of the publication of the proceedings and debates of the Convention in the newspapers, reported from the select committee on that subject, on Wednesday last.

The motion was agreed to, and the resolution was accordingly taken up and read by the Secretary.

Mr. MAGUIRE moved to strike out from the resolution so much as related to postage. He considered that those who received the papers should at least pay the postage. He had enquired of the city Post Master, and had been informed that the packages would be sent without being pre-paid, if put up and sent from the offices of publication, where members could send the proper direction, and they would as certainly go to their proper destination as if directed and sent by members themselves. And in this way the expense would fall where it should; those who

received the benefit of the papers and documents would pay the postage. The postage was a large item. It would be some thirteen hundred dollars of the amount of expenditure proposed by the committee. He hoped it would be stricken out.

The PRESIDENT remarked, that the amendment of the gentleman was not now in order. When the resolution was laid on the table the other day, there was pending an amendment proposed by the gentleman from Dubois, (Mr. Edmonston,) and there was also pending an amendment to the amendment proposed by the gentleman from Franklin (Mr. Shoup).

Mr. MAGUIRE said, that he was not aware that there was any amendment pending.

The question was taken on Mr. SHOUP'S amendment to the amendment, to-wit: "To extend the same offer to all the local press; and it was rejected.

The question then recurred upon the adoption of Mr. EDMONSTON'S amendment.

Mr. KELSO said, he hoped the amendment would not prevail. If the Convention proposed to strike out any thing, let them strike out such papers as could not publish the whole of the proceedings. The proposition to take three papers was not for the purpose of advising the people what the Convention was doing, but for the purpose of advising them fully of the reasons for what was done through the medium of arguments advanced here, to preserve which an officer had been employed at a heavy expense. Two of those papers were daily papers, and they proposed to publish the debates in full; and it was proposed that the Convention should subscribe for five copies of these papers for each member. Three other papers embraced in the resolution had declined to publish the debates in full. These were not daily papers. Now if they were going to strike out anything proposed in the resolution, he would say, let us take less of those who do the least for us, and more of those who do the most for us.

But it seemed to him, that by calling up the resolution, at this time, the gentleman from Marion (Mr. Maguire) was about to steal a march upon the Convention. Some anxiety had been manifested as to whether there should be a permanent location in Indianapolis for the Convention, or whether they should be left on the wing till the report from the select committee should come in. The feeling of the Convention, a few minutes ago, seemed to be in favor of waiting for the report, but now, if the gentleman could slip in this proposition, and get the Convention to commit themselves by taking newspapers here, it would evidently be a heavy clog against going elsewhere. He would not, himself, make the motion, but he hoped that at the proper time, some gentleman would move to lay the subject on the table.

Mr. TAYLOR said, it seemed to him that it could not be considered either as wise or good

policy for the Convention to keep their constituents in suspense any longer as to what they were doing. Every gentleman, he had no doubt, had answered the inquiries of the people, telling them that they certainly should know what the Convention was about; and if it was ever intended to pass the resolution, it really seemed to him that it would be better to do so at once. It would be better for their constituents, if not for themselves. For gentlemen could not be supposed to be without information, from day to day, of what they themselves were about. But they had been postponing this matter from day to day without the intervention of any matter, making it necessary that the subject should lie over. And now the gentleman from Switzerland (Mr. Kelso) asked for a further postponement of the subject—and for what? For nothing more than to give some importance to a mere freak about moving the Convention to some other point! Was business of importance to be deferred in this manner upon a mere hypothesis? Should the transaction of important business be made to depend upon the contingency whether the Convention might or might not go to Madison? It did seem to him that such a consideration should never weigh so much as a single ounce in value upon any man's vote. It would be time enough to act upon the Madison proposition, when it should make its appearance. That proposition would come up to be voted upon in due time; whether it were wise or not he did not pretend to decide, nor would he say that he would not vote for it. But he would say to the Convention that they should not lay over business of importance, on account of such a question, for it was a small matter compared with the great anxiety of their constituents, to know what they were about. Business was accumulating upon the hands of the Convention. Gentlemen could see what an amount had accumulated during this brief day; and yet not an editor in town was authorized to go on and publish these proceedings. He did hope that the gentleman from Switzerland (Mr. Kelso) would reconsider the matter. He considered it a wise provision of law, that the proceedings of the Convention should be promulgated by their authority. But this business had been permitted to sleep too long. He had been informed by one of the editors of this place, that there had already accumulated such an enormous mass of reports, that it would take some days to catch up. If the subject was to go again to the table, for several days longer, their constituents would not, of course, know the reason at once; but when they should come to know it, what would they say? They would tell their delegates that it was a very paltry consideration whether they should go to Madison or remain in this town, compared with the public enlightenment with reference to what was doing for the amendment of the organic law. But he did not wish to argue the question, or make a



speech; he merely desired to avow his honest conviction, that it would be better either to dispose of this affirmatively, or lay it by forever.

On motion by Mr. SIMS, the resolution and pending amendment were again laid upon the table.

Resolutions offered by Messrs. Wolfe, May, and Tague were then disposed of, and, on motion of Mr. KELSO,

The Convention adjourned until to-morrow morning, 9 o'clock.

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WEDNESDAY, Oct. 16, 1850.

The Chair announced the following additional members to the committee "On Elections:"

Messrs. Anthony and Zenor.

Mr. BEARD presented the proceedings of a meeting of the "Friends," of the Congregational order, in favor of abolishing all distinction between the inhabitants of this State on account of color.

Mr. BORDEN moved its reference to "the committee on the rights and privileges of the inhabitants of this State," and observed that he knew nothing of this particular society, but was formerly well acquainted with the Society of Friends of the old order, and could bear testimony to their worth. There were ties that bound him to them, that could never be severed, and he felt always disposed to treat anything, emanating from persons of that name, with respect. He was opposed to the principles of conferring upon the negro race among us, the right of voting; and if the Convention should be called to act on the question, he should carry out the wishes of those who sent him here, and vote against it. But he was in favor of the right of petition, and for that reason, he should vote in favor of receiving it. For his part, as a member of this Convention, he should feel it his duty to present any petition sent to him from inhabitants of this State, if couched in respectful language, without regard to their sect, color, or condition. He trusted the petition would be respectfully received and appropriately referred.

Mr. OWEN said, I do not rise to say anything as to the question of reference to one committee rather than another. But there seems an apparent disposition among members of the Convention to reject the Memorial without reference, and to that point I desire to speak.

Now, in the outset of our deliberations, let us reflect, whether it be wise or just to pursue such a policy; to refuse even to receive or consider any petition couched in respectful language, merely because we may happen to disapprove its prayer. I am not much disposed to refer to the proceedings of Congress by way of precedent for the action of this Convention; yet it may be useful to remind gentlemen of the very long and somewhat violent debate which sprang

up in the House of Representatives on the right of petition, at the time Mr. Adams reported a resolution to strike out the rule usually known as the Twenty-First, which shut out from reception, all abolition memorials. The debate dragged on, through the morning hour, for three entire months. During its progress we heard from Southern Representatives the most doleful and threatening predictions. Rescind this rule, the great safe-guard of Southern rights—thus it was they argued—and our table will be literally loaded with a daily mass of abolition petitions; clogging the regular business of the House, and engrossing, to the exclusion of all other subjects, its time and attention. They went further yet. They predicted, as the ultimate result, nothing less than the dissolution of the Union. But, in point of fact, what was the issue? Towards the close of the discussion, we, who were in favor of the right of petition, remained passive, listening in silence, without reply, to the vehement denunciations of Southern alarmists. We waited until the fire of debate had nearly burned out; and then very quietly voted down the restricting rule. What happened in consequence? Literally nothing, except that there was not one abolition petition presented for ten that had claimed admission before. From that day to this I have scarcely heard the rule alluded to. The subject disappeared, as it were, from view. From the strongest friends of slavery I have heard no assertion, that the least practicable evil has resulted from this recognition of the great principle, that, in a free Republic, all men have a right, so their language be but decent and respectful, to present, and to claim a hearing for their petitions, no matter whether the prayer of these petitions be approved or disapproved by the majority of the body to which they may be presented.

He would not, he said, positively claim for the Memorial a reference to any one Committee, though he was Chairman of one to which the reference seemed to him appropriate. He was not in favor of the prayer of the petitioners; but he earnestly hoped their petition would be received and referred.

Mr. FOSTER said, that he did not think the analogy drawn by the gentleman from Posey (Mr. Owen) between the reception of petitions in Congress and the reception of this Memorial was correct. Those petitions presented in Congress were for the abolition of slavery—this was a petition for granting equal rights to negroes. Whenever a respectful petition was presented, he had no objection to refer it—but it was due to that body that petitions presented there should emanate from respectable men. He was told by a friend near him that this was a petition from a nondescript sect called Congregational Friends—and all the anomalous and eccentric religious bodies in Christendom, and out of it—for he supposed there were Christians outside of what was called Christendom—this body carried off the

palm. It was a sort of *olla podrida*—a hotch potch of the most motley description—composed of abolitionists, renegade quakers and negroes.

They were not of the regular order of Friends—a class of persons for whom he entertained the highest respect—but renegades from that body, opposed to all religion, and desirous of a kind of amalgamation in religion, politics, morality, &c. He wished, while upon the subject, to enquire of the gentleman who presented the Memorial whether the names of any negroes were appended to it?

Mr. BEARD, I think not.

Because, continued Mr. F., I wish it to be understood at the outset, that I am opposed utterly and entirely to negro suffrage. I do not want to grant them any more rights or privileges than they enjoy at present in our State. And I would further say that if we do not take some course to prevent the emigration of negroes to this State we shall be completely inundated with them—because of the severe constitutional laws that have lately been enacted by Kentucky and the neighboring slave States. It is important that we should make a provision of sufficient stringency to correct this great and growing evil. If no gentleman wishes to speak further on this question, I will move to lay the Memorial on the table.

Mr. COLFAX. I trust the gentleman from Monroe will withdraw his motion for a moment.

Mr. FOSTER. Certainly.

Mr. COLFAX said, I have listened, Mr. President, to the remarks of the gentleman from Monroe (Mr. Foster) with great regret, for I had believed that no opposition would have been made to the reception and reference of this Memorial. I care not, sir, whether this sect of Congregational Friends are peculiar or fanatical, as has been charged by him, in their ideas of religion. They are, notwithstanding, our fellow-citizens, and as such they have the undoubted—I had hoped, in this body, the undisputed-right of every American freeman to petition their fellow-citizens whom they elect as their legislators for such laws and provisions as, to them, may seem valuable or desirable. It matters not to me, sir, so far as this question is concerned, whether that body is imbued with one iota of true religion, or whether they admit individuals of another class and color to church association with them: they are still entitled to be heard in this Hall. Why, sir, we have established a rule in our order of business, that of “petitions and memorials,” which, in effect, calls upon the citizens of this State to present their views and make their wishes known to us through the medium of such documents as this. And are we now virtually to annul that rule? Are we to say to the people of Indiana that we will receive petitions and memorials from those only who concur with the majority of us in sentiment—and that petitions sent here by those who

differ from us in opinion we will disrespectfully and contemptuously lay on or under the table? Is this republican, sir? Is this the true policy to adopt in a free State like this, or in any State? No, sir! I think not. This memorial is couched in the most respectful terms; and, although I shall vote against adopting a Constitutional provision extending the right of suffrage to negroes, as I told the people of my district before they sent me here, a constituency as deeply imbued with free-soil sentiments as the constituency of any other delegate on this floor, I shall cheerfully vote for its reception and reference. I shall vote for the reception of this petition as I shall vote for the reception of all other petitions, couched in respectful language, from the people of this State. When I act differently I shall justly forfeit the esteem and respect of every lover of free speech and free discussion, as this Convention will most certainly do, whenever they adopt such a course.

Mr. MORRISON of Marion remarked, that he considered one of the fundamental principles guaranteed by a republican government was the right of petition. It was a right which should be regarded as inviolate—a right which every American freeman was entitled to—and every petition of a citizen of the State of Indiana, couched in respectful language, presented to this Convention, should be received. He considered this course as more obligatory upon them than in the case referred to by the gentleman from Posey, (Mr. Owen) of the effect of the Twenty-First rule upon Congress. Here they were called upon to make fundamental laws for the government of the people of Indiana, for, at least, a generation to come. Bearing this fact in mind, justice and propriety dictated that the opinions of every citizen of the State in regard to the propriety or impropriety of certain laws should be taken into consideration. The Twenty-First rule was merely a provision affecting existing provisions of the Constitution of the U. States, while this memorial affected no provisions of the Constitution of this State; only those that were yet to be made. There he drew the distinction and although he agreed with every sentiment of the gentleman from Monroe (Mr. Foster), with regard to the subject of negro suffrage, he could not apply to white citizens the restrictions that might properly apply to negroes—but should vote to receive all petitions drawn up in courteous language. He should vote against giving the negro the right of suffrage and in putting them on an equality with white men, and should also advocate stringent measures to prevent their introduction into this State: nevertheless he held the right of petition sacred and should vote to receive this memorial.

Mr. READ of Monroe stated, that there was a committee on the rights and privileges of the inhabitants of the State, and to that committee he wished to have this petition referred. He was in favor of making a respectful reference

of all petitions presented by respectable citizens of the State.

Mr. RITCHEY said, he was in favor of receiving this petition. If they treated this memorial with disrespect, it would create a great excitement throughout the whole State, and they would have petitions on petitions pouring in from every quarter. He trusted the Convention would receive it.

Mr. CHAPMAN said, if it was the opinion of the Convention that all men should be heard, they should act *consistently*. The Convention, the other day, refused to entertain a proposition of his own—a resolution of mere inquiry, touching public defaulters. He was not tenacious about that matter, though he believed with the gentlemen from Posey, that many things were worthy of investigation, that might not prove worthy of adoption. If it was proper to reject propositions of a member of the Convention, it might be equally so with regard to a memorial of a few citizens of Wayne County. He was in favor of fair investigation, and should therefore vote to refer the memorial.

Mr. RARIDEN said, he thought there was some misconception of this matter. They, as a Convention, were bound to act for the people as wise and prudent men. They should be careful of their own reputations and listen with an attentive ear to all wise and wholesome suggestions. But, he would ask, what effect it would have upon this paper, whether it was laid on the table or under the table? The question was, whether the principle contained in it was correct—whether it advanced just and sensible views for their consideration. The people held their representatives responsible for obeying the beests of their will, whether they apprized their representatives of that will or not. Now, if a petition presented there had reference to a subject about the settlement of which society was divided, in his opinion it was very proper that they should take a moderate view of the matter and not a hasty one. The Congregational Friends, so far as he was acquainted with them, belonged to no church, were not connected with any other denomination. They pretended to live for God and mankind, and embraced within the circle of their benevolent sympathies both black and white.

He could appreciate that kind of feeling when it came from the heart—then he could respect it; but generally it was a species of fanaticism, as he thought it to be in this case.

As far as the disposition of the paper they had presented was concerned, it did not appear to him very important what disposition might be made of it. It was a matter of policy to prevent irritation and allay all feelings of excitement among the people—but, so far as the action of that body was concerned, upon the principle embodied in the petition it would not be affected by the reception or rejection of the paper. The principle was the same whether the

paper was received by them or not, because if the mass of the people favored the principle embodied in it, they, as their representatives, would be unfaithful to duty, unless they acted upon it in accordance with that sentiment, and would be held responsible accordingly. He assumed the ground that they were the people so far as they were permitted to act as the representatives of the people. These petitions were merely suggestions of the people, as individuals, to those in this Hall—the people in the aggregate.

Mr. FOSTER was very glad he had lead off the opposition, if it had been for nothing else than to call forth the eloquent remarks of the gentleman from South Bend (Mr. Colfax). It being a very dark morning, consequently, knowing that gentlemen could not see very well to write resolutions, he thought a spicy little debate, like that which had just transpired, would not be inappropriate. [Laughter.]

Mr. CLARK of Tippecanoe said, he did not concur with the gentleman from Monroe when he stated that it was requisite that petitioners should be respectable in order to secure the reception of petitions they might offer. He understood that all men had certain rights secured to them, though they might not be respectable. Government exercised its powers and duties for the benefit of all that were governed, and although men may be entitled to different degrees of respect, yet all have rights. If they have not the sovereign right to govern, they have personal rights, inalienable rights—rights which all governments recognise in greater or less degrees.

He objected also to the statement of the gentleman from Wayne, (Mr. Rariden,) that these petitioners were not orthodox in their religious views, and therefore should not be heard—at least this was the inference he drew from the gentleman's argument. He objected also to the gentleman's assumption, that they, as a Convention, were entirely independent of the pre-existing state of things, and of the present government as organized for the State—that they were the people, and were not to recognize the rights of individuals. He (Mr. C.) thought that they represented the sovereign power of the government, which sovereignty, in our government, resides in and is exercised by a majority of the people. These petitioners were individuals—a portion of the people who had certainly a right to petition this sovereign authority which was about to establish permanent laws affecting the rights of individuals, and should they reject the petition of men connected with whose rights they were about to frame permanent and perhaps unalterable laws? These principles, he felt bound to say, were in contravention and in opposition to all his ideas of the purpose of a free government. He felt it to be his duty to oppose such sentiments wherever uttered, and wherever attempted to be put in practice. This question of the right of

petition had agitated the people of this country for years, and they had finally decided that every citizen of this country had a right to petition. What sort of magnanimity was it, he would ask, in a government that would not listen to the prayers of the governed? And if the black man was not represented in this Hall, the only way of expressing his opinion, of making known the oppression he might labor under, was by petitions, in the same way that we presented our petitions to the great Being above us. What friend of freedom desired to trample on the man whose tongue was tied and hands fettered? These sentiments were not the sentiments of democracy; they were not the sentiments that would lead to the establishment of equal rights among men—they were not the sentiments which led to the formation of our present government, which declared all men had rights, and that it was instituted to protect those rights.

Mr. DOBSON said, that if the Convention were to engage in a dispute about the negro question for six months, he would rather it would be upon this than any other question. He did not wish to abridge the eloquent efforts of those gentlemen desirous of engaging in this debate, but he thought they had met there for another purpose rather than to reiterate debates that had occurred in other State conventions. He thought the question of the reception of this petition a very harmless one, and he should vote for its reference to an appropriate committee, and for having a report made upon it.

The question being taken upon the motion to refer the memorial to the committee on the rights and privileges of the inhabitants of this State,

It was agreed to, and

The memorial was so referred.

REMOVAL OF THE CONVENTION TO MADISON.

Mr. GREGG, from the committee appointed to ascertain whether a suitable room could be obtained in the city of Madison to accommodate the sittings of this Convention, &c., submitted the following report:

MR. PRESIDENT:

Your committee, heretofore charged with the duty of ascertaining whether a suitable room could be obtained in the city of Madison of sufficient capacity to accommodate the sittings of this Convention, and if so, upon what terms, together with such other information as might be of interest to this body, beg leave to report,

That, in discharge of the duty assigned them, they visited the city of Madison, on Saturday last, and addressed the following note to the municipal authorities of that city, to-wit:

MADISON, Oct. 12, 1850.

To the Common Council of the City of Madison:

GENTLEMEN:—The undersigned have been appointed a committee, on the part of the Constitutional Convention, now assembled at Indianapolis, to ascertain whether a room can be procured in your city of sufficient capacity to accommodate the sessions of that body, and if so, upon what terms.

You will please communicate your answer to the Chairman of this committee as early as practicable.

We have the honor to be,

Very respectfully, yours, &c.,

MILTON GREGG,	} Com'tee.
A. L. WHEELER,	
T. J. BOURNE,	
DAN'L. KELSO,	
M. G. BRIGHT.	

To this note of your committee the Common Council of the city of Madison returned the following answer, which is hereby made a part of this report:

OFFICE OF THE COMMON COUNCIL
OF THE CITY OF MADISON, }
October 14, 1850. }

GENTLEMEN:—At a meeting of the Common Council of the city of Madison, holden this evening, in relation to your communication of the 12th inst., making enquiry whether a room of sufficient capacity could be obtained in the city of Madison (and upon what terms) to accommodate the sessions of the Constitutional Convention now assembled at Indianapolis, the following preamble and resolutions were unanimously adopted, namely:

WHEREAS, A committee has been appointed by the Convention now in session at Indianapolis, to visit our city for the purpose of ascertaining whether a suitable room can be procured in which said Convention can sit, as the Representatives' Hall is too small for their accommodation: AND WHEREAS, We have learned with pleasure that said Convention have it in contemplation to adjourn to this city, provided a suitable room can be obtained,

Resolved, therefore, That the Common Council of the city of Madison do hereby tender to the Constitutional Convention a suitable room for their accommodation, *free of charge*; said room to be well and suitably furnished.

The two rooms in view, either of which can be had, are of the following dimensions, viz: "Melodeon Hall," forty-five feet by sixty feet, with a ceiling eighteen feet high, and "Jenny Lind Hall," which is fifty by eighty-five feet, with a ceiling fifteen feet in height, both of which halls are finished in fine style.

Resolved, further, That the clerk is hereby directed to furnish the Chairman of said committee with a copy of the foregoing preamble and resolutions.

[Signed] H. WATTS, President.
Attest, F. CRUMBAUGH, City Clerk.
To Messrs. MILTON GREGG, }
A. L. WHEELER, }
T. J. BOURNE, } Committee.
DAN'L. KELSO, }
M. G. BRIGHT. }

Your committee would further state that they made a personal examination of each of the Halls alluded to in the communication of the city council, and have no hesitation in reporting that either of them would be found sufficiently large to accomodate all of the members and officers of this Convention, far more comfortably than they possibly can be in this Hall. The "Melodeon" is on the second floor and accessible from the street by a very spacious doorway, and a flight of steps five and a half feet in width. This Hall is situated in the center of the city, although not on the main business street, is easy of access, and finished in good taste. It contains 2925 square feet, while the Representative Hall, now occupied by the Convention will be found to contain within the bar less than 1500 feet.

The "Jenny Lind Hall," although somewhat larger than the "Melodeon," is not so easy of access being on the third floor, it is, however, very eligibly situated on one of the principal streets, and the entrance thereto is by a stairway from five to six feet in width. Contiguous to each of these Halls are a number of well finished rooms which would be found well situated for committee rooms.

Your committee would further say, that they visited some eight or ten of the Hotels of Madison and ascertained that good boarding can be obtained at prices ranging from three to seven dollars per week. Besides, it is understood, should the Convention adjourn to Madison, that several private families will open their houses for the entertainment of as many of the members as they can conveniently accomodate.

Your committee would further state, that, sometime since, the Board of Directors of the Madison and Indianapolis Railroad Road Co. authorized their President (as this committee are informed) to tender the members of this Convention, in a body, a free passage over their Road to Madison and back again, at such time during the session as would best suit their convenience—and under these circumstances your committee are authorized to say that there will be no charge for conveying this Convention over their road should they determine to adjourn to Madison. Your committee are deeply sensible of the fact that this Convention cannot continue to hold its session in the Hall now occupied by them, without subjecting themselves to very great personal

discomfort, and without greatly endangering the general health of this body. And they are equally convinced of the importance, if not of the necessity of a change in their location so soon as a more suitable room can be procured, nor can your committee see any good reason why the business of this Convention cannot be as well transacted in any other city or town in this State, where suitable facilities can be obtained, as in the city of Indianapolis. Your committee therefore recommend the adoption of the following resolutions:

Resolved, That a proper regard for the health, comfort, and convenience of this body imposes the necessity of procuring another and more suitable place for their deliberations, and that it is expedient to abandon the Hall now occupied by the Convention, so soon as a larger and more comfortable one can be obtained, properly fitted up and furnished for our accomodation:

Resolved, That this Convention accept the tender of a Hall made by the Common Council of the city of Madison, and that when we adjourn on Friday next we will adjourn to meet at 2 o'clock on the following Monday in the Melodeon Hall in the city of Madison.

The report having been read by the Secretary—

Mr. WOLFE moved to amend the Resolutions reported by the committee, by striking out all after the word "resolved" and inserting the following. "That the Convention will continue to occupy this Hall during its deliberations and until it shall have completed the labors assigned it."

The question being upon the adoption of the amendment.

Mr. PETTIT said, that before voting he simply wanted to state that he should vote against the amendment, and he would give the reason why he should do so: for it might look as though he desired to go to Madison, which he certainly did not. He would as soon think of going to the moon. He was not going to vote for the substitute, because its adoption would bind the Convention to remain in his hall, which might not be the best thing that could be done.

Mr. RARIDEN said, if the Convention was going to continue its sittings in this Hall, or in any other Hall in this town, he would say, let it be decided upon at once. What was the object to be attained by going to Madison, unless it were to get a hall better calculated for the accomodation of the Convention. The next consideration in this matter was, could not a better hall than this be procured in this town? He had been appointed upon a committee to procure such a hall, and they had found two halls which could be procured, of ample size to accomodate this body—the Baptist Church and the Masonic Hall. Then why not occupy one of these? Was it a feeling of economy which prevented them from doing so? He would put

that question; for he had heard it suggested that the proprietors of these buildings had manifested a disposition to extort from the State an enormous rent. That might be so, and if so, it was certainly a very wrong thing. But, like other men in the transaction of business, these proprietors had found out that it always required two parties to make a bargain. He would consider for a moment the economy involved. He supposed the price demanded for these Halls to be extortionate. The price demanded by one company was twelve dollars per day, amounting to seven or eight hundred, or, perhaps a thousand, dollars, for the whole session. On the other hand, he affirmed, that if the Convention were to resolve to-day upon this proposition to go to Madison, no business of importance could be transacted by this body till next Tuesday morning, while the State expenses would be going on at a rate of about five hundred dollars a day. [A voice, "six hundred."] He put it at five hundred, to be within a just estimate. This would be the cost of removal, besides other expenses of going and coming, and besides this, it would dissipate everything like harmony and good feeling between the two towns. He had a very high opinion of the people of the town of Madison. Whatever may have been said about that town, he remembered the time when she reached forth her arm and saved the sinking fortunes of the State, by her assistance rendered toward the completion of the Madison and Indianapolis Railroad. But towns would always act for the advancement of their own interests, and if there were gentlemen of that town who were desirous of subverting their own private ends, he had no kind of objection to it. He himself had found nothing but kindness and hospitality both there and here in Indianapolis.

But he was discussing the question of economy on behalf of the State of Indiana, and he could not but think it an unwise expenditure to occupy five or six days with this removal, for the sake of removing the body away from all the sources of knowledge to be found in the archives of the State. And here also was the State Library opening all its treasures of knowledge to members—they could not remove that.

But there was another thing in this question: Had not the people a right to look to the State for a fulfillment of all her obligations to her citizens, and should not the people be allowed to realize all their just expectations of the State? And had not the people a just right to expect that all the public business of the State would be transacted in the town of Indianapolis? Had not the public money been profusely expended in this town? Had not the State, in this way, induced men to give high prices for property, and to come here and establish themselves for life? Moreover, had not the State given the world, and especially men of business and those engaged in trade, to understand that there was

to be such a convocation here as this Convention, and had not these men risked the investment of their capital with a view to meet the wants of this Convention? Would it be just then toward these men of business for the Convention to adjourn now, without, in his estimation, any adequate cause for so doing? Because one or two individuals had manifested a disposition to extort from the State to the amount of eight or ten hundred dollars, was that to be a justification for removing the Convention away from all the conveniences about this building, and from all the archives of the State? He was decidedly in favor of remaining in this town, but against remaining in this Hall; for he did not think the public expectation could be met here, where so many men were brought into so small a space. They might feel well enough toward one another, but they could not do the public business amidst so much jostling and elbowing, a thing which could not be avoided here. What was ten or twelve hundred dollars toward the accommodation of a body of men called together to perform the most responsible work which had been transacted for the State for more than a generation past, the business of altering and amending the fundamental law, a work which was probably to stand for a generation to come.

He regretted that he could not say more, but he felt that his health would be hazarded if he went more at length into these considerations. He desired most of all to say, that gentlemen should have no feeling upon this subject. If they chose to adopt the resolutions let it be done, or else let them refuse to do so. Or if it should be their choice to remove from this Hall to some other in this town, let them just authorize the committee to contract for the Church or the Masonic Hall.

Mr. COLFAX said, the gentleman from Wayne (Mr. Rariden) had anticipated him in many things upon which he had intended to remark, and which he would not repeat. He held different views in regard to the powers of the Convention, from those which had been advanced by several gentlemen in the discussion on the State Printing; but he did not intend now to re-open that discussion. He merely mentioned this by way of explanation, because it was his intention to look into the law under which the Convention was assembled. He did not think the Convention was clothed with such absolute authority as was claimed by gentlemen the other day. He believed this body to be the creature of legislation, which carried out the popular will in calling the Convention together; for even the place where they should hold their sessions was provided by law and the expenses are paid by special authority of law.

After all, this Convention had been sent here to perform a duty, which could not, in constructive power, compare with the business of legislation. The Legislature could pass the

most important laws, affecting the interests of the whole people, which would go into force by the legislative action of that body. All we can do, as had been before stated, was, to act as a grand committee of proposition. The Convention could make only a CLAY IMAGE, which can be vivified only by the breath of the people. Their labors would amount to nothing without the ratification of the people—unless that people at the time of their voting upon the proposed New Constitution, give to it vitality by affirming our action. It might be with them, as with the first Wisconsin convention, whose labors being submitted to the people were rejected; and another convention was necessarily convoked to make another constitution more conformable to the wishes of their constituents. But he only offered this statement as a reason for the reference which he was about to make to the law which authorized this Convention.

The law showed distinctly that it was intended that the convention was to stay here at the Capitol. It provided that the Delegates should assemble here and organize for the election of a President, and in the close of Section 11, it was specially provided that the members should have the use of the books in the State Library, in which could be found many important volumes, valuable to the members of the convention for information on the various subjects that will come before them. Now the Legislature certainly did not anticipate that they were to pack up the State Library and the Librarian (Mr. Dillon,) upon the top of it, and carry all of them on a freight car to Madison. No, they expected the Library to remain here, of course, and we with it.

Again: in case of vacancy by death or resignation, how was the new member to be qualified? The law provided that members were to be sworn in by one of the Judges of the Supreme or Circuit Courts, or some officer of the county of Marion, authorized to administer an oath. Fortunately, there are in the convention three judges who can perform this service. But supposing there were not? and the convention sitting in the "Jenny Lind Hall," as it is called at Madison, were about to swear in a new member, they would have to send all the way here, to Marion County, to procure an officer to administer the oath, while the new member waits in the lobby until the cars can bring that officer there.

But it might be contended that there was a precedent for this removal in the act by which the Constitutional Convention of Ohio adjourned from Columbus to meet again in Cincinnati. But what were the circumstances in that case? The Convention were resolved to adjourn over the warm weather until the first Monday in December. They had but one convenient hall for the accommodation of a deliberative body, in the city of Columbus; and on the first Mon-

day of December the Legislature was to meet there. That body therefore, had a superior right to the building; and hence the absolute necessity for the removal. In an exactly similar case, the precedent might have weight here: as it is, it has none.

But with reference to the argument of convenience which had been already appropriately referred to by the gentleman from Wayne, (Mr. Rariden.) Here was the State Library and all its contributions to the stock of general knowledge, which members of the Convention ought to possess; and going to Madison would completely throw them out from the enjoyment of this important advantage. The State officers were here, and they were placed by the Legislature in a kind of connection with this body, with authority to command their services if needed. They would be frequently called upon for information upon various subjects of vast importance to the deliberations here. One or two of these resolutions of inquiry had been passed already. But if they were to go to Madison, all of these facilities for information would be placed further off. Further more, on the score of *economy*, of which the friends of the Madison change have talked much, there was the consideration of *extra mileage* to be reckoned amongst the expenses of the proposed removal. The whole 150 members of the Convention would have to travel 86 miles each to Madison, and fully two-thirds of them, 100, would be compelled, at the adjournment, to return home via Indianapolis. This would make 21,000 extra miles to be paid for amongst the expenses of the Convention, amounting to \$2,625; which with several days that will be lost by the time spent in the removal, with the confusion that would prevent action for a short time after, at \$600 per day, would make the extra expenses incurred by this removal at least \$4,000.

Again: the local presses of the State are deeply interested in the proceedings of this body, in copying them for their readers, and thus diffusing reliable and full information of our acts. They have, therefore, effected an exchange with one or all the papers here, some of which are large enough to publish either full reports by their reporters, or the entire Stenographic report of the debates if that is ordered. But the papers at Madison are smaller in size, as is well known—they could furnish only brief reports—and their exchange with the local press being much more restricted, would prevent as extensive a dissemination of our proceedings amongst the people.

Whether the Convention would continue to sit in this Hall, was a matter of indifference to himself, personally. He would not insist upon anything only that the Convention should not remove beyond the limits of the Capital of the State. He insisted upon this, because gentlemen were all now settled down here, and established in their several boarding places: and be-

cause he did not believe that the people of Madison were in a situation immediately, not having anticipated such a removal, to accommodate them similarly.

Besides this, and more than all, the success of the proposition would not be a compliance with the expectations of the people. The people had not expected them to make a sort of traveling menagerie of this body; and, he ventured to say, that no law could have passed the Legislature contemplating a session of the Convention at any other place than at Indianapolis. If, then, gentlemen had come here fairly to represent the wishes of the people, they should be willing to give to the law under which they had assembled, the only construction which it would bear. In this way they would discharge their duty as representatives, for, although they claimed such absolute and uncontrollable power, they could not divest themselves of their representative character.

In regard to the proposition to go into the Masonic Hall, the citizens of Indianapolis had certainly made a most liberal proposition, if the change of rooms was desired. They had said to the committee—"Set your own price for the rent of the Hall, whether one dollar, or five, or eight dollars, per day, and we will ourselves pay the rest." The Legislature had contemplated that this Hall might be found too crowded, for they had expressly authorized the State officers to hire another room, but had only authorized them to offer a sum which all considered inadequate. But now, if we do desire for health, or comfort, or convenience, to change our present quarters, what fairer or more honorable proposition could we have asked or expected of the liberal citizens of this town?

For these reasons he hoped the report would not be adopted.

Mr. DOBSON said, this seemed to be a kind of three-sided question. He was in favor of taking the vote upon the proposition of the gentleman from Sullivan (Mr. Wolfe) first. But he wanted, first of all, to know whether they were to leave this Hall or not. If they were to leave this hall, then it was to be determined where they would go. For one, he was for remaining right where he was. This was the people's Hall. It had been provided for the accommodation of the Convention, and he thought wisely provided. Connected with this Hall were the committee rooms, the State Library, the public records, besides other conveniences which he would not stop to enumerate; and here was the advantage of the neighborhood of the public offices, which had already been referred to. On the other hand, if the Convention should determine to go to Madison, it would occupy at least five or six days, at a cost of six hundred dollars per day, before they could get under way with the business of the Convention there, making three thousand dollars, aside from the mileage estimate of two thousand five hundred dollars, by

the gentleman from St. Joseph, (Mr. Colfax,) making five thousand dollars difference in the public expenditure, between staying here and going to Madison. He admitted that they were crowded a little here, but he would prefer to be crowded a little himself, rather than crowd out their constituents. They were provided with lobbies here, where their constituents could come in and inspect their doings. He was always glad to see them around, and he could wish to see more of them. If they removed their sittings from this Hall, he would ask where could they get another with accommodating lobbies! Should they go into a concert-room, their constituents would either have to go into the pit, or have their hats chalked in the hall, so that the door-keeper could tell whether to put them out or not. Again, the people had sent them here to transact business at the expense of the State, and it was a question with him whether many of their constituents at home were not more crowded than they were. They had a good roof over them, and solid walls around them, and good chairs to sit upon. Whoever mingled with the people would find many of their constituents who were not better accommodated. And gentlemen should remember, that when they themselves go upon the stump, they are content to sit upon the lowest seat, and lie upon the worst bed; and they should remember how they used to kiss all the little ragged children, and swear, at every house, that they had the prettiest children in the world. But now, so soon as gentlemen had got here, they seemed, all at once, to have become very choice about their accommodations. For himself, he had taken a seat out there upon the confines of the Hall; and he preferred to retain it rather than take the chance of a removal; for if they cut loose from that Hall, they might go to Madison, or Cincinnati, or Louisville, or wherever they choose, he did not know but that they might congregate upon the Grand Prairie. It was reasonable to suppose, that about the time of the organization of the body they would be more crowded, than after the time when the committees begin to work. For himself, he expected, for about half the time, whilst the speaking would be going on, to be amused and interested outside of the bar. He was on the confines now. He had selected a place there for his seat, about two feet one way and five feet the other. This space he divided with another member, and, although he was the longest-legged man but one in the Hall, yet he had learned how to get along well enough.

Mr. KENT moved to commit the resolutior and amendment to a select committee of "five," with instructions to enquire by letter whether a more commodious room and cheaper board cannot be secured at some other point on the Ohio river, and to report the result of such investigation to this Convention on the third Monday in December next.

The question was taken on the motion of the

gentleman from Floyd, and it was decided in the negative.

Mr. KELSO said, that as to whether they should leave this Hall or not, he cared very little. He was to some extent like his friend from Owen. He had been raised in the bush, and, as the common saying was, rocked in a sugar trough, and accustomed to inconveniences all his life; and he believed he could endure the inconveniences of this Hall as well as any other man; for that it was extremely inconvenient and uncomfortable no one would dispute: but, as he had said, inconvenience and discomfort he had been accustomed to. The question first to be settled, however, was, whether they would leave this place or not.

He did not think that his friend from St. Joseph knew anything more about our rights and privileges than he supposed he did. [A laugh.] According to that gentleman's opinion this Convention was the creature of the Legislature. Suppose, said Mr. Kelso, the Legislature had taken it into their heads to enact as a part of the law relating to this Convention, that we should make certain amendments in the Constitution and none other; I ask would they not have the same right to do so, as to insist in the act what they have inserted? and would we be bound to comply with such a provision of the act as that? I do not believe that any man here would rise and say that we would. Seven-tenths at least of the members of this Convention, I am sure, know better. I maintain then that we have the power, under the law, to remove from Indianapolis and go wheresoever we please, so that we keep within the limits of the State.

Mr. COLFAX. Why must we keep within the limits of the State.

Mr. KELSO. Because we have no business out of it.

I sir, was one of the committee that was appointed to ascertain whether a more convenient Hall could be obtained in Indianapolis. The committee promptly discharged their duty, and reported to the Convention that a proposition was made to us such as we did not feel at liberty to recommend the adoption of; there was not a single member of the committee in favor of hiring the Hall that was offered to us, at the price that was demanded for it; we therefore simply submitted the proposition, and it was laid on the table. A committee was then appointed to go to Madison and ascertain what accommodation could be obtained for the Convention at that place. I was one of that committee. The duty entrusted to it has been faithfully performed, and the facts correctly stated to the Convention. Now what the Convention may determine upon is a matter that I care very little about.— If you determine to remain here I am satisfied; but if you determine to remove I claim a voice as to where we shall go.

I am rather in favor of leaving it an open question to be decided hereafter, and for that

reason I shall vote in favor of the amendment. I would sit here rather than accept the Masonic Hall at an exorbitant price. Indeed, I am not in favor of taking it upon any terms. When they thought they had us by the collar, and that we could not escape, they were disposed to take from the public Treasury the exorbitant sum of fifteen hundred or two thousand dollars, for its use. I am opposed now to having it at any price.

Mr. WOLFE said, that it was not his purpose in introducing the amendment to give any preference to either Indianapolis or Madison. He had introduced it in justice to their constituents at large. He believed this was the place in which the Convention should sit, but if the Convention should determine otherwise, then he was for going where the best accommodation could be procured.

Mr. HADDON moved to amend the amendment by adding the words "unless this Convention may find it to be, to the interest of the State, and comfort of said Convention to move to some other room in this city."

The question was taken on the amendment to the amendment, and it was rejected.

Mr. DUNN of Jefferson said, that he did not intend to detain the Convention with a speech. He desired to say, however, that if the Convention should determine to remove to Madison, it would be very gratifying to his feelings and to the people of that place and its vicinity. His constituents would be pleased to have the opportunity of attending the meetings of this Convention, of listening to the debates that will take place, and of making the acquaintance of the Delegates, some of whom have already distinguished themselves in the councils of the State and Nation, and others of whom will, no doubt, hereafter become equally distinguished.

A committee of your appointment has visited Madison to ascertain whether suitable accommodations for the Convention could there be procured, and upon what terms. The report of that committee is before you. It does not become me to say whether the citizens of that place have tendered to you a hospitable welcome, nor to contrast the spirit manifested by them with that which has been exhibited here. I have nothing to say as to the compensation demanded of this Convention for the use of the Masonic Hall, or other houses in this city. If those having charge of these buildings thought they could drive a hard bargain with us and have shown a disposition so to do, they have but manifested the selfishness of human nature. But, sir, in advocating this removal I wish to say nothing in disparagement of the citizens of Indianapolis. They have always treated me well, fully as well as I deserved, and I have among them many of my most valued friends and acquaintances. I do not consider that there is any thing in the law under which we are assembled that requires us to continue our sessions here. We may ad-

jour to any point in the State if it becomes necessary so to do for our comfort, health, or the convenient transaction of our business, and there is certainly nothing wrong in a fair competition for whatever benefits may accrue to the place in which our sessions may be held. I am influenced by no hostility to this city in the vote I shall give. The citizens of Madison are neither envious nor jealous of the growth and prosperity of Indianapolis, but rejoice in her improvement as they do in that of all parts of our State and country, and I have only to regret that on some previous occasions, a similar feeling has not been manifested towards Madison. Permit me to say that, in my opinion, a very unjust and unfounded prejudice against Madison, exists in many parts of our State—a prejudice that much industry has been employed to extend, and one which a better acquaintance with our city and her citizens would do much to remove; and this, sir, is one reason why I desire that the members of this Convention, representing every part of the State, may have the opportunity of spending a few weeks in the city of Madison.

But, Mr. President, whether we shall remove from this city or not, I feel anxious that we should leave this Hall. I have had the experience of but one session here, you have had the experience of several, and I have no doubt that every person who has served a session in this Hall must be aware of the great sacrifice of health to which the members of the Legislature are here subjected. My health was seriously impaired the winter I was here, and I attribute the injury I sustained to the foul atmosphere I was compelled to breathe in this Hall. We do not feel this evil now, while the weather is pleasant, the windows all open, and we have the air fresh and pure from the surrounding country; but, sir, when the cold weather comes, as soon it will, and these windows have to be closed, and we are shut up here in these crowded seats, and our lobbies are thronged with visitors, all breathing over and over again the same atmosphere, until it becomes foul and sickening, then sir, we will all realize how unfit is this Hall for the accommodation of such an assemblage. Some of us will not only be compelled to leave here on account of our impaired health, but unless we are more fortunate than many who have occupied these seats before us, may be sent to our long homes in consequence of the want of any proper arrangements for the ventilation of this Hall. Moreover, I am informed that the space between the floor and the ceiling below was filled with mortar, and of course that makes the floor very cold; and gentlemen sitting here, especially when their boots are damp, will be liable to take severe colds before they are aware of it. Sir, this Hall is but little better than a slaughter house of the Representatives of the people. Nor is this the only objection. It is badly construct-

ed for the purposes of a deliberative assembly. It is not an easy Hall to speak in, and of course is not a good one to hear in. Indeed, if the architect who constructed this Hall had undertaken to violate all the laws of health and acoustics in its construction, he could not have been much more successful than he has been. I think, therefore, that we ought to endeavor to procure some place for our meetings where we can be more comfortably situated and our health exposed to less danger.

This will prove the better economy in the end. It is impossible for us to continue in session long at a time here, and while we are so uncomfortably situated we will be in session but a few hours per day, and consequently it will be a greater number of days before our task is accomplished.

A few words in reply to some of the objections urged against the proposed removal to Madison. One gentleman suggests that there are no newspapers there capable of publishing the proceedings of this Convention. There is one daily paper published here, and there are two daily papers published there, one of which is near the size of the Daily Journal, and both of which would, no doubt, be promptly enlarged if it should become necessary for them to publish our proceedings and debates.

Another gentleman seems to think that there is a great and unusual concentration of light and knowledge in this city, especially in the State Library. If this is the case, the facilities of communication between the two cities is so great that Madison can readily borrow a few santillations of this light if necessary, and all the books and documents from here that we possibly can need, can be procured with the greatest convenience. In regard to the mileage of the delegates, the removal can occasion but little difference, for generally about the time that we shall probably adjourn, the roads are almost impassible, and in addition to those who otherwise would return to their homes by the way of Madison, many of the delegates, some of them even living in the Wabash country will proceed to Madison and thence by water to the places of their residence, or as near to them as they can go by steamboats. Under the arrangement suggested by the committee it will cost the delegates nothing to go to Madison, and they ought therefore to charge no additional mileage for going there.

I wish, Mr. President, before I take my seat, to make an explanation with reference to the free passage in the cars to Madison, which the committee state they are authorized to say will be afforded to the members of this Convention, in the event of its removal. The President of the Rail Road Company, has not, in any manner, interfered in this question, and I do not wish that it should even seem that he had so interfered. The board of directors of the Company, at its last meeting, directed the

President to tender to the members of this Convention a free passage to and from Madison, at such time during the session as the Convention might designate; and I understand that the President, when applied to by the committee on this subject, stated that he should extend the invitation as directed, and the Convention might avail themselves of it if they pleased, and whenever they pleased, whether there was a removal or not.

And now, Mr. President, having occupied the attention of the Convention longer than I anticipated, I will only add, that, as one of the delegates from Jefferson county, however much I might be gratified by the adjournment of the Convention to Madison, I have not and will not now urge an adjournment. We are not there accustomed to invite our friends to partake of our hospitalities and then beg them to accept our invitation. If the Convention should go to Madison, I trust the delegates will not be disappointed in any of their reasonable expectations as to the accommodations they would there enjoy, as for myself, I would much prefer that we should remain here than that any such disappointment should occur.

Mr. STEELE said, he desired to make a few remarks; that he would promise not to detain the Convention long; first, as to the accommodations here. Gentlemen were complaining of being crowded. He recollected the first morning he came into the Hall, he traveled around and saw all the desks occupied. At last he came round to where he was now sitting, and importuned his friends to give him a place, and they did so, and ever since that time five of them had been sitting at two desks. He supposed other members were situated very much in the same way, but for his own part he had got quite used to it, and was now sitting quite comfortably among his friends. His constituents, according to his impression, had designated this legislative Hall as the place where the Convention should hold its sittings, and it occurred to him, that if they were to remove to Madison, or even to the Masonic Hall in this city, it would impose upon him the duty of returning at once to the bosom of those who elected him. He had come here for the express purpose of putting in execution what he understood to be the will of his constituents. This was the course he expected to pursue. He intended to vote for the amendment of the gentleman from Sullivan, and the vote of the Convention upon that amendment would decide the question and put it at rest. His friend from Switzerland had stated that he had been enured to hardships. He (Mr. S.) could say, also, that he had sat in legislative halls that were quite as small and inconvenient as this. He was quite as comfortably accommodated now as were the members of the Legislature who met in the old court-house; and as the gentleman had remarked, in relation to the situation of their constituents at home,

his experience during his canvass was, that he was frequently crowded into cabins, where there was scarcely room for the family, without the presence of strangers. It was true, also, that a great proportion of their constituency were living in small cabins, where the children were huddling around a small fire-place, glad of any shelter from the inclemency of the weather. He would add one further remark, and it was, that if the atmosphere of this house became unhealthy, and thus the sittings of the Convention in this place should be the means of taking the old man's life, he would have the consolation of knowing that he died in a good cause, and his epitaph should be "Old Billy died while in the discharge of his public duties."

Mr. PEPPER of Ohio said, that before voting upon the amendment of the gentleman from Sullivan, he would like to know whether there had not been submitted to the Convention by the gentleman from Marion, a distinct and separate proposition, which he was authorized to make, in regard to the use of the Masonic Hall.

The PRESIDENT said, that he would inform the gentleman that a proposition relative to that subject was presented yesterday by the gentleman from Marion, and that it was laid upon the table.

Mr. PEPPER, continuing, said, that he should vote against the amendment of the gentleman from Sullivan, for the reason assigned by the gentleman from Tippecanoe. He was not satisfied that it was right to remain in this Hall, although he was prepared to vote in favor of remaining in the city of Indianapolis.

Mr. OWEN said, he should not have said a word upon this occasion, had it not been for the introduction of the amendment of the gentleman from Sullivan. It appeared to him that they ought to consider exactly what it was they were voting upon. If the point to be decided, was whether they should remain for the present in this Hall, or remove from it, it would be a plain question, and one upon which they might vote without tying themselves up as to their future action; but as he understood it that was not the question. The question was, whether they should remove from this Hall, or whether they should remain in it during the whole session. That, he believed, was the tenor of the proposition as it stood.

Several MEMBERS. "Oh no!"

Mr. OWEN. Is not that it? I would like to hear the amendment read.

[The amendment was accordingly read by the Secretary.]

Mr. OWEN. Nothing can be more imperative. No matter what circumstances may arise, if the amendment be adopted we are to continue our sittings here until the close of our labors. Now, I think that is going too far. I remember reading in the history of England,

that in the reign of one of the Charleses there was a certain oath required to be subscribed by the students of the University of Oxford, I believe, not only abjuring the doctrine that subjects ought, under any circumstances, resist their King, but declaring also, that never, while they lived, would they believe in so scandalous a heresy! Now I am not for taking such a course as this, and placing a bar in the way of a change of determination. I am not prepared to say that I will not, at some future time, be in favor of a removal. I shall therefore vote against the proposition of the gentleman from Sullivan.

Now, as to our power to remove to any place we may choose, I can conceive—without claiming for the committee powers of an indefinite character—that, in the discharge of duty as delegates, we have the power to do all things that are necessary and reasonable; and that the Legislature, as to all expenses incurred for reasonable objects, would, to use an ordinary phrase, be bound to foot the bill—pay the expenses. The proposition made by the people of Madison is certainly a very fair and libelal one and I think the Convention ought to consider itself indebted to them. I think it would be well for us to consider what reason we shall assign when we go home and the question is put to us—"Why, did you remove from Indianapolis?"

I agree with the gentleman from the North (Mr. Colfax) that the expenses of removal will be very large. It is said that there is an offer to us that we shall be conveyed to Madison made free of expense; but, I ask you, if the members of this Convention will not be entitled to receive mileage if they choose to demand it? I ask you, sir, whether you will not be obliged to certify their accounts for additional mileage? I do not say that gentlemen may not make their constituents a present of this mileage, I say only that they are entitled, beyond all doubt, legally entitled to receive it. But the gentlemen from Jefferson has said that although some additional expense for mileage will be incurred, it will be counterbalanced by the smaller amount that will be due to the Southern members for mileage, at the close of the session. I think the gentleman is in error. Many, even of the Southern members, will be farther from home at Madison than here. I myself would be entitled to mileage for one hundred miles beyond what I should have a right to receive if the Convention remain in this place.

Again, it would be unreasonable to suppose that less than two or three days will be consumed in making the change from one place to the other, and that, at the expense of some \$600 a day, will amount to \$3,000. I do not believe that the removal, including additional mileage, will cost less than \$4000. Now, are we prepared to go to that expense? I will not

say that I am perfectly satisfied with regard to all the proposition made to us here; prices have been demanded that are nearly as high as they would be at Washington; but I have never been at any seat of Government, whether it be that of the U. States, Columbus, this city, or any other, where there has not been more or less of a disposition to make as much as could well be made out of the Government. That is natural; and, I must say, that I have not seen more, nay, I do not think I have seen so much of that spirit in this city as I have seen elsewhere, under similar circumstances.

With regard to the Masonic Hall and the propositions that have been made to us respecting it, I think we allow our feelings to carry us a little farther than is just or reasonable. I am not a member of the fraternity to which the Hall belongs, and have no personal interest in the matter; nor do I know what the risk attending our occupation of it, may be; but I know the owners have a perfect right to demand what they please for its use, and we have a perfect right to refuse to give it. If, after such refusal, they should decide to reduce their demand, be willing to accept one-half or one-fourth of the price first demanded, I for one, if they came down to a price that is reasonable, see no reason that should prevent us from closing the bargain. But this is aside from the immediate question before us. I rose chiefly to express a hope that we would not adopt an amendment which not only declares that we will not now remove, but that we will not any time hereafter.

Mr. HELM said he was opposed to the amendment because it offered no alternative but to remain here, and it was evident to every one that this Hall was not large enough to accommodate the members of the Convention. He was satisfied, notwithstanding what had been said about their constituents at home, that they were better accommodated than their delegates were in this Hall. They had at least a pure atmosphere to breathe, and that, said he, is a thing which we have not. Sir, if the amendment had proposed adjourning from this Hall to some other suitable building in this city, I should, perhaps, have supported it, provided the building could have been procured at a fair and reasonable charge. But I should vote against the amendment as it now stands, and in favor of the proposition for removing to Madison, in preference to remaining here.

Mr. MAGUIRE said, he desired to make a few remarks in reply to the gentleman from Switzerland. The gentleman (speaking of the proposition to rent the Masonic Hall) said that *they* had made one proposition, and finding that not acceptable, had found it necessary to make another one more liberal, thus showing a willingness to extort as much as they could from the Convention. Now, he would ask the gentleman to whom he had reference when he

said *they* had done so and so? Did he mean the citizens of Indianapolis?

Mr. KELSO said, he had cast no imputation upon the citizens of Indianapolis. All that he had said, was, that he, for one, was prepared, when an exorbitant demand was made, to go against it.

Mr. MAGUIRE said, that the gentleman had not replied to the point of his inquiry. He, Mr. M., had heretofore explained that the citizens of Indianapolis had nothing more to do with the Masonic Hall than the members of the Convention themselves, and consequently they had made no proposition to the committee, respecting it. The committee had made no inquiry of the citizens respecting the procuring of a Hall, for the accommodation of the Convention. They were confined by their instructions to the procuring of the Masonic Hall, and, as he said before, the citizens had no control over it. After the committee made their report to the Convention, setting forth the terms upon which that Hall could be procured, a number of responsible men, in behalf of the citizens, had guaranteed that the amount demanded for the Hall, over and above what the Convention deemed reasonable, would be made up by the citizens, no matter what the sum agreed upon by the Convention might be. He had presented their communication on this subject, to the Convention, some days ago, and it was now lying on the table of the Secretary. No application had been made to the citizens of Indianapolis for proposals to furnish a convenient place for the sittings of the Convention, and, therefore, no proposition had been made by them, except as before stated. No communication had come from our City Council, because no application had been made to them, as had been made to the City Council of Madison. He took it upon himself, however, to say that the citizens of Indianapolis were always ready to respond to any appeal to their liberality, and a portion of them had come forward in this instance, voluntarily, and agreed to pay the balance upon the rent of the Hall. This was all that could, with propriety, be done under the circumstances, without being obtrusive.

It was not his purpose to enter into the defence of the people of this place, as to complaints made as to the accommodation of members, &c. He believed that there was not more discontent on that subject, than was common at other seats of Government. He felt it his duty, however, to say, for the gentleman who represents the Stockholders of the Masonic Hall, who had no opportunity of defending himself on this floor, that he was merely the agent of the owners, and was without discretion in the matter. The Hall was the property of stockholders living in various parts of the State, and its profits were understood to be devoted to charitable purposes. He knew that gentleman

well, and he felt bound to say that no charge of extortion could be justified by any conduct of his, in the course of his life. His personal interest in the Hall was quite inconsiderable, and he had devoted much of his time and attention in the superintendence of its construction, without compensation. This much he felt bound to say, in order to do justice to that gentleman, and to correct an error into which some gentlemen seemed to have fallen.

He would not enter into an argument to show that it would not be proper for the Convention to remove from this city. The objections to such a movement had been well stated by others. He would take no part in the discussion of that question, lest he might be supposed to be actuated by interested motives. He was willing to sit in this Hall, or go any where else in this city, as the Convention might determine to be best. He would vote for the amendment of the gentleman from Sullivan, although he would prefer that the question of remaining here or removing to the Masonic Hall, should be left to the discretion of the Convention hereafter.

Before he took his seat, he desired to make a remark in reply to the gentleman from Jefferson (Mr. Dunn). Whether the people of Madison regarded our interests more than we regarded theirs he would not undertake to determine; nor could he see that that matter had any legitimate bearing upon the question now under consideration; but he would say that there was no prejudice existing here against the people of Madison. On the contrary, the people here are gratified at the prospect of seeing, before many years, a large and prosperous city there. The interests of the two cities are in no respect antagonistical. He had the highest respect for the gentlemen, all of them, whom the city of Madison and the county of Jefferson had elected to represent them in this Convention. They were able and intelligent, and would reflect honor upon their constituency. He hoped, however, that in the allusion made by the gentleman from Jefferson, to the illiberality of the people of this city, he did not mean as much as his remarks might seem to import. Sir, I repeat, the people of this place have no jealousy of, or hostility to, the citizens of Madison. There is no cause for such a feeling. As to the procurement of a hall, in which to hold the sessions of this Convention, he would repeat that the citizens of Indianapolis stood ready to respond to any reasonable demand that could be made upon them. This was all he desired to say. The Convention had now the whole matter before them, and could determine the question according to their pleasure.

Mr. KELSO said, that the gentleman from Marion seemed to be extremely anxious to correct an error, into which he supposed he (Mr. K.) had fallen. Now, continued Mr. Kelso, I undertake to say I have fallen into no error.

And it appears to me, somewhat strange that the gentleman should come here to defend the people of Indianapolis, when nobody had attacked them.

Mr. MAGUIRE said, that the gentleman had cast an imputation upon them by implication. The gentleman, by the use of the word *they*, had left it doubtful to whom he referred.

Mr. KELSO (continuing). Well, sir, I should suppose that if any man is qualified for a seat here, he would understand the meaning of plain English language.

We made application to Mr. Sheets for the use of the Masonic Hall. He returned a reply to the committee, containing a statement of what was the precise truth of the matter, I apprehend, and in that reply he said, that he was the mere agent of the stockholders of the concern. Now would it have been proper for me to say that it was his act—that he did it? No, sir. He advised us in his statement that he did not speak for himself, but for the Stockholders.

And I said I thought their demand exorbitant, and it was made in such a way as to warrant us in not having anything to do with it; I think so now. We did not, it is true, apply to the Common Council of Indianapolis. We had no inducement to do so. Nobody intimated to us that we would receive anything from that quarter; and nobody has said anything about the liberality or illiberality, of the citizens of Indianapolis—about the high price of boarding—about the imposition practiced by landlords, and all that—save the gentleman himself. He seems to think it necessary to defend the people of Indianapolis before, they had been assailed. Now, the committee were advised that there were two halls in this place, either of which we might obtain—one under the charge of the Baptist society, the other that of Mr. Sheets. We made a written application to each, and received a written reply. In the reply of Mr. Sheets, he defined his position distinctly, and nothing can be said against him. I have not heard any one intimate that Mr. Sheets was an extortionate man, or that he expected to extort a single dime from the Convention. I could not have made any such accusation against him because I knew he was not acting for himself. I said that, in my judgment, the demand was exorbitant, and my own judgment is as good for me as anybody's judgment—and that I, for one, was unwilling to accede to it; I say so yet—and I think so yet; and that if we can get a suitable place elsewhere, in Indiana, I care not if it is in Michigan City, or anywhere else, where a spirit of liberality would be manifested by the citizens of the place, I would take it in preference to taking the Masonic Hall, for which they wished to charge us \$15 or \$20 per day. I wish it to be understood that I speak only for myself, and not for anybody else. I do not know that any other gentleman on the floor entertains the same feelings that I do, nor do I

care. The propositions made to the committee are public property, and we have a right to speak of them precisely as we think. I have attacked no man, or set of men, nor have I fallen into any error. All that I have said is strictly correct, and I repeat that I spoke only for myself.

Mr. RITCHEY said, that he should not have troubled the Convention with any remarks had it not been for what was said by the gentleman from Jefferson, in reference to the unwholesomeness of this Hall. I have had the honor, said Mr. Ritchey, of being a member of the Legislature, and of serving two sessions in this Hall, and have also been in other halls, and so far as my experience goes I can not see the least difference. It is true that I have never served here during a session of the Legislature without materially injuring my health, but I disagree with the gentleman in the assertion that it is the unwholesomeness of this Hall that occasions the mischief. I cannot see why this Hall may not be as well ventilated as any hall in Madison, or as the Masonic Hall in this city.

Sir, I do not believe that the reason why members of the Legislature or of the Convention suffer with ill health, is to be found in the unwholesomeness of the atmosphere in this Hall. It is my opinion, and I give this opinion as a medical man, that the friction of mind, the agitation, the sedentary habits of members, together with indulging too freely at the table, and other indulgences, are the occasion of the bad health which gentlemen experience here; and I apprehend that if we were to adjourn to the Masonic Hall the same causes would affect us quite as much. If we remove this Convention to Madison we shall be subject to the same evils and inconveniences. The excitement, the indulgences, and all things that tend to impair health, will be present even there, and we shall be quite as likely to suffer in health as we would be, if we remain here.

Sir, I am in favor of remaining in this Hall, and I am glad that the gentleman from Sullivan has moved the proposition that he has. But if we remove from this Hall I am for going to Madison. I think the people of Madison deserve our thanks for the generous offer they have made us, and I hope that some gentleman will move a vote of thanks. I should not be willing to tax the people of Indiana for the rent of any house in which to hold the sittings of the Convention.

If the people of Indianapolis should now tender to us the free use of a hall in this city, I should prefer to sit here, rather than accept an offer extorted from them by the liberal offer of the people of Madison. Sir, I have nothing to say against the people of this city. They have been long in the habit of asking what prices they please, and I apprehend that wherever we may go we shall find the disposition of the peo-

ple pretty much the same. Whenever people have it in their power to obtain high prices they will not fail to avail themselves of the opportunity.

If we continue to sit here there is no doubt we shall suffer in health, but it will be so wherever we may go, for I do believe that the causes I have mentioned have more to do with producing disease than the unwholesomeness of the atmosphere of this Hall. We are, to be sure, inconveniently situated, but it is better to suffer a little inconvenience than to run the risk of incurring still greater. I hope that the amendment of the gentleman from Sullivan will be adopted. Some gentlemen will not vote for it because it settles the question definitely. I am for settling the question. The Legislature have deferred their meeting so that we may have ample time to complete our labors before their next meeting.

I hope that this is the last time that the question of removal will be mooted in this Convention.

Mr. BASCOM said, he should vote against the proposition of the gentleman from Sullivan, not that he desired to go to Madison, for he had made up his mind to vote against the report of the committee, but because he did not think it right that they should bind themselves to sit in that Hall through the whole session; neither would he at present favor the proposition to go to the Masonic Hall. He would not at this moment vote twelve and a half cents a day for the use of that Hall. Neither was he in favor of allowing the citizens of this place to pay for it for them. His constituents had not sent him here to ask the citizens of this place to pay part of the rent of a hall for the use of this Convention, and he was not in favor of accepting any such donation. He agreed with the gentleman from Switzerland, and he was glad to find a majority of the Convention of the same opinion, that the proposition to take the Masonic Hall upon any terms ought to be rejected; but that was no reason why they should sit here, if they could procure a better place. He did not think that they would be justified, however, in going to Madison. He should vote against the amendment of the gentleman from Sullivan.

Mr. NAVE said, that as there seemed to be some difficulty in the minds of gentlemen here as to the vote to be taken, he had risen, not to make a speech, but merely to propose a mode of removing that difficulty. He proposed to amend the amendment of the gentleman from Sullivan, by adding the following: "Unless it became imperiously necessary to adjourn to some other place."

The question being put on the amendment to the amendment, it, was rejected.

The question recurring on the amendment of the gentleman from Sullivan,

Mr. MORRISON of Marion said, he did not intend to detain the Convention with anything

like a speech, for everything that he could have said had been much better said by others, but he desired to explain briefly the reason why he should vote for the amendment of the gentleman from Sullivan. He intended to vote for it because it would settle a vexatious question, and he knew very well that as long as that question was unsettled the business of the Convention would be retarded. He looked upon it as settling definitely the question whether they would remain in Indianapolis or not, and it was very material that that point should be determined.

I do not, said Mr. M., mean to be out-complimented by the people of Madison. I am ready to cultivate every kindly feeling with them. They have shown themselves very liberal; but I maintain that we have rooms better suited for the accommodation of the Convention than can be found in Madison.

I shall vote for the proposition of the gentleman from Sullivan, as I have said, for the reason that it settles the question of removal. But it does not appear to me that we shall be bound by it, if a sufficient cause for removal should arise hereafter. We shall still have power to rescind the resolution, and to go where we please at any time.

The yeas and nays were demanded upon agreeing to the amendment, and, being taken, were as follows:

Those who voted in the affirmative were,
Messrs. Allen, Anthony, Beach, Beard, Berry, Biddle, Bryant, Butler, Carter, Chandler, Chapman, Chenoweth, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Colfax, Crawford, Davis of Madison, Dick, Dobson, Dunn of Perry, Farrow, Foley, Garvin, Gootee, Gordon, Graham of Miami, Graham of Warrick, Haddon, Hall, Hamilton, Harbott, Helmer, Hendricks, Hitt, Hogin, Hovey, Huff, Kendall of Wabash, Kendall of Warren, Kindley, Lockhart, Maguire, March, Mather, Mathis, May, McClelland, McLean, Miller of Fulton, Miller of Gibson, Milroy, Moore, Morrison of Marion, Morrison of Washington, Murray, Nave, Nofsinger, Read of Clark, Ristine, Ritchey, Sherrod, Shoup, Sims, Smiley, Snook, Steele, Stevenson, Tague, Taylor, Todd, Vanbenthusen, Wallace, Wolf, Wunderlich, Yocum, and Zenor—78.

Those who voted in the negative were,
Messrs. Alexander, Badger, Balingall, Barbour, Bascom, Bicknell, Blythe, Borden, Bourne, Bowers, Bracken, Bright, Carr, Cookerly, Davis of Parke, Davis of Vermillion, Dunn of Jefferson, Duzan, Edmonston, Fisher, Foster, Frisbie, Gibson, Gregg, Holliday, Hardin, Hawkins, Helm, Holman, Howe, Johnson, Jones, Kelso, Kent, Logan, McFarland, Milligan, Mooney, Morgan, Mowrer, Niles, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Read of Monroe, Schoonover, Smith of Ripley, Smith of Scott, Spann, Tannehill, Terry, Thomas, Watts, Wheeler, Wiley, and Mr. President—59.

Mr. NAVE moved to amend the amendment by adding the following: "Unless it shall become imperiously necessary for the Convention to adjourn from this Hall before the final adjournment, to any other room in this city."

The question was taken on the amendment to the amendment, and it was not agreed to.

The question recurring upon the amendment proposed by the gentleman from Sullivan, (Mr. Wolfe,)

The yeas and nays were demanded, and ten delegates rising to second the demand, they were ordered.

The yeas and nays were then taken, with the following result:—yeas 78, nays 59.

Those who voted in the affirmative were,

Messrs. Allen, Anthony, Beach, Beard, Berry, Biddle, Bryant, Butler, Carter, Chandler, Chapman, Chenoweth, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Colfax, Crawford, Davis of Madison, Dick, Dobson, Dunn of Perry, Farrow, Foley, Garvin, Gootee, Gordon, Graham of Miami, Graham of Warrick, Haddon, Hall, Hamilton, Harbolt, Helmer, Hendricks, Hitt, Hogin, Hovey, Huff, Kendall of Wabash, Kendall of Warren, Kindly, Lockhart, Maguire, March, Mather, Mathis, May, McClelland, McLean, Miller of Fulton, Miller of Gibson, Milroy, Moore, Morrison of Marion, Morrison of Washington, Murray, Nave, Nofsinger, Read of Clark, Ristine, Ritchey, Sherrod, Shoup, Sims, Smiley, Snook, Steele, Stephenson, Tague, Taylor, Todd, Vanbenthusen, Wallace, Wunderlich, Yocum, Zenor.

Those who voted in the negative were,

Messrs. Alexander, Badger, Balingall, Barbour, Bascom, Bicknell, Blythe, Borden, Bourne, Bowers, Bracken, Bright, Carr, Davis of Parke, Davis of Vermillion, Dunn of Jefferson, Duzan, Edmonston, Fisher, Foster, Frisbie, Gibson, Gregg, Holliday, Hardin, Hawkins, Helm, Holman, Howe, Johnson, Jones, Kelso, Kent, Logan, McFarland, Mooney, Morgan, Niles, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Read of Monroe, Schoonover, Smith of Ripley, Smith of Scott, Spann, Tannehill, Terry, Thomas, Watts, Wheeler, Wiley, Work, Mr. President.

So the amendment was adopted.

On motion,

The Convention then adjourned until two o'clock, P. M.

AFTERNOON SESSION.

The pending question being the adoption of the resolution reported by the Madison committee, as amended,

Mr. PETTIT said, he was inclined to think that the resolution ought not to be adopted as amended. The Convention had expressed an intention not to leave the city, and that was sufficient. They ought not to pass a resolution

binding them to stay in that Hall, for it might be that a majority of the Convention would decide upon moving to a more spacious and comfortable one, the Masonic Hall for instance. He for one had on several occasions suffered from the heat, and confined, unwholesome air of this Hall, and he doubted not that others had been similarly incommoded. It was said by some gentlemen that it was no matter if they did resolve to stay in this Hall, they could at any time rescind the resolution. So they might! They could put many contradictory things upon the journal, and do other things equally foolish, but it would not be very creditable to them. He considered that they ought not to adopt a resolution binding them to do a certain thing, when they might be under the necessity of rescinding it. He would move to lay the resolution on the table.

Mr. GREGG said, he certainly should vote against putting anything on record that would eventually prove a contradictory. It appeared that two committees had been raised by the Convention, charged with the duty of finding a more suitable and convenient Hall for the sittings of the Convention. One committee had made an effort to obtain a suitable room in this city, but their report was laid on the table. And at the suggestion of some friends he had introduced a resolution providing for the formation of a committee of five, whose duty it should be to ascertain whether a more suitable room could not be obtained in Madison for the sittings of the Convention, and it was adopted by a vote of more than two to one of the members of that body. The committee proceeded, in the discharge of their duty, to the city of Madison, and made inquiries for a suitable room, and the result of their investigations had been laid before the Convention in the shape of a report. Another resolution had been offered by way of amendment to the resolution therein reported, providing the Convention should continue to sit in this Hall during its deliberations, and until it should have completed the labors assigned it, which amendment had been adopted by a very decided majority of that Convention, thereby clearly showing to the people of Madison that the Convention was not in earnest when they sent word to them that they wanted a room, and determining that in their opinion this Hall was, of all others, the most suitable. He had intended when the report of the committee was read to call for a division of the question, for he knew that the first resolution reported by the committee expressed the sense of two-thirds of that body. They could, however, strike out in the second resolution the word "Madison," and insert any other Hall in Indianapolis. It was plainly evident that they would have to move to some other Hall, as the papers on the Secretary's desk were even now immersed in water from the drippings of the rain through the rotunda.

He hoped that the amendment would not be concurred in.

Mr. EDMONSTON said he considered that it would be treating the citizens of Madison very impolitely, after the very generous offer they had made, not only to reject the resolution reported by the committee, but to pass a resolution providing that they would not leave that Hall. He would move to lay the resolution as amended on the table.

Mr. WOLFE demanded the yeas and nays, and they were ordered and taken with the following result:—yeas 66, nays 58.

Those who voted in the affirmative were,

Messrs. Alexander, Allen, Anthony, Badger, Balingall, Barbour, Bascom, Borden, Bourne, Bowers, Bracken, Bryant, Butler, Carr, Carter, Chenowith, Colfax, Cookerly, Davis of Parke, Davis of Vermillion, Edmonston, Fisher, Foster, Garvin, Haddon, Holliday, Hamilton, Hardin, Hawkins, Helm, Hovey, Huff, Jones, Kelso, Kent, Kendall of Warren, Kinley, Logan, March, McClelland, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Morgan, Mowrer, Nofsinger, Owen, Pepper of Ohio, Pettit, Prather, Read of Clark, Read of Monroe, Schoonover, Snook, Smith of Ripley, Smith of Scott, Tannehill, Terry, Thomas, Todd, Trimble, Watts, Work, Mr. President.

Those who voted in the negative were,

Messrs. Beach, Beard, Berry, Biddle, Blythe, Chandler, Chapman, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Crawford, Davis of Madison, Dick, Dobson, Dunn of Jefferson, Farrow, Foley, Frisbie, Gootee, Gordon, Graham of Miami, Graham of Warrick, Gregg, Harbolt, Helmer, Hendricks, Hitt, Hogin, Holman, Johnson, Kendall of Wabash, Lockhart, Mathis, May, McFarland, McLean, Moore, Morrison of Marion, Morrison of Washington, Nave, Pepper of Crawford, Ristine, Sherrod, Shoup, Sims, Smiley, Spann, Steele, Tague, Vanbenthussen, Wallace, Wheeler, Wiley, Wunderlich, Yocum, Zenor.

The CHAIR announced the first business in order to be the reading of the Constitution by clauses, for the purpose of reference, under the resolution of Mr. Pettit offered on yesterday, and made the special order for 2 o'clock today.

On motion, by Mr. KELSO, the special order was postponed until to-morrow morning at 9 o'clock.

The CHAIR announced the next business in order to be the resolution submitted by Mr. Edmonston on the 14th inst., to-wit :

Resolved, That the committee on the Legislative Department be instructed to insert a provision in the amended Constitution adopting biennial instead of annual sessions of the Legislature.

Mr. READ of Clark moved to amend the resolution by striking out the word "biennial" and inserting the word "triennial."

The question being upon the adoption of the amendment,

The yeas and nays were demanded, and, being taken, were as follows :

YEAS.—Messrs. Alexander, Allen, Balingall, Blythe, Bowers, Bryant, Butler, Chenowith, Clark of Hamilton, Coats, Cookerly, Dick, Edmonston, Garvin, Gordon, Harbolt, Holliday, Holman, Kelso, Kilgore, Lockhart, Logan, March, Mathis, McClelland, McLean, Miller of Gibson, Morrison of Washington, Murray, Nave, Pepper of Crawford, Prather, Read of Clark, Schoonover, Sherrod, Sims, Smiley, Smith of Scott, Tague, Trimble, Wheeler, Wolfe, Yocum, and Mr. President—43.

NAYS.—Messrs. Anthony, Badger, Barbour, Beach, Beard, Berry, Biddle, Borden, Bourne, Bracken, Carr, Carter, Chandler, Chapman, Clark of Tippecanoe, Cole, Colfax, Crawford, Davis of Madison, Davis of Vermillion, Davis of Parke, Dobson, Dunn of Jefferson, Farrow, Foley, Foster, Frisbie, Gootee, Graham of Miami, Graham of Warrick, Gregg, Haddon, Hamilton, Hardin, Hawkins, Helmer, Hendricks, Hitt, Hogin, Hovey, Howe, Huff, Johnson, Jones, Kent, Kendall of Wabash, Kendall of Warren, Kindley, Maguire, Mather, May, McFarland, Miller of Fulton, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Mowrer, Nofsinger, Owen, Pepper of Ohio, Pettit, Read of Monroe, Ristine, Ritchey, Robinson, Shoup, Snook, Smith of Ripley, Spann, Steele, Stevenson, Tannehill, Terry, Thomas, Thornton, Todd, Vanbenthussen, Wallace, Watts, Wiley, Work, Wunderlich, and Zenor—83.

So the amendment was not adopted.

The question recurring upon the adoption of the original resolution,

Mr. DUNN of Jefferson said, he thought this a very important resolution. He expected himself to vote for it. Still, he thought it ought to be duly and deliberately considered. To send to a committee so important a resolution and of an imperative character, now when so many members were absent, he thought would be rather a bad precedent. Therefore, he would move to amend the resolution, by inserting at the proper place the words, "inquire into the expediency of."

Mr. KELSO said, it seemed to him that this matter had been sufficiently discussed before the people, and, so far as he knew, this change to biennial sessions of the Legislature was made a leading proposition throughout the State. He thought it might as well be ascertained to-day as at any other time, whether a majority were in favor of it or not ; and let the vote of the Convention upon the resolution be taken as the sense of the body upon this subject. All he asked was leave to record his vote in favor of the resolution.

The question being taken upon the amendment of the gentleman from Jefferson, it was not agreed to.

Mr. GRAHAM of Warrick proposed to amend the resolution by adding a proviso to the effect that the Governor shall have power to convene the Legislature at any time, in case of an emergency.

This amendment was agreed to.

Mr. CLARK of Tippecanoe proposed to amend the resolution by striking out the word "biennial" and inserting in lieu thereof the word "annual."

Mr. OWEN suggested to the gentleman from Tippecanoe that a direct vote upon the resolution by yeas and nays would have precisely the same effect.

Mr. CLARK of Tippecanoe acquiesced in the suggestion of Mr. Owen, and said, he knew this question had been mooted before all the people; but it depended upon other questions. He thought the reason why the people demanded biennial sessions of the Legislature, was the frequency of change in local legislation. Now, it had been already proposed here, and he thought the people of the State at large had determined, that the Legislature should be restrained from the enactment of local laws; and that their deliberations should be confined to the enactment of laws of general interest—laws in which a change would not be made, unless it were called for by some pressing emergency. It was a proverb in free governments, that "where annual elections end, tyranny begins." The Legislature was the strength of all the departments of the Government. The law making power always exercised the most direct authority over the government; and, if the agents in this department, instead of being frequently called to account were removed one year further from the supervision of the people, they would be so much more likely to abuse their power. Whereas, the more frequently they could be brought under the supervision of the people, the more anxious they would be to do the will of the people. He apprehended that the objections to annual sessions, on the score of economy, would be entirely removed, if the Legislature were restrained from the passage of local laws. The business of legislation would then be confined to its proper sphere; the sessions would not be so long, and consequently, not attended with such a vast expense for printing, &c. And besides, if annual sessions were continued, the Legislative body would act every year as a sort of committee of inquest upon the State officers; and there was a necessity for some such supervision as this, which no other body could furnish; there could be no substitute for the Legislature in this matter. Moreover, in the event of the establishment of biennial sessions, there would frequently arise a necessity for a call of the Legislature, in special session; and these special sessions would be

found to cost as much as the regular sessions. He admitted that, so far as he understood the wishes of his constituents, they would be in favor of biennial or even triennial, sessions, if the Legislature were not restrained from the passage of local laws, and confined to their proper sphere of duty. But if, in this respect, the Legislature were restrained by the Constitution, he believed that not only his constituents but the people of the State at large, would be in favor of annual sessions.

He acquiesced in the suggestion of the gentleman from Posey, (Mr. Owen,) and withdrew his motion to amend.

Mr. WATTS proposed to amend the resolution by adding the following:

"And the House of Representatives shall consist of sixty-six members, and the Senate of thirty-three members."

The amendment was rejected.

Mr. PRATHER proposed to amend by inserting a clause to the effect, that the sessions of the Legislature shall be limited to a term not exceeding sixty days.

This amendment was also rejected.

Mr. MILLER of Fulton moved to amend by inserting the following:

"*Provided*, however, that the Legislature may, by a vote of the people, without a convention for that purpose, alter to *annual* or *triennial* sessions, having first provided for taking such vote."

Which was decided in the negative.

The question recurring on the adoption of the original resolution,

Mr. READ of Clark said, being called on to vote upon the resolution proposing biennial sessions of the Legislature, he desired to say one word. Upon this question, above all others, he felt himself to be instructed. He was satisfied that this proposition expressed the unanimous wish of his constituents; and from his own experience in the Legislature, he felt the most abiding conviction of the expediency of this change. He found, also, that in nearly all the States where new constitutions had been adopted, they had engrafted this provision. Such was the result of the experience of three-fourths of the States of this Union; and this Convention should take advantage of the lessons derived from their experience. He ventured to affirm, that, if the matter were referred to the people of the State, nine-tenths of them would be in favor of biennial or triennial sessions. Let gentlemen reflect for a moment, and look back upon the session of last winter. During the session of the last Legislature alone some seven hundred acts were passed, mostly of a local nature. Local legislation would creep into that body. It could not be kept out. And then, another Legislature would come in and repeal and alter these new laws, in many cases, before the people, or even many

of the lawyers, were aware of their existence. Whereas, if the sessions of the Legislature were biennial, with proper limitations and restraints upon their powers, the laws would be better known and better executed ; and there would be saved a vast amount of the public money. But as it was now, the Representatives danced and the people paid the fiddler.

Mr. BIDDLE said, he had not expected that upon this question the Convention would come to a vote now ; nor was he very well prepared to discuss it. He did not know that he could be very well prepared for this discussion ; but he had hastily noted one or two points, which, by the indulgence of the Convention, he would throw out. The gentleman who had just concluded his remarks had declared himself to be instructed in favor of this proposition. He did not blame him, therefore, for the support which he gave to it. He (Mr. B.) should probably do the same thing under the same circumstances ; but that gentleman had expressed his belief that a large majority of the people of the State were in favor of biennial or triennial sessions. He (Mr. B.) was in favor of neither ; on the contrary, his course heretofore had shown him to be emphatically in favor of annual sessions ; and the reason why he desired to say a word upon this question now, was, because he feared the impression of the gentleman from Clark (Mr. Read) was but too true ; and laboring under the fear that the resolution would pass, he was unwilling to let it go to the vote without saying a few words. It seemed to him that the success of this proposition would be progressing in a retrograde direction. It would be impossible for any argument, such as he had yet heard, in favor of it, to convince him that this would not be a removal of the power which belonged to the people further from its original source. What was the objection to annual sessions ? It was, that they induced too much legislation. But he denied that the remedy was to make the sessions biennial. Why was it that they had too much legislation ? He affirmed that this evil was an incident to every new government. This newly settled State was made up, from year to year, of minds taken from every section of the Union, and every part of the world ; and it was inevitable that, amongst men educated under every form of government upon earth, there would be conflicts of opinion in legislation, till they should all become whole-hearted Hoosiers—a designation which he was in the habit of using, and it was one to be proud of. What was the object of legislation ? It was to give form and expression to the opinions of the people ; and he held, that the oftener they could get that expression, the nearer they would approach to a perfect republican government. He admitted that too much legislation was an evil ; but too much power to legislate never was, and never could be, an evil. He would allow the people to express their opinion

as often as possible ; and, absurd as it might seem, he would, if possible, require the Legislature to meet oftener than once a year, whenever it was necessary. He desired gentlemen to distinguish carefully between the use and the abuse of a good thing ; between making use of the legislative power for the advantage of the people, and curbing the power of the Legislature. He maintained that time would correct this evil, and that nothing but time could correct it. For if they made the sessions biennial, it would be found that the Legislature would just do twice as much business in a session. Besides, the people would not like to suffer under the effects of bad laws for so long a period as two years. Hasty legislation was an evil, and therefore they should have a hasty method of remedying the evil, and this was one of the reasons why he would never cast a vote to restrain the power of legislation. It was an axiom in his notions of government, that the moment delegated power was removed farther from its original source, that moment a step was taken toward despotism. A despotism was nothing more than a government where this power was so far removed from the people, that there was no remedy short of a resort to revolution. A pure democracy was impracticable ; but he would not render it still more impracticable, by carrying political power still farther away from its rightful source.

There was much room for amplification in the point which he had taken, namely, restricting the powers of Legislation. But he would not now detain the Convention to elaborate it. The people themselves had the remedy in their own hands, against the excesses of Legislation, in the right of instruction. Did their Representatives make too many laws, let the people tell them so, and warn them against it. But if the accountability of their agents to the sovereign power were postponed two years, the evil would be made worse. The further the accountability of any officer was removed from the sovereign power, the wider was the departure from the true idea of a democracy or a republican government.

He assumed that the popular expressions of opinion were the only true indices of what the law ought to be ; and, as he had before said, if it were practicable, he would have it so contrived, that the expression of the popular will could be taken oftener than once a year. The oftener these agents met the sovereign power, the more faithful would be the expression of the popular will. But, to seal up this expression for two years would be to take one step in a direction adverse to the progress of true democracy. He would give opportunities for the most frequent expressions of the popular will. The oftener the better. And the higher the grade of civilization, the more necessity for the application of this doctrine. For, going into barbarous nations, it would be found that they

have but few laws, handed down from generation to generation, but few notions of right and wrong which continue from age to age. The more enlightened the people, the more intricate were their wants. For this reason, also, he could never consent to take the retrograde step proposed in the resolution. He would keep the delegated power as near as possible to the sovereign power. Why, it was one of the troubles in the judiciary of this country, that justice could not be obtained as speedily as desirable. And what was the remedy? Why, to make the sessions of the courts as frequent as possible. Under the present judicial arrangements for the State, when the court meets only once in six months, a man's rights were liable to be delayed for that length of time. Whereas, whenever justice was infringed, her sword should be ready to redress the wrong. This was the perfection of government in theory; and, although it could not be strictly attained in practice, yet it was better to approximate towards it, than to retrograde from it. He was willing to stand still, in reference to the matter before the Convention; but he was unwilling to retrograde; he was unwilling to take a step in a direction contrary to the true remedy.

He feared the result of the determination of this question by the Convention, and for that reason he had attempted, in this manner, briefly to deter them from hasty action. But, if gentlemen were instructed, they would, of course, vote accordingly; and if their instructions were to adopt the proposition, he would be satisfied that the public voice had been expressed. But, at present, he was slow to believe that such was the mind of the people. His own opinions were well known in the canvass. He had always expressed the views that he had now indicated—that biennial sessions were not the remedy for the evil complained of; that the evil was an inherent one in all the new States, which time alone would correct. Every man that came into the State from Pennsylvania, Ohio, or any other State, or perhaps some foreign country, brought along with him his own notions of law which he had imbibed in his childhood. Could uniformity of legislation be expected amongst such a people? or could gentlemen expect to attain to that uniformity by muzzling the voice of the people? Experience had already shown, that after a time this vibration of public opinion would gradually settle down upon the rule of right; then he would let time do its work. He would not muzzle the popular expression, much less would he put such a principle as this in the organic law, which might not be again changed for a quarter of a century.

But he would not detain the Convention. These were his views. They were somewhat abstract, he confessed, but they could be made practical. He had confined himself to a few general ideas, upon which he thought, perhaps,

every man would find food for reflection. He could not expect to change the mind of any man who had maturely considered the subject. But he had some experience in dealing with the minds of others, and knew how to respect difference of opinion. He entertained these views as correct, beyond a doubt; and, therefore, he advocated them. He expressed his opinions freely, and if they could benefit others he should be glad of it; and if not, at least, he enjoyed the reflection of having discharged his duty.

Mr. ALLEN said, that he was in favor of triennial instead of biennial sessions, but it seemed that a majority of the Convention were in favor of biennial sessions, and the Convention having voted down triennial sessions, of course he would now vote for biennial sessions. The reasons urged by the gentleman from Tippecanoe (Mr. Clark) for annual sessions were some of the very reasons why he would vote for biennial sessions. He had no doubt, from the expression which he had heard from members, and from the expression of the people, so far as he had heard an expression, that amendments would be incorporated into the new Constitution prohibiting the Legislature from this miserable system of local legislation that now existed, and that they would also be prohibited from the passage of special acts of incorporation, and that the election of State officers and Judges would be taken from the Legislature and placed in the hands of the people where it properly belonged. All these amendments would, no doubt, be the result of the deliberations of this body; and if this should be the result, many of the subjects which now occupied the time of the Legislature would be taken away, and the necessity of annual sessions wholly obviated. It was contended by the gentleman from Cass (Mr. Biddle) that the change contemplated by the resolution would be a retrograde movement and that its tendency was to remove the officers further from the people. Now, it did not seem to him that a change of the time of the sessions of the Legislature from annual to biennial sessions, as contemplated by the resolution, or a change of the manner of electing State officers, would produce any radical change in our present system of government or in the manner of doing business in the Legislature. The question was simply whether the Legislature could not perform all the business necessary to be performed by them and meet only once in two years; in other words would not biennial sessions meet the exigencies of that branch of our State government?

This, he thought, was beyond a question. He was satisfied that when the Legislature should be prohibited from their present system of local and special legislation; when the election of State officers should be taken from the Legislature and placed in the hands of the people; when these and some other amendments should be engrafted into the new Constitution, taking away from the Legislature the consideration of

so many subjects which now occupied so much of their time and attention, that the necessity of annual sessions would entirely cease; and that the Legislature could, under this new order of things, meet once in two years and perform all their duties in less time than is now required, under their present system of legislation. He should, therefore, vote for the resolution.

Mr. MURRAY observed, that the people in his part of the State were clearly and entirely in favor of biennial sessions. It was a general complaint among them that the laws of the State were continually fluctuating. The changes made were of such frequent occurrence that the people did not know what the laws were; and, of course, they could not be obeyed by men who did not know when they had violated them. That was impossible. And a further evil resulting from this continual change was, that they were not administered a sufficient length of time for the people to ascertain whether their effect was good or evil. In all governments, a want of stability in the laws was considered a very great evil;—for where the laws were fixed and permanent, the people became acquainted with them, and knew what they had to obey. If they found upon trial that they were stringent and oppressive they could then cause their Legislators to ameliorate them, and thus remedy the evil.

With regard to the effect of this measure upon the elections, he considered that on that point was to be realized one of its happiest results. The frequent elections that were held, kept men in a constant turmoil. The excitement attendant upon one election would hardly subside before another election would come round and there was nothing but commotion and excitement with the people continually.

If the period of holding office was also confined to one term it would do away with the present system of electioneering, so injurious to the faithful performance of the duties of office;—for if the period of holding office, closed after the first term had expired, there would be more of justice and impartiality in the administration of their duties. These reforms were not new and untried reforms. The election of all the officers of the State, and the system of biennial sessions, were measures that had been adopted in several of the States, and, so far as he knew, with the happiest results.

Mr. FOSTER moved to amend the resolution by inserting the following:

“And that the sessions of the Legislature shall not continue longer than six weeks without reduction to one-half of the per diem allowance of the members.”

The question being taken upon the proposed amendment, it was not agreed to.

Mr. HARDIN moved to amend the resolution by adopting the following:

“And the Governor, in his proclamation convening the Legislature, shall state specifically the subjects which they shall consider, and no other subjects shall be taken into consideration at such special session.”

The amendment was not agreed to.

The question being upon the adoption of the Resolution,

The yeas and nays were demanded, and were taken with the following result:

AYES—Messrs. Alexander, Allen, Anthony, Badger, Balingall, Barbour, Bascom, Beach, Beard, Berry, Bicknell, Blythe, Borden, Bourne, Bowers, Bracken, Bryant, Butler, Carr, Carter, Chandler, Chenowith, Clark of Hamilton, Coats, Cole, Colfax, Cookerly, Crawford, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, &c., Edmonston, Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Gootee, Gordon, Graham of Miami, Graham of Warrick, Gregg, Haddon, Holliday, Hamilton, Harbott, Hardin, Hawkins, Helm, Helmer, Hendricks, Hitt, Hogin, Holman, Hovey, Howe, Huff, Johnson, Jones, Kelso, Kent, Kendall of Wabash, Kendall of Warren, Kinley, Lockhart, Logan, March, Mather, Mathis, May, McClelland, McFarland, McLean, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Morrison of Washington, Mowrer, Murray, Nave, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Prather, Read of Clark, Read of Monroe, Ritchey, Schoonover, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Stevenson, Tague, Tannehill, Terry, Thomas, Todd, Trimble, Vanbenthussen, Watts, Wheeler, Wolfe, Work, Wunderlich, Yocum, Zenor, Mr. President—124.

NOES—Messrs. Biddle, Chapman, Clark of Tippecanoe, Maguire, Wallace—5.

The Convention adjourned.

THURSDAY, OCTOBER 17, 1850.

The Convention met pursuant to adjournment, and was opened with prayer by the Rev. L. H. JAMESON

The journal of the preceding day having been read,

The PRESIDENT announced the first thing in order, to be the reading of the Constitution, which by the resolution of Mr. Pettit was made the special order for this morning, at 9 o'clock.

Mr. PETTIT said, he was aware that in taking up bills, and reading them by sections, the preamble was generally read last; but he saw no good reason, for the adoption of such a course in the present case. The reason of this course being pursued generally was, because it was not known until the bill was gone through with what amendments would be made, and it was

necessary to make the preamble correspond with the bill. But it was not proposed with respect to the simpler reference of these amendments to make any change. The only question that could occasion debate, was that of determining to what committees these articles should be referred. He insisted that the preamble ought first to be read and referred.

The preamble was then read and referred to the committee on miscellaneous provisions..

The first article of the Constitution was then read, and the question being upon its reference,

Mr. SMITH of Ripley stated, that he felt bound to preserve the bill of rights in its present form, and he desired that it should be referred to the committee on the rights and privileges of the inhabitants of this State. At some future day he should offer an imperative resolution providing that the committee report it in its present shape. He would move that it be read and referred to the committee on the rights and privileges of the inhabitants of this State entire. This motion would also save the time of the Convention, and dispense with considerable journalizing.

Mr. DOBSON moved to amend the motion of the gentleman from Ripley, by adding with instructions to strike out the word "validity" in the eighteenth section and insert the word "obligation," so as to make the article conform with the Constitution of the United States, which provided that no State should pass any law impairing the obligation of contracts.

The question was then taken upon the amendment of the gentleman from Owen, (Mr. Dobson,) and it was rejected.

The question then recurring upon the motion of the gentleman from Ripley, (Mr. Smith,) it was decided in the affirmative.

Mr. DOBSON desired to move instructions to the committee to which this bill of rights had just been referred, to strike out the word "validity," and insert the word "obligation," in the eighteenth section of the bill. One of the objects in revising the present Constitution was to do away with all extraneous legislation, and it was a well known fact, that this slight variance of the State Constitution with the Constitution of the United States, the difference between the word "validity" and the word "obligation," led to discussions in the Legislature, every winter, that cost the State thousands of dollars.

The PRESIDENT stated that instructions of an imperative character would have to lie over one day, under the rule.

Mr. DOBSON said, he was willing to make it a resolution of enquiry.

Mr. MORRISON of Marion said, he hoped that the suggestion of the gentleman from Owen (Mr. Dobson) would be adopted. Upon the face of it there would appear to the general reader but little difference—but there was a nice hair-splitting distinction drawn, which

made a great deal of difference in the application of law to the question. Legal gentlemen in defence of the replevin law of the State, had always stated that its meaning was that there was no change in the obligation of the contract—that it was valid, but, that they could make a change in the remedy; hence if two men agreed in writing to pay money on a certain day, the Legislature could step in by law and say, this may be paid by a certain arrangement on the justice's docket, in two, four, or eight months. Thus the obligation of the contract, or the validity of the contract, was not infringed but the remedy was infringed. He wanted the law in this point so set forth that there should be a plain rule of action in the understanding of contracts. He did not want hair splitting distinctions between validity and obligation, to set contracts aside.

The question was then put on the motion of the gentleman from Owen, (Mr. Dobson,) and it was agreed to.

The second article was then read, and referred to the committee on miscellaneous provisions.

The first three sections of the third article having been read and referred, and the question being upon the reference of the fourth section,

Mr. BRIGHT said, that references to different committees of sections in the same article would inevitably produce confusion in the action of the committees, and incongruity in the Constitution itself. He considered that the various sections of this article should all be referred to the committee on the legislative department. Here they were attempting to refer one section of this article to the committee on the election franchise, another section to another committee, and so on, when these subjects were all necessarily connected with the organization of the Legislature.

Mr. PETTIT said, he was very glad to hear the remarks of the gentlemen from Jefferson, and he only wished that the gentleman had taken part in the debate which occurred upon his proposition of referring the entire Constitution to three committees. They came now to the point where the absurdity of the large number of standing committees organized was apparent. As these committees were organized, however, they were necessarily compelled to divide and apportion out the various sections of the Constitution to those committees, in the best manner possible. The various sections of this article were so connected together that the distribution of them to different committees would lead to great confusion in their action; and he thought that the entire article should be referred to the legislative committee.

Mr. WOLFE remarked that, as they were getting into difficulty, with regard to the reference of the Constitution, they had better begin to retrace their steps, and decide upon some better mode of distribution. He must acknowl-

edge that he did not see how the business of the Convention would be advanced by the present mode of referring the Constitution. It would be far better to reconsider the motion upon which the Convention had proceeded with the present mode of reference, and go at once into committee of the whole, take up the Constitution, article by article, agree upon the amendments necessary, and refer them to appropriate committees, who would then report the various articles of the new Constitution.

Mr. NILES observed, that he could not see that any such embarrassment, inconvenience, and confusion would result from the present mode of referring the Constitution, as seemed to be anticipated by the gentleman from Jefferson and the gentleman from Tippecanoe. In the remarks he had made upon the subject the other day, he had stated it as his opinion that there were more committees raised than was necessary; but as those committees had been appointed, the various articles of the Constitution should be referred to them, and he could not see how any inconvenience or confusion would result from the adoption of such a course. For instance: take section seventh, which provided that no man should be eligible to a seat in the Senate under the age of twenty-five. That was a clear and distinct proposition of itself, and what did it matter whether the question was considered and reported upon by the committee on the legislative department or some other committee? It would be reported upon in some form, and the report could be either amended or adopted, and then moulded into the new Constitution. It was true these sections might be reported disconnectedly at first, but still they would all be reported in the proper form, and distinctly expressed, and they were not to be thrown together hastily, sent to the printer, and embodied in the Constitution, but were to be referred to the committee on phraseology and revision. Each distinct subject would be then inserted by that committee in its appropriate place, and the Constitution finally drafted. He could see no necessity for any difficulty arising on this point.

The question was then taken on the reference of the fourth section to the committee on the legislative department, and it was agreed to.

The remaining sections of the third article were then read and referred.

The first twenty sections of the fourth article having been read and referred, and the question being upon the reference of the twenty-first section,

Mr. BORDEN moved to refer the twenty-first section to the committee on State officers other than the executive and judiciary.

Mr. KELSO said, he had not, as yet, troubled himself as to the reference of any portion of the Constitution, nor did he care much what particular direction they took, for he thought it very likely they would have to go over the

whole matter again. But as to these particular officers, and the manner of their election, he would suggest that the more appropriate reference would be to the committee on the elective franchise. It was a question as to the mode of creating these officers, and there were one half-dozen propositions now before the Convention, proposing to change the mode of their appointment, and to direct that they shall be elected by the people, and he believed there was a large majority of the Convention in favor of that proposition. It appeared to him that the appropriate committee would be the one he had indicated. He would move to amend the motion of the gentleman from Allen, so as to refer this subject to the committee on the elective franchise and the apportionment of representation.

The PRESIDENT remarked, that the questions must be put in the order in which the motions were made.

The question would be first on the reference to the committee on State officers other than executive or judiciary.

Mr. PETTIT said, he did not understand that it was requisite that this subject should be considered by the committee on the elective franchise. This was a question as to how the officers of State should be elected, whereas the duty of the committee on the elective franchise was to prescribe the manner in which the elective franchise should be exercised, and who should be permitted to exercise it. It might be proper, if there were such a committee, that it should go to a committee on the tenure of office.

The question being taken on the motion to refer the section to the committee on State officers other than executive and judiciary,

It was decided in the affirmative.

The remaining articles of the Constitution were then severally read and referred.

CONTESTED ELECTIONS.

The following resolution, offered by Mr. Wolfe, on the 15th inst., which had been laid over, was then taken up for consideration:

Resolved, That in our amended Constitution it be provided that all contested elections, as far as practicable, be referred back to the people, and by them decided.

The resolution having been read, Mr. WOLFE said, he hoped the Convention would give to this resolution its favorable consideration. He thought it would be far better to have all cases of contested elections decided where the election took place. He understood there was a contested election before the Convention. To take that as an example, instead of taking up the time of a hundred and fifty men in taking evidence and determining that case, he thought it would be much more satisfactory, and it certainly would be more economical, to let the people of Union county decide it for themselves.

If the resolution needed any amendment, he was willing it should be amended so as to suit the views of gentlemen, but he certainly thought that some such proposition ought to be adopted.

Mr. EDMONSTON moved to amend the resolution so as to make it a resolution of inquiry, directed to the committee on the elective franchise.

The resolution was then adopted.

REPRESENTATIVE DISTRICTS.

The following resolution, offered by Mr. STEVENSON, on the 18th, inst., which had been laid over, was then taken up for consideration:

Resolved, That the committee on the Legislative Department be instructed to report the following as a part of the amended Constitution, viz.: "The members of the House of Representatives shall be elected by single districts, such districts to be bounded by county, precinct, town, or ward lines, to consist of contiguous territory, and be in as compact form as practicable, provided that parts of different counties shall not be united to form representative districts."

The resolution having been read,

Mr. STEVENSON said, that he thought the members of the Legislature ought to be elected by single districts; this would obviate a great many inconveniences. Where counties were united for the purpose of electing representatives, the county seats generally controlled the elections. He hoped the resolution would be adopted.

Mr. SMITH of Ripley said, that he would merely remark that he was opposed to the proposition of the gentleman from Putnam. He did not intend to discuss the resolution at this time, but to express his disapprobation of it. The gentleman's objection to the present plan of uniting counties for the purpose of elections was, that it gave to the county seats the control of the elections, and he proposed, therefore, that the elections be held in single districts. But according to the gentleman's idea of dividing the county, the county seat would not lose its influence; on the contrary, it would exercise its influence upon both sections, but that was not the greatest evil to be apprehended: it would have the effect of building up political cliques and destroying the good feeling that exists under the present system. He would, when in order, move to amend the resolution, so as to make it a resolution of inquiry.

Mr. PEPPER of Ohio said he had an amendment to offer.

The PRESIDENT reminded the gentleman that there was an amendment already pending.

Mr. STEVENSON said, he trusted the amendment of the delegate from Ripley would not be adopted. It appeared to him that very little would be accomplished by referring these resolutions of inquiry to committees.

He had been opposed to it from the first. There was no expression of the sense of the Convention contained in them, and he had no doubt that each one of the members of the Convention had already determined in his own mind what sort of a Constitution he wished to have adopted. He had no doubt that each one had canvassed before the people the different amendments proposed to be made in the Constitution. All this had been pre-arranged in their own minds, and all that was requisite, therefore, was for each member to ascertain the sense of this body, in regard to such amendments as he desired should be made. When this was done the whole work would be accomplished, and until this was done they would have accomplished nothing.

The great thing to be desired was that there should be an expression of the sense of the Convention in regard to the various propositions for amendment, and when that expression was obtained, the committees would have nothing to do but to arrange the various propositions.

The Convention might proceed for weeks in passing resolutions of inquiry, and when the committees reported back the propositions concerning which they were directed to inquire, they would be as far from having the sense of the Convention upon them as before. It was only postponing the action of the Convention. He was utterly opposed to resolutions of inquiry, for as he had said, they accomplished nothing, for when the sense of the committee was taken they were as far as ever from having the sense of the Convention. Then why not, said he, at once ascertain, as in this case, whether you intend to have single or double Representative District. It was a question upon which he, for one, had made up his mind. He was in favor of single districts. What injustice, he would ask, could possibly arise from single Representative Districts—each county having a right to elect its own representatives—so that there could be no combination between the candidates or the friends of the candidates; no mutual agreement to aid each other—on the principle "you vote for me, I'll vote for you."

But where the single district system prevails, the people vote for the man of their choice, and the result is, the will of the people is justly and clearly expressed. It appeared to him it was the safest way, and that it would be more satisfactory than any other. He was aware there would always be around the county seat a set of village politicians who would always more or less influence every election. The principle was the same in double Representative Districts. It would be wrong to say that you will have double Senatorial Districts; and if it was wrong to have double Senatorial Districts, it was equally wrong to have double Representative Districts. He hoped that the decision would be made upon the question of adopting the principle contained in the propositions at once; by

this means they would the more speedily accomplish the end they had in view, than by any other plan that could be adopted.

Mr. COOKERLY said, he trusted that the amendment would prevail. This was a very important question, and it was one that was new to most of the members, he supposed. At least, it had not been discussed in his county, and he thought, under the circumstances, it should either be amended so as to make it a resolution of inquiry, or that its consideration should be postponed to some future day. If the amendment should not prevail, he would move to postpone the further consideration of the subject until next Saturday week.

Mr. FEPPER of Ohio said, he hoped the gentleman from Ripley (Mr. Smith) would withdraw his amendment, and allow the proposition to be postponed, as suggested by the gentleman from Vigo, (Mr. Cookerly.)

The question being taken upon the amendment, it was decided in the affirmative.

And then the resolution as amended was adopted.

EXPLANATION.

Mr. SHOUP moved that the Convention adjourn, but he withdrew the motion at the request of

Mr. KELSO, to enable him to make a brief explanation. The committee on elections, he said, had before them the matter of the contested election from Union county, and they were desirous of getting along with it as speedily as possible. At the request of the parties they had adjourned last night to give the counsel an opportunity to prepare the papers, and they would be ready to present the case at about three o'clock this afternoon. Most of the gentlemen engaged in the case being elderly men, and unwilling to go out at night, the committee, for this reason, desired to have leave to sit this afternoon. To accommodate this and other committees, which he knew to be desirous of sitting, he would move that the Convention adjourn until to-morrow morning at nine o'clock.

Mr. STEVENSON suggested that the committee might have leave to sit during the sitting of the Convention.

Mr. KELSO said that might be done. But pending the consideration of important questions, he would like to be here. He adhered to his motion,

And the Convention adjourned till to-morrow morning at nine o'clock.

FRIDAY, Oct. 18, 1850.

Prayer by the Rev. Mr. COOPER.

On motion, by Mr. JOHNSON, leave of absence, for a few days, was granted to Mr. TAGUE.

DISTINCTIONS ON ACCOUNT OF COLOR.

Mr. OWEN, from the standing committee on the rights and privileges of the inhabitants of the State, submitted the following report :

Mr. PRESIDENT : The committee "on the rights and privileges of the inhabitants of this State," to whom was referred the memorial presented on behalf of a meeting of Friends of the Congregational Order, in Dublin, Wayne county, praying that all provisions making distinctions of color be excluded from the Constitution, have had the subject under consideration, and have instructed me to report, that, in their opinion, it is inexpedient to act in the premises.

They report back the memorial, and recommend that it be laid on the table. And they ask to be discharged from the further consideration of the subject.

Which was concurred in, and the committee was discharged from the further consideration of the subject.

Mr. OWEN, from the same committee, to which had been referred the resolution instructing them to inquire into the expediency of abolishing, by Constitutional enactment, the punishment of death in this State, reported the same back to the Convention, with the expression of opinion that the subject of the resolution did not come distinctly within the jurisdiction of the committee, and with a recommendation that it be referred to the standing committee on criminal law.

Mr. COOKERLY moved to refer the resolution to the select committee upon the subject of the abolition of capital punishment.

Mr. SMITH of Ripley inquired whether a motion to change the reference would not be equivalent to a proposition to amend the report?

The PRESIDENT replied in the affirmative. The Chair understood that the Convention had no right to amend the report of a committee. They might amend a resolution or a proposition reported, but they had not the right to amend the report ; for if that were done, then it would no longer be the report of the committee.

Mr. SMITH observed that the reference was a part of the resolution.

The PRESIDENT said, the report recommended that there be given a certain direction to the resolution. If the gentleman desired to refer it to some other committee than that indicated in the report as a matter of course, he would vote against concurrence in the report, and if the report should be rejected, then he would move to refer to another committee.

Mr. KELSO said, he would have to refuse to concur in the recommendation of the committee ; and he disliked very much to vote against the report of any committee containing nothing more wrong than this. But it seemed to him to be absurd to send this resolution to the committee on criminal law, so long as they had already a special committee upon the very sub-

ject of the resolution. He would prefer to re-commit the proposition to the committee on the rights and privileges of the inhabitants of the State, with instructions to report a recommendation that it be referred to the select committee.

Mr. OWEN said, he believed it was usually considered parliamentary wherever a select committee was to be raised, that there should be appointed upon that committee a majority favorable to the prayer of the petition or whatsoever was the cause of raising the committee. Under the circumstances, therefore, he should suppose it likely, that this select committee, or a majority of them, would report a proposition in favor of the abolition of the penalty of death. He meant to say, that when this select committee was raised, it was, perhaps, with a view of having a report in favor of the abolition of the death penalty; and to that he had no objection. But if the object had been to take the subject away, altogether from the consideration of the criminal law committee, and he had been aware of it, he should have voted against raising the select committee; as it was, however, he made no objection, because he supposed the object was merely to secure a favorable report upon a very important subject.

Mr. COOKERLY interposed, expressing his willingness to withdraw the motion to change the reference.

The report of the standing committee was concurred in, and the resolution was accordingly referred to the committee on matters pertaining to criminal law.

THE LEGISLATIVE DEPARTMENT.

The PRESIDENT now announced the first business in order to be the consideration of resolutions lying over under the rule; and the Secretary read the following resolution, which was offered yesterday by Mr. STEVENSON:

Resolved, That the committee on the Legislative Department be directed to report the following as an amendment to the Constitution, viz.: No bill shall be passed unless by the assent of all the members elected to each branch of the General Assembly; and the question upon the final passage shall be taken immediately upon the last reading, and the yeas and nays entered upon the journal.

Mr. KELSO said, he was perfectly content with the latter clause of the resolution; and he should be willing to vote for the whole of it if the mover would consent to amend it so as to make it a matter of inquiry. But he maintained that it would be bad policy to make it a constitutional point, that no law should be passed by the Legislature unless a majority of all the members elected should vote for it. It might frequently be necessary to pass an important law when such a majority could not be obtained. It was not extravagant to suppose, that,

from sickness, or other cause, eight or ten members might be necessarily absent from their places, and so the advantages of important legislation might be lost to the State. Thirty-four years practice upon the existing majority principle had been followed by no evil result whatever, and he was in favor of continuing it. He would move to amend the resolution, so as to make it a proposition of inquiry.

Mr. STEVENSON said, he was opposed to all resolutions of inquiry, because they expressed no sense of the Convention; but he regarded all imperative resolutions which they might pass, as of some importance. He was willing that the Convention should now settle the question involved in this resolution. If it should be their wish that it should require a majority of all the members of the Legislature to pass a law, and if that wish were expressed by the adoption of the resolution, something would have been done—the sense of the body would have been ascertained upon one point. He trusted that the gentleman from Switzerland would yet be willing to waive his amendment, and allow the vote to be taken directly upon the adoption of the original resolution. One of the greatest evils which had oppressed the State was too much legislation; and, for the purpose of checking this thing, he had offered the proposition contained in the resolution. How was it now? Why, he had seen bill after bill passing in the Legislature by the votes of ten or twelve men, at the close of a session, when many of the members had gone home—and some of them manifestly injurious and against the will of the people. The adoption of this proposition was required by the principle of universal suffrage. If it was the unrestricted suffrage of the majority of the citizens which elected their representatives, surely it should be by the voice of the majority of the representatives that the law should be passed. The advantages of universal suffrage could not be fully enjoyed without requiring the representatives to remain in their places till the Legislature should adjourn. There was no other way to frustrate the mischievous and sinister schemes of designing men. The experience of other States had proved that this was a wholesome constitutional provision. What harm had it ever produced in the legislation of the State of New York? This principle had been incorporated in nearly all the lately amended constitutions of the Union, and he hoped to see it prevail here. With reference to the objection, that good bills might be rejected under its operation, he replied that it would be much better to lose a good bill now and then, than to cram into the laws the mass of ill-digested and injurious bills which were every year passed in this Hall by only a handful of men.

Mr. PEPPER of Ohio said, he was sorry his colleague (Mr. Kelso) had proposed to make

this a resolution of inquiry. He was as ready to meet the question now, as he should be at any period of the session. He could not think that the people of Indiana, sending here one hundred men to legislate for them, would be content with the understanding that thirty-four of that number could pass a law; for if only a majority of a quorum were necessary to pass a law, thirty-four was that majority. He submitted to the Convention, whether it had ever been generally understood by the people, that a law of any importance could be enacted and made obligatory upon them, in their House of Representatives of a hundred members, by a bare majority of a quorum? Nevertheless, it was well known, that, under this practice, many laws had been passed which were not agreeable to the wishes of the people, and which had been repealed in consequence. He did not think there could be any hardship in requiring, that fifty-one members out of the hundred shall record their votes in the affirmative upon the final passage of every bill, before it can become a law. It struck him that this question might as well be decided now, as at any other period. He hoped that the motion to change the imperative character of the resolution, if it were insisted upon, would not prevail. He thought they would expedite business by deciding all these questions as they might come up. If gentlemen wished to discuss the question, he was willing to give them time. He would not seek, by any parliamentary stratagem, to prevent the free discussion of every proposition.

Mr. CLARK of Tippecanoe said, he should vote against the proposition to make this a resolution of inquiry, because he thought it better to settle these questions as they went along, and he should also vote against the resolution. There was one feature in the resolution to which he was radically opposed. It involved a principle which would enable a factious minority in the Legislature to defeat the will of the majority; and there were emergencies which would arise in every government, when it would be absolutely necessary that something should be done—when it would be fatal to stand still. Now it seemed to him that, under the principle involved in this resolution, a very small minority of the Legislature, by seceding or keeping out of the way, at any time, might completely defeat the will of the majority; whereas, in his opinion, there ought always to remain in the legislative body sufficient power to secure the transaction of all the business necessarily belonging to that department of the government. He thought the yeas and nays required on the final passage of a bill, would be a sufficient remedy for the evil complained of. But the objection which he had referred to was insuperable, that the principle of the resolution would enable a factious minority to defeat the will of a majority.

Mr. SHOUP said, that he was opposed to the amendment because a mere resolution of inquiry could give no assurance to the Convention as to what the committee would make of it; and the whole ground of debate would have to be gone over after the report came in. But the Convention could now decide upon the amendment, as he believed they would ultimately adopt the principle of this resolution. He supposed it would be one of the results of the labors of this Convention to abolish local legislation by the General Assembly; and if so, the rights of the people could not be represented unless the voice of the majority were heard in the enactment of every law. Then, more especially, it would be the duty of every representative to be in his place. It was right that a full and fair expression of the will of the people should be heard; and it was democratic that the majority should govern. He hoped to see a constitutional provision, that, hereafter, every law of the land shall be enacted by a majority of the representatives of the people.

Mr. RITCHEY said, he thought this a very important question, and he was himself prepared to vote upon it at this time. But if members had not thought sufficiently upon the subject to make up their minds, he would be glad to afford time to such by a postponement of the subject. He thought that one of the principal reasons which induced the people to call this Convention was, that there might be set up a constitutional check upon the legislation of the State. It was a universal complaint that the State had too much legislation. But that was not all. It was really true that reflection and propriety did not always mark the action of the Legislature. In reply to the gentleman from Tippecanoe, (Mr. Clark,) who contended that the adoption of this principle would put it in the power of a factious minority to defeat the will of the majority, he was prepared to admit the fact and all the force of the objection, and still he would put the principle into the Constitution. They had seen how a minority of the Legislature of the State of Ohio had defeated the will of the majority, and if the minority of the Legislature of the State of Indiana should at any time see proper to take such a responsibility upon themselves, and stop the wheels of Government, he would say, let them do it; but he would take care to make that responsibility so great and so crushing, that no man would be willing to take it upon his shoulders. He had been present here during session after session of the Legislature, and witnessed the passage of the measures when the yeas and nays could not be called upon them for want of a quorum, and business of the worst character had been passed in this way—all this he had himself seen and felt, and he had remonstrated in vain against its manifest injustice.

He hoped the new Constitution would require

the affirmative vote of a majority of all the members elected to both branches of the General Assembly, before any measure could have the sanction of law. He commended the subject to the mature reflection of the body. It should not be passed upon without reflection. Whether it went to the committee as a resolution of inquiry, or of instruction, he cared not; and he cared very little whether it were decided upon now or hereafter. He had spoken merely because he desired to direct the attention of gentlemen to the importance of the subject.

Mr. NILES said, he earnestly hoped that the amendment proposed by the gentleman from Switzerland (Mr. Kelso) would not be adopted, for the reason, (as it occurred to him,) that its tendency would be to suppress the freedom of debate and discussion. It seemed plain to his mind that it would be giving the widest latitude to debate, to take up for consideration all important questions and discuss them as presented. He would not, of course, insist upon a decision at once; definite action might be postponed from day to day. He thought it was discourteous toward the mover of the resolution, thus to attempt to silence him entirely, by changing the whole character of his proposition, and referring it as a mere matter of inquiry—taking away all its vitality, in fact; for the committee knowing the subject to have been in agitation, would consider of it in their room, whether submitted to them in the form of a resolution of inquiry or not. He considered such a motion no less discourteous than a motion to lay finally upon the table or postpone indefinitely. With reference to this proposition, he hoped it would not be disposed of in this summary manner, for he deemed it a matter of the highest moment. He spoke confidently with reference to his portion of the State when he affirmed, that there was no one subject upon which the opinion of the people was more decided and unanimous, than that all practicable constitutional checks ought to be placed upon inconsiderate and hasty legislation. At the proper time—even then, if it were in order—he would submit an amendment to the effect, that for the passage of a law, not only should the affirmative vote of a majority of all the members elected to each branch of the General Assembly to be necessary, and that the yeas and nays in every case should be required to be entered upon the journals, thus holding every man responsible for his acts, but that no law or joint resolution should, in any case, be passed until it had been three times fully read on three several days in each house. He was confident that such was the sentiment and wish of the people in his part of the State; and he deemed it as important and as necessary, indeed, as any other provision of the Constitution.

As the gentleman from Johnson (Mr.

Ritchey) had intimated, and as they all could see upon the examination of the journals of the General Assembly, bills of the most important character were often passed in one day, and frequently in the course of five minutes, without having been once read through, or perhaps ten members knowing their purport, and perhaps without a vote in the affirmative of more than one-fourth of the members elected. It was by means of such a system of legislation, that the Statute Books had been incumbered with not merely useless, but even bad laws. It was, in fact, by means of such a method of legislation, that at one time they had established an insurance company which directly became a bank; and that at another time peculiar privileges were given to one railway company, which on the very next day would be denied to another. Indeed, it was, in no small degree, by means of such legislation, that the volume of local laws had been extended and enlarged to its present unwieldy dimensions.

The gentleman from Tippecanoe (Mr. Clark) had alluded to the inconvenience and occasional evils which would incidentally grow out of such stringent rules. But that gentleman should recollect that such evils were only of a negative character, which the people themselves could remedy. When factious legislators, who, by combinations of minorities, had defeated wholesome legislation, should go home to account to their constituents, they would not be sent back to act the same part again. But when, by hasty and indiscriminate legislation, peculiar and unreasonable privileges were granted to private corporations or individuals, or, what was still worse, when injudicious public legislation was adopted, then it would be a direct, positive and serious injury, and the remedy not so easily applied.

He should not go into any discussion of the main subject this morning: he would, therefore, merely repeat the earnest wish, on his part, that debate would not be suppressed in this way; and that the character of the resolution would not be changed, but left in the form submitted by the mover. He felt confident that this was the true method of eliciting the sentiments of the Convention, and learning from each other the wishes of their constituents.

Mr. EDMONSTON said, that he should vote against the amendment of the gentleman from Switzerland, (Mr. Kelso.) He thought the present was the proper time to discuss this matter. He confessed that he could not see how the adoption of this principle could remedy the bad legislation spoken of by the gentleman from Laporte, (Mr. Niles.) It certainly could not operate as any check upon the power of the Legislature to confer exclusive privileges upon corporations or individuals. It could not prevent the same combination of interests which had heretofore procured this kind of leg-

isolation; nor could anything prevent such legislation, while the Constitution continued to sanction the practice of local and special legislation. But let this practice be prohibited—let the Legislature pass only general corporation laws granting equal rights and privileges to all companies which might organize under them. This would ensure an equality of rights under the legislation of the State, which could never be brought about by requiring a majority to record their votes in favor of the passage of every law. But there was an evil which, in his estimation, would result from making this a Constitutional provision. How often was it the case, that, in consequence of sickness, and for other causes, a full House could not be obtained: and in this way, measures of vital importance would be frequently defeated by a Constitutional provision of this kind. He thought the recollection of the Chair would bear him witness that, if, in the consummation of the State Debt Bill, there had existed such a constitutional provision, it would have been lost. It seemed to him that by the adoption of this resolution the Convention would be taking into their own hands what properly belonged to the people. He considered it would be a sufficient remedy to adopt a Constitutional provision, that, upon the final passage of every bill, each member of the Legislature should record his vote. By this means he would be held directly responsible to the people, and not to this Convention: and surely if a measure were defeated by a member absenting himself he should be amenable only to his constituents. It seemed to him, that, upon the whole, the adoption of this principle would be injurious instead of beneficial.

Mr. KELSO said, it would seem, by what had been said, that his motion was rather unpopular this morning. He would, therefore, with the leave of the committee, attempt to defend it. It had been said that his motion was discourteous to the mover of the resolution. He thought there would be no more discourtesy in making a motion of this kind than for one man to attempt to impose his opinions imperatively upon a standing committee of this body. What necessity was there for creating standing committees at all? If they were to make their instructions to them upon all subjects imperative, the committees would have no discretion whatever; there would be no necessity for them; the whole idea of standing committees would be a foolish anomaly, if they were to be instructed in every thing they should do. He understood the advantage of committees in deliberate bodies to be something like this: the Chair selects for each committee, men well qualified to pass upon any measure that might be submitted to them; then the body submits to them their propositions, and the committee, after considering them in all their bearings, report them back to the House, with their judgment in the premi-

ses; then it remains for the body to determine whether they will coincide with the report or not. This was what he understood about the utility of committees. He would like to inquire of gentlemen whether it would not be preferable to offer, at once, an amendment to the Constitution in proper shape? They had talked about saving time; would it not be a far more time-saving method to have their amendments at once incorporated in the Constitution? He affirmed that the course proposed by the gentleman would prove to be a saving of time over the left shoulder—a useless and reckless waste of time.

According to strict parliamentary usage, he supposed that he ought not to detain the Convention any longer; but as other gentlemen had gone into the merits of the resolution, he would like to do the same. They had talked about the will of the people, and affirmed that an expression of that will could not be obtained, unless a majority of all the members of the Legislature should be required to vote in the affirmative before any proposition could become a law. Their object seemed to be, if he understood the matter, to compel every member of the Legislature to remain here until the end of the session. But he affirmed that this provision would no more have that effect than if not one word of it were in the Constitution. For when any member took a notion to go home he would ask for leave of absence, which would be granted, of course. It would be thought discourteous to refuse the first application. And, on the next day, perhaps B, C, D, &c., would have leave of absence, because the application had not been refused in the first instance. And so, frequently, the House would be found without a quorum. During the term of his own short experience in legislation, such had always been the case, and on the last days of the session there was sure to be but a very thin attendance. Under the operation of this principle, the sickness of five or six members, and perhaps the factious temper of five or six others, might prevent the passage of the most important law. Where then was the wisdom of placing so much power in the hands of a few factious men, who might be disposed to keep outside of the bar? They need go no farther, and upon a call of the House they could answer, and the Clerk would report a quorum present. If gentlemen would take the trouble to examine the journals for four or five years past, they would find that, upon the announcement of the Chair that there was no quorum voting, a call of the House, at the very minute, had furnished a quorum, time after time. By the adoption of the principle of this resolution, they would only give to such a factious minority ten times more power than they now have. What obligation could it place members under to remain in their places? None in the world. It could not have the effect which gentlemen pretend. For these and

other reasons, he should adhere to his motion to change the character of the resolution. Like his colleague, (Mr. Pepper of Ohio,) he was, himself, ready to vote upon this question, but he would rather, first, have the judgment of the standing committee, in the shape of a report.

Mr. OWEN said, that he agreed with the gentleman from Switzerland, (Mr. Kelso,) and, with respect to the reference which had been made to that gentleman's amendment, (with all due deference to the judgment of the gentleman from Laporte (Mr. Niles,) for whom he had much respect, he could not regard it as anything discourteous if a gentleman proposed to change a resolution from one of positive instruction to one of inquiry. Wherever, he would not say a majority of this body, but, wherever even a small minority should appear to have doubts upon the propriety or expediency of any proposition submitted, he, for one, would always vote to have the question postponed—to have it referred to a committee, and await their action, before deciding in regard to it. Upon such a question as that of biennial sessions of the Legislature, a matter which had been universally discussed throughout the State, there certainly could be no harm in coming to a vote upon it at once, for, as it turned out in that case, nineteen-twentieths of the Convention were found voting for it. But so far as any other matter, not so generally discussed and decided among the people, was concerned, he did think that, instead of implying discourtesy, it was but a common act of courtesy, to request the opinions of a committee upon it. He expected in accordance with notice given, to have an opportunity of exhibiting his own course in such a case, upon another proposition—that in regard to the property of married women. He intended to introduce this as a proposition of inquiry, for he desired that no man should be asked to give his vote upon it without examination.

The gentleman from Laporte (Mr. Niles) had spoken of this course of proceeding as calculated to suppress debate. He submitted it to that gentleman whether it would not operate only as a postponement of discussion. He thought, as a general rule, when anything like an expression of opinion of the committee was called for, upon any important subject, it would be better not to press the decision at once, nor so long as gentlemen seemed not fully to have examined it, nor to have had an opportunity for examination.

In regard to the resolution itself, with the permission of the Convention, he would say a few words. He was in favor of the principle of the resolution. The gentleman from Tippecanoe (Mr. Clark) had said that it was often as fatal to stand still as to advance. As a general maxim, it was doubtless true, that there is as much factiousness in obstinate conservatism as in wild innovation; but it struck him that

this maxim did not apply here. He thought the evil of too little legislation to be far less than the evil of too much legislation; and if they were to adopt this provision, that the affirmative vote of a majority of all the members of both branches of the General Assembly should be required to pass a law, did any one suppose that if, in consequence of its adoption, any important proposition should be defeated, the matter would not be referred back to the people? The people then would take up and pass upon it themselves, by sending back the proper men to express their wishes. It would be the same thing as submitting the proposition to the vote of the people. It would operate only as a postponement of legislative action. It was like the veto power. He had always been in favor of the veto, because he believed it was only a postponement—only a keeping back of hasty legislation. It was a maxim in criminal law—and a very proper and merciful one—that it was better one hundred guilty men should escape punishment than that one innocent man should suffer. He would not go quite so far as that, in this connection, but he would say, that he believed it was better that ten good laws should be postponed than that one bad law should be passed. Postponement was no very great evil in legislation; but the passage of a bad law might be an evil of the gravest character, which would be felt by the public for years. Upon this question his mind was made up; but from this it did not follow that the minds of others were prepared for the vote; and for that reason, in order to give others an opportunity for examination, he should vote for the amendment of the gentleman from Switzerland.

Mr. SMITH of Ripley said, he desired to make a few remarks with reference to the proposed amendment of the gentleman from Switzerland. For the discussion of all propositions there was an appropriate time, and this portion of the business was usually discussed in the committee of the whole. He apprehended that the most proper time for the discussion of these measures was after the report of the committee had been made upon them. The Convention could then resolve itself into committee of the whole, and decide upon them. He considered that this was an inappropriate time for the discussion of such propositions as gentlemen might think proper to offer.

If gentlemen were allowed to offer resolutions upon every topic embraced in the Constitution, and engage in the discussion of their merits before they were referred to their appropriate committees, it would be involving the Convention in a kind of guerrilla debate. It would be springing upon them the examination of questions that had not yet received their appropriate consideration at appropriate times. If any gentleman was desirous of offering a resolution of instruction to any one of the committees

He could do so and it would be duly referred, but he could not but think that the proper time for the discussion of these propositions would be when the report of the committees were received.

He would state to the Convention that he thought the appropriate course to have been pursued by the Convention, at the outset, was to have referred the Constitution to the committee of the whole, and in that committee to take it up section by section, and express their sentiments, fully and impartially in regard to them. But they had now raised these committees, and it was proper that these questions should be referred to them, and when their reports were received the Convention could go into a committee of the whole and decide upon their adoption or rejection. He wished to call the attention of the members to the fact that there was an appropriate time for the discussion of all these propositions. They had raised the necessary committees and referred nearly all the subjects embraced in the Constitution to them, and should any gentleman be desirous of inserting an additional section to that instrument he could do so by bringing forward an imperative resolution, embodying the principle he desired to have incorporated among its provisions. He considered that the discussion would be doubled if they discussed these propositions now, and discussed them again after the reports of the committees were received and came up for consideration in committee of the whole.

Mr. CHAPMAN said, that he hoped the proposition of the gentleman from Switzerland (Mr. Kelso) would be adopted.—He was in favor of a full and free discussion of all important subjects before they were referred to the committees. It was desirable that committees should have some manifestations of the opinion of the members of the Convention upon the different propositions referred to them, in order that they might prepare a report in accordance with the will of the majority. He had had no experience in legislative matters inside of the bar, but he thought he had a little outside of the bar; and from witnessing the proceedings of the last nine sessions of the Legislature, he had been satisfied that some rule of this description should be adopted, in order to do away with the very evil with which they were now threatened—that of “hasty legislation.”

The Convention had, by a large majority, declared in favor of biennial sessions of the Legislature, as a remedy for hasty or bad legislation. This, in his opinion, was not only a wide departure from the first principles of republican representative government, but would prove altogether an inadequate remedy for the evils complained of. Biennial sessions, without other and efficient rules, would only tend to increase and prolong the evils resulting from unwise laws. The latter could only be guard-

ed against by constitutional rules, of a character such as that now under consideration.

He would go a little further than the gentleman from Putnam, in regard to special legislation, and also in regard to special appropriations from the Public Treasury. He thought that a vote of two-thirds of the Legislature, by yeas and nays, was requisite in regard to all special appropriations of money, or special acts of any kind whatever. He had heard members of the Legislature say, that they cared nothing how they voted on certain measures, simply because the people whom they represented would have no immediate interest in the issue. But if we adopted a rule requiring the yeas and nays upon the passage of all bills, it would bring every member square up to the mark, and all would be held responsible for their votes. He trusted that the committee having charge of this subject would report a provision imperatively requiring the yeas and nays on the final passage of all bills. To his certain knowledge, bills had passed the House of Representatives, no record of which appeared upon the journal. Would that have been the case, he would ask, if the yeas and nays had been required to be taken upon them? The famous Canal Land Bill, which made so much noise at the North a few years ago—and one of the most infamous measures, if he was correctly informed, that ever passed a legislative body, was an example in point. No record of its passage could be found upon the journal of the session at which it passed. He hoped that the amendment proposed by the gentleman from Switzerland would be adopted; and he further hoped that the rule proposed would be incorporated in the new Constitution.

Mr. BORDEN stated, that in regard to the correctness of the position taken by gentlemen, that it required a majority of the Legislature to pass a bill, there could not be much dispute. He favored the idea of simply inquiring into the expediency of the proposed resolution. In case the Convention concluded to make this amendment to the resolution, he was prepared to offer an additional amendment. He thought to the effect that in voting money out of the treasury for proper purposes, it should require two thirds of all the members to effect that object, and also, that in creating, altering, or renewing any charter for private companies, it should require a vote of two-thirds of the Representatives elected. He had heard some objection made to the last part of the proposition, but he thought that the Convention, generally, were in favor of the first part, requiring two-thirds of the members to appropriate money out of the Treasury. If there was any serious objections made to the latter clause of the proposition, it could be stricken out.

The question being upon the amendment offered by the gentleman from Switzerland, (Mr. Kelso,)

Mr. BORDEN said, he would not press the amendment he had proposed to offer at the present time.

Mr. READ of Clark said, he was opposed to the reference which the gentleman from Switzerland (Mr. Kelso) seemed to think necessary, and should vote against it, not from any want of courtesy towards the gentleman, but because he thought it was time to come to some definite conclusion upon this question. It was well known that the rules provided that all amendments to the Constitution should be read three several times on three several days. He thought that was sufficient time for a full and impartial consideration of any subject that might come before them. He regarded this as one of the greatest reforms of the day. The county from which he hailed, embracing within its limits a large class of practical and sober thinking men, were unanimously in favor of it. It would protect, in a great measure, the people of the State from hasty legislation, an evil so justly complained of. He would appeal to those members of the Convention who had participated in the deliberations of the State Legislature, if their experience did not justify the adoption of such a course. The gentleman from Johnson (Mr. Ritchey) knew very well that bills of great importance had passed the Legislature in less than fifteen minutes. What had been the custom in that body in regard to many important measures? Some member would rise and present a proposition, which, upon its first appearance, would meet with little favor. If he was an artful and intriguing Legislator, he would move that it be laid upon the table. He would then go to log rolling, or, in other terms, intriguing among the members to secure a party in its favor.

On the last days of the session, when it was known that a good portion of the members had left for home because of not being immediately interested in the proceedings, the bill would be brought forward and passed by a majority of two-thirds of the members, when it could not have been passed at any anterior period of the session. What said the present Constitution in regard to the veto power being exercised upon bills passed in this hasty manner? It required that when the Governor vetoes a bill it shall be brought before both branches of the Legislature for their consideration, in which case it requires a majority of all the members elect to both branches of the Legislature to pass a bill or joint resolution. But at this late period of a session how could a bill of the character he had referred to be appropriately investigated? He had a resolution which he would move at an appropriate time. It was as follows:

"That the Legislature shall be prohibited from passing any bill or resolution for the appropriation of money, or creating any debt against the State, or for the payment of money in any way whatever, unless such bill or reso-

lution shall be voted for by a majority of the members then elected to each branch of the Legislature, and said vote spread upon the journals of each house."

The gentleman from Switzerland seemed to think it was necessary for this bill to be referred, and desiring that the committee should be instructed simply to inquire into the expediency of adopting it. He supposed that in regard to subjects that were imperatively referred to the committees, it only remained for those committees to put them in a proper form, and make proper reports in regard to them—which reports would be only considered and decided upon by the Convention. Now, he was disposed to think that when thus reported, some of the members would consider themselves relieved from all responsibility in regard to them, and take their departure for home. Taking this fact into estimation, he considered that some such reform as was proposed in the resolution before the Convention, should be made.

Mr. STEVENSON said, that it appeared from the remarks of the gentleman from Ripley, (Mr. Smith,) that he seemed to consider that this was not the proper time to investigate these questions—and, that they ought not to introduce imperative resolutions at this period. He (Mr. S.) was astonished that the gentleman's memory was so defective. It would be remembered, that among the Rules reported for the government of this body, there was one providing that imperative resolutions should lie over for one day.

This rule was adopted on motion of the gentleman from Tippecanoe. He was upon the committee that formed these rules, as was the gentleman from Ripley, (Mr. Smith,) and they thought that one day's notice was amply sufficient. Now the House had been notified in accordance with that Rule, and more than that this resolution had been introduced some three or four days since. Thus the Convention had had notice that this proposition would be investigated, yet the gentleman was disposed to smother it down.

Mr. SMITH of Ripley said, he would explain his position. The gentleman from Putnam would recollect that in the first of the organization, he took the identical ground for which he now contended—namely, that they should discuss all the propositions embodied in the Constitution in the committee of the whole. He was now in favor of referring them to these committees without any preliminary discussion upon their merits.

Mr. STEVENSON stated that due notice had been given in regard to this propositions, and ample time afforded for a proper investigation of its merits.

In regard to the argument of the gentleman from Tippecanoe (Mr. Clark) which had appeared to have considerable weight upon the minds of the members—with respect to

the withdrawal of the minority, thus preventing a majority from being obtained, he considered it a very fallacious and weak one. Suppose the House was divided on a certain bill—no matter what bill it might be—and that there were one hundred members present, fifty-one being for it and forty-nine against it. Did the gentleman suppose that if this minority were to withdraw, it would defeat the bill? Certainly not. There would still be left fifty-one members of the House who would, of course, be a majority of all the members, and they could pass the bill. Thus, it will be seen that the argument of the gentleman from Tippecanoe fell to the ground unless a portion of those voting in the majority should withdraw with the minority.

Mr. WOLFE desired to remark to the Convention that the very ground taken in this proposition had been taken by the citizens of the county which he represented, and that was an additional reason for its meeting with his approbation.

It had been truly said by gentlemen who had taken part in this discussion, that there was a great deal of irresponsibility on the part of the members who came up to this Hall to legislate for the people of Indiana. He thought that if a resolution of the character of the present one had been adopted years ago, the State would have been greatly benefited by it. He recollected in 1847, on the day of the adjournment of the Legislature, there were only twenty members present, out of one hundred, to transact business in this Hall, whereas, had the yeas and nays been demanded upon the passage of every bill, they would have been compelled to remain and discharge the duties required of them. He contended that every man who came up to that Hall was a servant of the people, and should be held strictly responsible for the faithful performance of his legislative functions.

Mr. PEPPER of Ohio said, that he was in favor of a full and unrestricted discussion upon every subject that properly came up for the consideration of the Convention. He doubted not that there were many gentlemen in the Convention situated like himself, who had had no experience in the arts and stratagems of legislation. He felt that there was a manifest propriety in allowing full scope for enquiry and discussion in regard to all these propositions before referring them to committees. He thought it important that they should know the views of every gentleman who came up there to represent a portion of the people of the State.

The gentleman from Ripley (Mr. SMITH) had suggested that after these subjects had been referred, and reported upon by the appropriate committees, that then their merits could be fully discussed, and amendments be incorporated in them. Without intending any disrespect to

the gentleman, he thought there would not then be so fair and appropriate an opportunity for the settlement of questions as now; some of the members might not succeed in getting an opportunity to offer and discuss these amendments. Of all bodies that ever assembled in the State of Indiana, for the purpose of deliberation, he thought that this body should be the most free and unrestricted—liberal in their rules, in their actions towards each other, and as to the limits of discussion—so that every subject that gentlemen might see fit to bring forward for consideration, having a bearing upon the interests of their constituents, might receive a full and impartial examination. There could be no charge made of a want of courtesy towards the standing committees—because gentlemen gave expression to the sentiments upon the subjects under their charge for the guidance of those committees.

These committees, it should be borne in mind, had a very great influence. Whenever they presented their reports, there was a general disposition on the part of the majority to adopt them without much discussion, thus giving them an influence which oftentimes they did not deserve. With respect to the present standing committees of the Convention, it was not expected by any one that they would be prepared in a day or two to report upon these subjects; and therefore it would not delay business, but, on the contrary, expedite it, to have subjects of importance, such as the one they now have under consideration, acted upon by the Convention.

Mr. STEELE said, that this was a new subject to him, one that he had not examined at any length, and, therefore he was unprepared at present to vote for the resolution. He would prefer that it be referred to a committee who should inquire into its expediency, and report thereupon to the Convention. They could then discuss the matter fully, and come to some decision with regard to it. He should, therefore, vote for the amendment of the gentleman from Switzerland.

Mr. READ of Monroe stated, that he was decidedly in favor of the provision embodied in the resolution. It was a provision that had been incorporated in the new Constitution of the State of New York; but in other conventions that had been held in the various States of the Union, for the purpose of revising their Constitutions, its utility had been doubted, and it had not been adopted. He supposed that there were many members of this Convention who had not yet fully made up their minds as to the propriety of its adoption. He was glad that the gentleman from Switzerland had offered the amendment then pending, because the attention of this body, by the discussion that had taken place upon it, had been directed to the propriety of introducing such a provision into the Constitution, and he had no fear but that it

would be so incorporated. All he desired was that there should be full time for deliberation. They would not in the end progress with any greater rapidity by adopting the resolution, than if they waited for the report of the committee upon it.

Mr. CLARKE of Tippecanoe remarked, that he knew it was out of order to discuss the merits of this proposition, nevertheless, as gentlemen had begun a discussion, he felt authorized to continue it in a few remarks. The gentleman from Putnam (Mr. Stevenson) had said that his (Mr. C.'s) proposition was a fallacious one, and that if there were fifty-one members in a body numbering one hundred, in favor of a law, it would be enacted.

But, said Mr. Clarke, if there were forty-nine members only in favor of a necessary measure, and these should constitute a majority of those present, who remained at their posts to do their duty, the law must be defeated. Now, in the ordinary course of human affairs some members of the Legislature will probably be sick, some may be absent, and notwithstanding these accidents, the government must go on—its emergencies must be provided for—and it is I think dangerous to so trammel the legislative body as to destroy its function and defeat its necessary purposes.

Mr. C. said, he understood the gentleman from Posey to say, that he favored the proposition because it would diminish or restrain legislation. Now I do not regard government as an evil, nor can legislation be supposed an evil. Government is a blessing; laws, its offspring, are necessary. There is no evil so great as anarchy. Nothing I should fear more than a provision in the Constitution, which may defeat the ends of government, and prevent the lawful and deliberate expression of the public will. In our government the will of the people, lawfully expressed through their regularly constituted organs, is law. It can be no part or purpose of our Constitution to defeat or hinder the expression of this will.

Some gentlemen appeal to their legislative experience, and suppose if this proposition were adopted, hasty and improvident legislation would be prevented. Now, I think with the gentleman from Dubois (Mr. Edmonston) that it would rather encourage and compel log-rolling—at least, it would in no wise hinder such combinations. I may be permitted to say that I served in the Indiana Legislature during a period of ten years, and that period in which our State debt originated. When the Mammoth Improvement Bill passed the Senate, the minority presented a proposition to amend the Bill by adding a million and a half to the appropriation and involving an ultimate cost of ten millions, and proposed if the Bill were so amended, to allow it to pass by an unanimous vote. And I give it as my experience, that if it had required an unanimous vote to have secured

the passage of that Bill, the amendment would have been adopted, and the Bill would have been passed by an unanimous vote instead of a vote of two-thirds by which it did pass.

Mr. OWEN. I have but a word to say in reply to the gentleman from Tippecanoe. That gentleman says, that he does not agree with me in the sentiments I have expressed on this occasion. He says that he does not, as I seem to do, regard Government as an evil, and that he does not wish to escape, as I seem to desire, from the expressed will of the people. Now, I should be very glad to believe that all laws that are passed do really embody the will of the people; but I do not believe it. If I did I should desire their passage. What I think we ought to see to, is, that no law shall pass until we know it does embody the will of the people.

As regards the proposition that government is an evil, I beg leave to say, that I have made no such unqualified assertion.

My proposition is this, that the best government so that it attains the legitimate object of government, is that which governs the least. I should be glad to know that we could live without government. We cannot do so, but it is a principle which we should always bear in mind, and it is an important one, that, so we effect the legitimate object of government, viz.: the protection of life, liberty, and property—the fewer laws by which that object is effected, the better. If the gentleman ever understood me as going beyond that, I assure him he is mistaken.

Mr. TAYLOR said, he had designed to say a few words upon this question, and he had intended to wait until every other gentleman had expressed his views fully and thoroughly, and to his satisfaction. He had, however, hoped to be relieved from inflecting upon the Convention at this stage of the question, anything like an argument, although it was a question of importance, and one in the discussion of which he should like to take a part, for he felt it was due to each member of that body, upon a question of this kind, that he should have an opportunity not only to give his vote but also to express his views and opinions. And he would not now trouble the Convention with any remarks if he knew how the vote would go, or rather if he believed that the proposition would go to the committee without positive instructions. If he were assured that it would be thus referred, he would be satisfied to defer what he had to say until the report of the committee was made, and the question came up on its merits, and after the enlightened views of the committee had first been obtained; and if the committee reported in accordance with his views, he should be satisfied, but if they reported adversely, it would then be time enough for him to interpose; and should a majority of the Convention disagree with the opinion of the committee, the

report of the committee would not be final and conclusive. There were some of these propositions for which he would go, heart and hand, but there were others which he deemed highly detrimental to the best interests of the people of this State, and the adoption of which he would do all he could to prevent.

But trusting that the Convention would refer the subject to the committee without instructions, he would not now enter upon its discussion. It was a matter which might be left to the disposal of the Legislature, hereafter. He thought there were many weighty reasons which might be given why it should be left to the Legislature.

Trusting that the resolution would be referred without instructions, he would say no more at this time. When the report of the committee came in, if it should appear that the committee took a different view of the matter from that which he took, he would then take occasion to say what he might consider necessary in support of his own views and in opposition to those of the committee, and move to engraft such provision as in his own judgment might seem expedient. He thought the proper course was to refer all subjects without special instruction. For, as had been remarked by the gentleman from ———, if the opposite course were taken, there was no need of committees at all.

Mr. NAVE said, he had not risen to discuss the question, but merely to call the attention of the Convention to one point, and that was whether they would discuss these important resolutions in the Convention, or whether they would make them resolutions of inquiry, and send them to the appropriate committees. If the Convention had determined that they would not now discuss them, he wished to see that determination applied to the resolution now before the Convention, and it would cut off a great deal of unnecessary debate. The several propositions that were before the Convention could then be referred, and when the committees reported upon them they could be discussed fully in the Convention. It was important that the Convention should determine whether they would discuss them previous to their reference, or whether they would wait until the committees had reported. He was, however, in favor of the resolution of the gentleman from Putnam, and he did not see why they might not come to a direct vote upon it. The people of Indiana generally had instructed their delegates to vote for such a proposition. There was no portion of the State in which he had been where he had not heard the desire expressed that such a provision should be inserted in the amended Constitution. He, for one, was prepared, therefore, to give his vote in favor of the proposition as contained in the imperative resolution.

Mr. NILES said, that as he had the misfortune to differ from his friend and colleague, (Mr. Taylor,) and from several other gentlemen, for

whose opinions he entertained profound respect, he hoped that he might be indulged in making one further remark. My colleague, (continued Mr. Niles,) has said truly that the reports from committees will have great weight with the Convention. Gentlemen will feel reluctant to vote against such reports, or to undo the action of the committees. Now, sir, while I admit that a windy and wordy session would be a misfortune, I hold that hasty and inconsiderate action on the part of a body of this kind, assembled to fix the character of the organic law of the State, would be a far greater evil. The gentleman from Ripley (Mr. Smith) has remarked that if the course for which we contend is adopted—if discussion of subjects is permitted before they are referred to appropriate committees, they will be liable to be twice debated. It is, sir, for that very reason that I oppose the amendment. I desire that the door be thrown wide open for debate. I hope that every member will have an opportunity freely and fully to express his views, on every important subject. For, however humble the member may be, though the weakest on this floor, even if that member be myself, he may make some valuable suggestion. If debate is elicited now, and the sense of the Convention, in reference to important subjects, ascertained, the minority will have an opportunity to be heard again when the question will be upon the adoption of the sections as they come from the committees. It will be like giving to the defeated party in a law suit the chance of a new trial. But, if the consideration of the most important questions which will come before this body, is postponed till near the close of the session, I apprehend that the desire to adjourn, and return to their homes, will be a ruling and paramount consideration with many members; and that a Constitution formed by committees, accidentally selected, rather than by the Convention itself, may be forced upon the people.

Mr. TAYLOR rose for the purpose of making an explanation.

Mr. GREGG rose to a question of order. He desired to know if it was in order for gentlemen to speak as often as they pleased upon the same question!

The PRESIDENT: If the gentleman from Jefferson desires to speak, the gentleman from Laporte, having spoken once, cannot retain the floor.

Mr. GREGG. I do not wish to speak, sir; but I noticed that several gentlemen assumed the privilege of speaking repeatedly to the exclusion of others.

The PRESIDENT. Under the rule, a gentleman has a right to speak twice upon any question, if no other desires to speak.

Mr. TAYLOR. I am sorry, sir, that the gentleman should have thought it necessary to make me the object of his remark in reference to a violation of the rules of order. I have

tried to be extremely modest hitherto. I think I have been particularly unobtrusive.

Mr. GREGG desired permission to explain. His point of order, he said, was not directed exclusively to the gentleman from Laporte; he had seen several gentlemen rise who had already spoken twice.

Mr. TAYLOR. I will inform the gentleman that I am not one of those who have spoken twice. I have made a few remarks, it is true, and I had hoped to be relieved from making even those few, and would not now trouble the Convention were it not for the high regard that I entertain for the talent and experience of my colleague, who, I regret to find, does not give his sanction to the proposition that this subject shall go to the committee without instructions. I had hoped he would have consented to let it go to the committee, and when reported back I should be prepared to say what I have to say in reference to the subject.

I agree entirely with my colleague that there ought to be most ample opportunity afforded for discussion upon all questions. It is only once in many years that a Convention is assembled to make amendments in the organic law, and while discussion is going on I trust we shall not be captious; and if a member does rise to speak twice upon the same subject, I hope he will not be called to order, because it has the effect of embarrassing a man who is as little disposed as I am to be obtrusive. And I confess that on many occasions I have kept my seat when I desired to offer a few remarks, because I saw that other gentlemen were desirous of addressing the Convention. I do not desire to be troublesome, but I do desire to be heard occasionally when matters of importance—matters in which my constituents are interested—are before the Convention. It is the only means I have of getting what I say before my constituents.

I should be very much gratified if the Convention would permit this proposition to take the course indicated by the gentleman from Switzerland; but if the question must now be argued I shall be under the necessity of detaining the Convention for a few moments while I express the views which I entertain in regard to it, although I should much prefer that we should first have the report of the committee. And if that report should coincide with my views, the Convention would be relieved from the infliction of a speech from me; but if it should differ from them I should claim the privilege of being heard.

My colleague says that he wishes to give the widest scope to debate, but is the course that he proposes calculated to attain that end? Not at all. Every one must see that the Convention is impatient of debate upon this subject at this time; and under such circumstances it would be difficult for me to give expression to my ideas in a satisfactory manner, and I ap-

prehend this would be the case with other gentlemen. But trusting that the Convention will yet take the course suggested, of referring this resolution to the committee without instructions, and that I shall have an opportunity, when the report of the committee comes in, of saying what I desire to say, I shall not trouble the Convention further at this time.

Mr. COOKERLY said, he had not risen to discuss the merits of the proposition that was now pending, but merely to say a word in regard to its reference. This, said he, is a very important question. It is a proposition which, if adopted, will change, materially, the Constitution under which we have lived for so many years, and I hold that it would be wrong to force the Convention to a decision upon it at this time. We have constituted a large number of committees. For what purpose? Is it for the purpose of sending to them resolutions instructing them to report in a particular manner upon the various propositions submitted to them? No sir; it is for the purpose of submitting resolutions of inquiry to them, and letting them, in the committee rooms, discuss the matter and decide upon the propriety of reporting favorably or otherwise, and when the reports come in, it is then for us to discuss them, and vote upon them. I do trust that questions of as much importance as this is, will be submitted to a committee, to be considered by them and reported upon. So far as I am concerned, I think I shall vote in favor of the proposition that is embraced in this resolution; but I am not prepared now to vote upon it, and I hope, therefore, that it will be referred.

Mr. DOBSON said, that so far as he was concerned, if it was a single and separate proposition, he would be willing to meet the question now; but as many gentlemen had expressed a desire that each and every member of the Convention should have an opportunity to be heard upon it, and as it was a new question, and as there was not sufficient time to discuss it now, his own opinion was, that it should go to the committee.

What was the object of the assembling of this Convention? It was to remedy the defects in the Constitution of the State. But it would depend very much upon the decision that might be made regarding some other provisions, whether this should be engrafted in the Constitution or not.

It has been asserted, continued Mr. D., with a good deal of plausibility, that the State of Indiana has been ruined by excessive legislation. Now I apprehend that no country has increased more rapidly than Indiana in population and wealth, and if it has been injured so much by legislation, I ask what it would have been if there had been no legislation at all. I apprehend that legislation has not done so much injury as is represented, after all. The State has more than trebled its wealth in the last seven-

teen years. But admitting that this has been a great evil—admitting that there has been a great deal of hasty and imperfect legislation—still, here is the question: shall we, therefore, run into the opposite extreme? I know it is very natural for a legislative body that has gone too far in one direction one day, to go too far the other way the next.

I apprehend it is not our true policy to go far into the discussion of this matter in its preliminary stage. It being a question of so much importance, I think it ought to be permitted to go to the committee, and when it comes back into the Convention members will have an opportunity of discussing it as fully as they wish.

I believe, sir, that if we take away from the Legislature the power of passing local laws we shall do a service to the State. Local laws have been the curse of this country. I believe that at the last session there were something like seven hundred bills passed. Of these, not more than two hundred are of a general character, leaving something like five hundred local laws passed in one year. Now if you take away their power to pass local laws, you take away five-sevenths of the legislation. But I am disposed to think that this is a matter that we should not be hasty about, or we may do more harm than good—like an old woman that I have read of somewhere, who was extra-officious. A neighbor having fallen off his horse one day, the worthy dame took great pains to assist him, brushing off the mud very carefully and helping him to remount his horse. And for fear that he was not properly seated, she had to give him an extra shove, which sent the old man off on the other side, where he fell deeper into the mud than before. Thus it may be with us if we attempt to determine hastily upon a matter of this kind; we may do more harm than good. I am disposed to think, therefore, that we had better send this matter to a committee. I nevertheless agree with the gentleman from Laporte. I am willing to hear discussion upon all subjects, and at every stage. It is but once in a number of years that the organic law is to be changed. My own original idea was, to have but three committees, and to refer every subject to one or other of those three committees, as the gentleman from Tippecanoe suggested at the commencement; and that when the reports from those committees came in, the discussion should take place. If discussion be had before the reference, it will have to be gone over again, unless we can settle and arrange a principle, definitely, at once. I shall vote for the reference to the committee.

The question being taken on the amendment of the gentleman from Switzerland, it was agreed to; and,

The resolution, as amended, was adopted.

Mr. CARR of Jackson moved that the order

of business be suspended, to enable him to offer the following resolution:

Resolved, That the Convention proceed, this day at two o'clock, to elect, by ballot, a Printer to this body.

The order of business was suspended, and

The question being taken upon the resolution, it was adopted.

Mr. MURRAY rose to move a resolution of thanks to the citizens of Madison for the hospitality tendered by them to the Convention.

Mr. BORDEN claimed the floor, and having been recognized by the President as being entitled to it, said, he rose to ask the mover of the resolution which had just been adopted, under a suspension of the order of business, the favor to move a re-consideration of the vote by which the resolution was adopted, in order that they might record their votes upon it. If the Convention were determined to go into the election of a Printer, he said he would of course yield to the will of the majority, but he hoped there was no desire to precipitate action upon that subject; he thought it was at least due to those who were opposed to the proposition, that they should be permitted to record their names against it.

The PRESIDENT remarked to the gentleman from Allen, that he had had plenty of time to call for the yeas and nays, if he had been within the bar of the House at the time.

Mr. BORDEN. That is true, sir; but I hope the House will indulge me by permitting the yeas and nays to be taken.

Mr. CARR said, he had no wish to take any member by surprise, but he certainly thought it was time that this question should be decided. If they were going to have a Printer at all, it was time that they should elect one. The printing for the Convention, at present, was done sometimes at one place and sometimes at another. For the accommodation of the gentleman from Allen, however, and all other members of the body who entertained the same feelings that he did on the subject, he would move a re-consideration of the vote.

Mr. BORDEN desired to say one word in explanation. He had observed that a motion was made the other day to reconsider a vote for a similar purpose, and he had not expected a new proposition would be made to supersede that motion. That was the reason why he had been taken somewhat by surprise when this motion was adopted.

Mr. DOBSON said, he had promised the gentleman from Allen to move a re-consideration, for the purpose, as he supposed, of giving the gentleman an opportunity to argue the question.

Mr. BORDEN. Not at all, sir. I did not wish to argue it, but merely to record my vote.

The yeas and nays were demanded upon the motion to reconsider.

Mr. CARR said, that, upon reflection, as there seemed an unwillingness to re-consider the vote, he would withdraw the motion.

Mr. DUNN of Perry renewed the motion to re-consider.

Mr. BORDEN renewed the demand for the yeas and nays.

Ten members rising, the yeas and nays were ordered.

Mr. CLARKE of Tippecanoe inquired of the Chair whether the motion to re-consider must not necessarily lie over one day.

The PRESIDENT replied that it must lie over.

Mr. CLARKE was proceeding to address the Chair, when

The PRESIDENT reminded the gentleman from Tippecanoe that there was no question before the Convention.

On motion by Mr. RITCHEY,

The Convention adjourned until 2 o'clock P. M.

AFTERNOON SESSION.

Mr. BORDEN rose and said, that when the Convention adjourned there was a motion pending to re-consider the vote that had been taken upon the motion to go into an election for State Printer, at 2 o'clock that afternoon. He had no objection, so far as he was concerned, to going into the election of State Printer; all that he wished was to have the yeas and nays taken on the motion to re-consider. He trusted that by the unanimous consent of the Convention the call of the yeas and nays might be proceeded with.

Mr. OWEN said, he had but a single word to say in reference to this subject. It had occurred to him on several occasions, and he had so expressed himself to many of the members of the Convention, that he had never been a member of a legislative body where so much courtesy was exercised by the members towards each other, and where kindly feelings so generally prevailed as in the present Convention. He understood that the minority had no desire to delay the election of a State Printer, but were perfectly willing that it should take place immediately. They were simply desirous, for reasons of their own, of having the privilege of recording their votes on the journal, and he did hope that that privilege would be granted unanimously.

The question being put on the reconsideration of the vote on the adoption of the resolution of Mr. Carr, submitted by him this morning on the subject of electing a State Printer to the Convention, and the yeas and nays being demanded by ten members, they were taken with the following result:

AYES.—Messrs. Balingall, Beach, Borden, Butler, Chandler, Clark of Hamilton, Cole, Colfax, Davis of Madison, Garvin, Graham of Miami, Hamilton, Hardin, Hawkins, Hovey, Howe, Kendall of Wabash, Kinley, Maguire, March,

Mather, May, McClelland, Miller of Fulton, Nave, Shoup, Spann, Terry, Watts, and Work. —ayes 30.

NOES.—Messrs. Alexander, Anthony, Badger, Barbour, Bascom, Beard, Bicknell, Biddle, Blythe, Bourne, Bowers, Bracken, Bright, Brookbank, Bryant, Carr, Chenowith, Coats, Cookerly, Crawford, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, &c., Duzan, Edmonston, Farrow, Fisher, Foley, Foster, Frisbie, Gibson, Gootee, Gregg, Hall, Holliday, Helmer, Hendricks, Hitt, Hogin, Holman, Huff, Johnson, Jones, Kent, Kendall of Warren, Lockhart, Logan, Miller of Clinton, Miller of Gibson, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Morrison of Washington, Murray, Niles, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Read of Monroe, Ristine, Sherrod, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Steele, Tannehill, Taylor, Thomas, Todd, Trimble, Vanbenhusen, Wheeler, Wiley, Wolfe, Wunderlich, Yocum, Zenor, and Mr. President.—noes 89.

So the vote was not reconsidered.

ELECTION OF STATE PRINTER.

The Chair announced the first thing in order to be the election of a Printer to this Convention.

Messrs. Carr and Colfax were appointed to act as tellers.

Mr. EDMONSTON presented the name of AUSTIN H. BROWN, as a candidate, and

Mr. COATS presented the name of SOLAN TURMAN.

Upon the counting of the first ballot it appeared that

Austin H. Brown received	78 votes.
Solan Turman	35 "
Jacob P. Chapman	6 "
Scattering,	11 "

AUSTIN H. BROWN having received a majority of all the votes given, was declared duly elected the Printer to this Convention.

After a few remarks by Mr. WALLACE, in explanation of his vote for Mr. Chapman, as Printer to the Convention,

On motion, the Convention adjourned.

SATURDAY, OCTOBER 19, 1850.

The Convention met pursuant to adjournment, and was opened with prayer by the Rev. Mr. MILLS.

The Journal of the preceding day was then read.

RIGHTS OF MARRIED WOMEN.

Mr. OWEN, agreeably to notice previously given, introduced his resolution of inquiry, in relation to the rights of married women.

The resolution was as follows:

"That the committee on rights and privileges of the inhabitants of the State, inquire into the expediency of incorporating in the bill of rights

the following section: Women hereafter married in this State shall have the right to acquire and possess property to their sole use and disposal; and laws shall be passed securing to them under equitable conditions, all property, real and personal, whether owned by them before marriage, or acquired afterwards by purchase, gift, devise, or descent, and also providing for the registration of the wife's separate property."

Mr. OWEN said, he wished to offer a few words of explanation with reference to the precise character of this resolution. The change proposed by it differed essentially in character from any of the changes which had already been made in various States of the Union; for example, in the States of New York, Pennsylvania, Ohio, Maine, Arkansas, Florida, Georgia, Alabama, and several others. The changes which had been made in these various States in regard to the holding of property by married women, were changes affecting existing relations—affecting the property of those now married. Now he would ask the Convention to observe that in this resolution, which he proposed to incorporate in the new Constitution, there was nothing but what was strictly prospective—relating to the property of women hereafter married. The difference he regarded as a very important one; for if this was made to apply to future marriages only, and among those about to be married, there were any who thought, or whose parents thought, that the old law was better than the new law, nothing would be more easy than to come under the old law. The day before the marriage the bride had only to transfer to her future husband all her personal property and the rents and profits of her real estate, and she would be placed at once as under the old law. It was, therefore, a matter of choice with her whether to come under the provisions of the old law, or to avail herself of the provisions of the new. He would not, at this stage of proceedings, argue the question whether the principle involved in the proposed change was right or wrong; he was simply desirous of calling the attention of the Convention to the particular character of this resolution. It would be discussed, he trusted, at length, by the Convention in a few days.

He would remark, in connection with this subject, that the people of the State of Indiana had already acted upon the subject. It was not a new matter even among them. There was, upon the Statute Book now, a law which made provision in regard to the real estate of married women, and the rents and profits of that real estate. The words of the law were, "that they should be deemed and taken to be her separate property." Whether it was the design of this law to give to the wife the sole management and control of her real estate, and its rents and profits, he did not assume to decide; not belonging to the profession he would not offer any legal opinion himself on that point. He had

heard various opinions in regard to it, some asserting that it did give to married women such rights of control, and others that it did not. The legal distinction in regard to these matters was of a very nice character. The words "to her sole use and disposal," are admitted to confer exclusive management, while the words "for her own use and benefit," have been held not to bar the marital right.

He would only say, in conclusion, that he had not brought up this matter hastily, nor without deliberation, nor; he would add, without consultation with wiser and more experienced persons. Many years ago he had written in regard to the subject to two of the most eminent jurists of this or any other country—Chancellor Kent and Judge Story—and at the proper time he would lay before the Convention their opinions on this subject, as they were given to him by letters addressed to himself.

Mr. KELSO remarked, that the very clause of this resolution of the gentleman from Posey, quoted by him in its favor, appeared to his mind the most fatal objection to it. It might do well this morning after having just emerged, as it were, from the large company of beautiful young ladies that graced the Governor's levee last evening, to come forward in favor of the rights of unmarried ladies—but he (Mr. K.) had considerable affection for one married lady, and he could not perceive any good reason for making such ample constitutional provision for the rights of unmarried women, in preference to the rights of those already married. He would have been pleased if the gentleman from Posey, had stated whether he occupied the position, that this Convention had not the power to apply this provision to the protection of the rights of those ladies who were already married; if that was his opinion, he must say that he differed from him entirely with regard to its propriety and correctness. He had no objection to the proposition if it went no farther than appeared on its face, because they had a law of similar character now on the Statute Book to which the gentleman had referred, but if they were to embody it in the new Constitution, he would enquire why its provisions might not be applied for the benefit of all women alike, both married and single. For the purpose of taking the sense of the Convention on this point, he would move to strike out from the resolution the word "hereafter."

Mr. OWEN had but a single word to say in reply to the gentleman from Switzerland. Individually, he was in favor of the amendment the gentleman had suggested, but he was not sure that the matter had been sufficiently discussed throughout the State to justify the Convention in going so far as it proposed, and the adoption of this resolution would not prevent the Legislature from carrying out the design of the gentleman's amendment at any future period. By this provision they would instruct the Legislature to go to a certain point; that would not

prevent them from going further if they desired. He was very far from asserting that we had no right to extend the provision to those now married as to property hereafter to be acquired; and he was most decidedly in favor of such extension, if it should appear that the people of the State generally were ready to receive and approve it.

He apprehended that the gentleman from Switzerland was in error when he said that this resolution differed but slightly from the existing law on the subject. The law now on the Statute Book gave to married women, at most, control over real estate, and its rents and profits only, but embraced no provision at all in regard to personal property.

Mr. KELSO observed, that that was the only difference. The idea that they were to do their business by halves and depend upon the Legislature to perfect it, he did not subscribe to. If they were going to make a constitutional provision in regard to this matter at all, why not make one sufficiently comprehensive to embrace the provision he had suggested? If the Convention inserted the proposition suggested by the gentleman from Posey, in the Constitution, the Legislature would take it as a criterion for their action on the question, and would shield themselves under the plea that the Convention had duly considered the matter, and had seen fit to go so far and no farther, and therefore they would not transcend the bounds of the action of the Convention. He contended that if the Convention had the right to pass such a provision, embracing the whole subject, it should be done at once and not left for the action of the Legislature. He hoped his amendment would prevail—as it was merely a matter of inquiry—and if upon examination the committee should esteem it necessary to make the change now proposed they could report accordingly.

Mr. OWEN said he consented to the gentleman's amendment.

The question was then taken upon the amendment of the gentleman from Switzerland, (Mr. Kelso,) and it was concurred in;

And the resolution as amended was adopted.

RESOLUTION ON NEWSPAPERS.

On motion of Mr. KELSO, the business was suspended and the report of Mr. MORRISON of Marion, chairman of the select committee in relation to taking newspapers, was taken from the table.

The question being upon the amendment submitted by Mr. EDMONSTON to the resolution reported by the committee,

Mr. NAVE said, that he had some knowledge with reference to the taking of newspapers for the purpose of distributing them among the voters of Indiana, as he had had occasion for several winters to vote for or against a similar proposition, and from the experience he had had on the subject he was satisfied that the adop-

tion of such a course was an unnecessary waste of the public money.

I believe, continued Mr. N., if the Convention take the number of papers proposed in the resolution, or a lesser number as proposed in the amendment of the gentleman from Dubois, (Mr. Edmonston,) that but a comparatively insignificant number of the people of Indiana will receive even a copy of the papers thus ordered—and I ask gentlemen, what information of any value can accrue to the people of this State by purging such a course? Occasionally an individual would receive a single isolated copy of the paper containing our proceedings, with a report of our action upon several distinct propositions, but of what benefit will that be to him? Unless they have a connected history of the proceedings here they most assuredly will fail to understand the reasons for, and the result of our action on, the various propositions that will come under the consideration of the Convention. I consider then that this resolution will result in no way to the benefit of the people of Indiana, but, on the contrary, that it will have the effect of adding to the large amount of taxes under which they are already groaning, the sum of four thousand dollars. And, sir, I would respectfully inquire for what purpose is this new tax to be levied? I answer, simply for the purpose of aiding the pecuniary interests of a few editors in this city without any prospect of advantage resulting to the people of the State. For one, sir, I conceive that this resolution will not be the means of imparting information concerning our proceedings to the masses of the people of Indiana; a few leading men in each county may receive a copy of the newspapers occasionally, but any general diffusion of information concerning our action among the people generally, by the proposed resolution, I consider hopeless. I shall vote against the resolution and the amendment.

Mr. PEPPER of Crawford moved to amend the amendment by adding the words "at the expense of the delegates."

The question being taken upon the adoption of the amendment, it was not agreed to.

Mr. SMITH of Ripley moved to amend the amendment so that three daily copies of the State Journal and State Sentinel should be taken on the terms proposed by Mr. Defrees.

The amendment was ruled out of order.

Mr. KELSO. I have a word to suggest in favor of this proposed expenditure of the public money for newspapers. The people have sent us here to revise and amend the Constitution of this State, and the law that authorized this Convention provides, also, that the instrument which may emanate from our hands is to be submitted to the people for adoption at one of the regular elections of the State, or an election to be provided for hereafter; and it depends on their vote whether our labors here are to have force and effect or to be null and void. In

order to advise the people of what we have done and the reasons that have led to our action, it has been thought prudent to distribute among them as much information as we can during the term of our deliberations; and the only two papers in which it is thought proper to publish a report of our proceedings are those proposed in this resolution—the number of copies ordered being five for each member, and my friend from Dubois (Mr. Edmonston) proposes to make even that small number still smaller, giving three copies only for each member. The gentleman from Dubois and myself have been together in this Hall before; and upon various occasions he has been in favor of taking newspapers and I have opposed him—and now in a certain degree our positions are reversed, he being in favor of taking the smallest, I the largest, number of papers. Now, sir, I go for taking the largest number proposed of those papers which will publish our proceedings and debates in full. The people of our State, or at least seven-tenths of them, will as readily understand what we are doing from these proceedings and debates as we can ourselves, and therefore it is that I think we should distribute the papers containing them, freely and extensively, among our constituents.

Sir, there is another reason why I think we should vote for this resolution, and it is this: Questions of vital importance will come up before this Convention, and it is essentially necessary that the debates which may occur upon them may be at hand for immediate reference. It is absolutely important that each member shall have upon his desk every morning the proceedings of the previous day. Suppose that an important question is under discussion for several days, can it be expected, for instance, that an argument made on Monday by one member can be replied to on Saturday by another member, unless he is furnished with it in *extenso*. The Stenographer will write out the debates, to be sure, but he cannot furnish a copy to each member every morning. The newspapers must take his manuscript and print it, and then we can be supplied with our proceedings.

Another great benefit to result from this resolution is to be found in the fact that each member will have the opportunity of sending a copy of the paper containing our daily proceedings to every local paper in his county; and those local papers will copy the proceedings, and having a general circulation among the people, every section of the State will be made acquainted with our doings. It is a mistaken notion to suppose that not one in fifty of the people of our State will read these proceedings. Why, sir, the action of this body is regarded with the most intense interest; a greater interest, even, than was felt at the time of the adoption of our first Constitution—in fact the people are expecting more than they

will get from us. They want to know our reasons for acting this way upon one proposition, and that way on another, so that they may themselves be enabled to pass a correct judgment on the result of our labors. I contend, then, that we should vote for taking the largest number of these papers that will publish the Stenographic report of our proceedings in full, and that we should not take any at all of those papers that will not thus publish our proceedings.

It is said, sir, that we are now about to pay a Stenographer the sum of ten thousand dollars to report the proceedings of this Convention, and for what purpose? Is he not employed to add to the general information of the people, by preparing a faithful record of all our transactions? Those proceedings will be published in book form, and a copy given to each member of this Convention, and a certain number of copies to the State Library; but when will the people be able to obtain them? Probably not under six, eight, or nine months. If, then, the Legislature should, in their wisdom, decide that a special election for the decision of the people upon the adoption of the new Constitution shall be held at the earliest opportunity practicable—which course will be perfectly proper—these books might not be yet printed or distributed among the people before the election occurred. Is it not, then, all important that a speedy and general diffusion of a knowledge of our proceedings, among the people, shall be made? I apprehend that they will count the proposed expenditure as nothing, in comparison with the knowledge that will accrue to them of the action of this Convention.

In regard to the editors who it is said will reap the pecuniary benefit of this resolution, I can only remark, that they furnish the necessary medium for communicating with the people. I have been abused and villified by this class of men, probably as much as any other man in the state, and especially at Indianapolis, nevertheless they are here, and we must take them as a kind of necessary evil. We are, to be sure, giving to the editors of this city, some advantage over the editors of other papers in the State, but through their instrumentality is to be furnished a great and valuable amount of information to the people of the State. In conclusion, I feel bound to say, sir, that I shall vote against the amendment of the gentleman from Dubois, and in favor of any proposition for increasing the number of papers to be taken by this Convention that shall publish our proceedings entire.

Mr. FARROW said, he was opposed to the resolution. The people of the State generally, he believed, understood to a great extent, already, the questions that would come before the Convention. He represented a constituency of three thousand persons, nine-tenths of whom were a reading people. The subscrip-

tion books of the papers of this city would show that a large number of papers were taken in his county. Those papers would, of course, have an account of these proceedings and this constituency would thus be notified of the work going on here. It was thus with the people of other counties. Many took the papers published in Indianapolis, others took papers which would doubtless, copy from the papers published here, all that was necessary to an understanding of their action. He was opposed, to scattering a few papers throughout the State for the of benefit a few local editors.

Mr. SHERROD said, he hoped the resolution as amended would not pass.

He was well satisfied that its passage would fail to accomplish the good predicted by its friends. Gentlemen talked eloquently about extending light and knowledge by keeping the good people informed of the proceedings of the Convention, and for one he desired that they should know what was going on in that body. But he doubted the means proposed by the resolution. He contended (and with great deference to the opinions of the members of the committee) that it was a useless and worse than useless drain upon the public treasury. He would appeal to the House, and ask, in all candor, was it right, was it just, was it in harmony with the spirit and genius of our institutions, to tax the mass of the people for the benefit of the favored few? For one, he could not subscribe to such doctrine. He had been taught a different lesson. He had learned that when the mass of the people were taxed for any purpose whatever, it should be for the benefit of the whole, and not the few. This he believed to be the true doctrine. It was the American doctrine; it was the doctrine of our ancestors. It had stood the test of scrutiny, and would continue to stand as long as our institutions remain permanent.

He could not see, for his life, what they were to gain by the adoption of this measure, and he was willing to view it in its most favorable aspect. Suppose they took these papers, he would ask how many of the people of each district represented upon that floor would be benefitted by it? How many would receive these papers? Perhaps one in every twenty. And even those who received them would be benefitted very little, if any. To-day he would send a paper to this friend, and to-morrow to that one. And the people would receive the proceedings of the Convention in such a disjointed manner, that it would be of no service to them whatever. If gentlemen were determined to appropriate from four to five thousand dollars for the benefit of their constituents, as they contended, he would say, in the name of reason, let them apply in such a manner that it might have the desired effect; and, in his humble opinion, that could only be accomplished by printing the proceedings of the Convention in a pamphlet

form. Then if they were distributed over the State, those who received them would get them in a tangible shape. However, he regarded the whole matter as a useless expenditure. In his opinion, the people were not particularly interested in what the peculiar views of this or that gentleman might be upon the various subjects discussed there. They were only interested in the result of their deliberations, and when submitted to them in the shape of a Constitution, they would be governed by their own view of right and wrong. They would weigh it in the scales of equal laws and equal rights, and not the opinions of any one man or set of men.

Gentlemen had talked about liberality, and had said these papers should be sent to the hard-fisted yeomanry of the country. This was all well enough. But this thing of being liberal at the expense of the people, was a kind of liberality that he did not approve of; and, if he was not much mistaken, it was one for which the people of Indiana would not thank them. It was not among the objects for which they had been sent there. If gentlemen were determined to have these papers, and in that way extend their liberality to the bone and sinew of the land, he thought it would look much more consistent, more patriotic, to run their hands into their own pockets and pay for them; it would prove one thing at least, that they were sincere in their professions.

The people of Indiana were taxed to death. They were groaning under the burthen of taxation, originating from a State debt, that was overhanging them like a mighty incubus, which had well nigh crippled the energies of this otherwise prosperous and happy State.

These complaints had been heard. Reform had been the watch-word. It had been preached during the last canvass, from the centre to the confines of the State. This was the great object for which that honorable body had been convened; and for one he had pledged himself to economize, to watch and guard the public treasury; or, in other words, to keep his eye steadily fixed where the cloud gathered darkest, and do what could be done to lessen the burthen of taxation.

He must confess that he was astonished at the spirit of extravagance manifested upon that floor. Here was a proposition to impose a direct tax upon the people of from four to five thousand dollars, and that, too, for an object, as he had contended, that was useless, and worse than useless.

At least he would have to hear a different tone of argument, backed by better philosophy than he had, before he could be convinced otherwise. Other gentlemen might vote upon this question as they pleased. For one he could not give his consent to support such an unjust measure. He was not there to represent sectionalism or favoritism. He was there to defend the rights and interests of the masses. He could

not think of setting an example there that would not only exert a pernicious influence for the present, but would be handed down to posterity.

Mr. FOSTER said, he understood that this resolution provided for the taking of a certain number of copies of the papers publishing their proceedings, and also for the payment of the composition of those proceedings. This, he would remark, was not the usual course heretofore pursued by the Legislature. If, continued Mr. F., I understand the amendment offered by the gentleman from Dubois, it proposed to take a less number of papers and pay for the composition. Now, sir, I do not like the tenor of the resolution or the amendment. It is proposed that the State shall pay for the publication of our proceedings in the newspapers; but, sir, I am of opinion that the people will derive but little benefit from them. I am disposed to think that the proper course to pursue, is to take this money intended to be appropriated for these papers and composition, and have a large number of copies of the old Constitution, with the amendments that are offered here, printed to distribute among the people for their consideration. This, I think, would be much more satisfactory to them than if they received detached portions of our proceedings. They can then form their opinion of the new Constitution without recourse to the arguments of gentlemen in this Convention. I shall, at the proper time, present a proposition to this effect, that the Convention shall be supplied with one copy for each member of each of the newspapers which publish the proceedings. I move that the resolution and pending amendments be laid upon the table.

The question was taken on the motion to lay on the table, and

It was decided in the affirmative.

So the resolution and amendment were laid on the table.

Mr. BADGER rose and said, he was inclined to the opinion that almost every gentleman on this floor must desire to have this question relating to the newspapers settled; for until it was definitely settled it would be called up to-day and voted down, and again called up to-morrow and again voted down. And when they reflected that every speech of two minutes in length draws from the public treasury five dollars, it ought to admonish them that their words should be few and well ordered.

I have risen twice (continued Mr. B.) to ask a suspension of the regular order of business, in order to present a resolution, and both times I have failed. Resolutions embracing the same proposition, however, have been introduced by other gentlemen under a suspension of the order of business. In relation to that I have nothing to say, but I ask again a suspension of the order of business, so that I may introduce a very short resolution, and if there are nine gen-

tlemen who will be kind enough to vote with me in calling the yeas and nays, I shall feel very much gratified.

The resolution was read, as follows:

Resolved, That this Convention will take no newspaper for distribution at the public expense.

On the motion to suspend the rules the yeas and nays were ordered.

Mr. OWEN rose and addressed the Chair.

Mr. FOSTER, interposing, said he had an amendment to offer.

Mr. OWEN. I will give way to the gentleman.

Mr. FOSTER moved to amend the resolution by striking out all after the word "resolved" and inserting the following:

"That the Secretary be directed to procure one copy each of the daily and tri-weekly papers published in this city, for each member of the Convention."

The PRESIDENT ruled the amendment out of order.

It was accordingly withdrawn.

Mr. OWEN. Of all the resolutions that have been proposed here, I consider that of the gentleman from Monroe the worst. If we would do anything in regard to this printing, it seems to me the important thing to do, is to have the debates published and disseminated among the people now, whether we take a single paper or not, and I care very little whether a paper is taken by any member of the Convention. The important matter seems to me to be, that the debates should be published in the daily papers of the city, in order that they may go to the country editors, so that they may select from the debates what they choose to re-publish. Now, sir, we ought not to conceal from ourselves that a large part of the expense of this publication we have already incurred. The gentleman from Switzerland estimates the cost of reporting our debates at ten thousand dollars. I suppose it may cost some two or three thousand dollars, but having a Stenographer, the question is, whether the result of his labors shall be circulated throughout the State now, or whether the publication shall be deferred for six months or a year, when the interest in our proceedings will have comparatively subsided. Now I do not think it very important whether we take any newspapers or not; but I do think it important that we should make an arrangement, if we can do so on reasonable terms, for the immediate publication of our proceedings, and I believe that such an arrangement can be made. I believe that if we adopt a resolution that we will pay twenty cents per thousand ems, we can have the work done, and that without rendering it obligatory upon us to take any newspapers. If we take them we must also pay the postage upon them, and this will be a very considerable item. If

we go to this expense, I would much rather pay a fair compensation to those journals that will publish our proceedings daily, in full, so that every country editor may be supplied with a copy. I do not know whether the resolution as it stands would prevent you from paying a fair compensation for publishing the debates in full, without which every body knows they could not be published. The editors cannot afford to publish them without being paid for it.

Before I sit down, permit me to say a word in regard to some of the observations of the gentleman from Hendricks. The gentleman asserted that it was solely for the purpose of putting money into the pockets of a few editors in this city that the proposition was made. Now, in the first place, the remark of the gentleman is unparliamentary. No member has a right to impute any such motives to his fellow members. I do not impute to the gentleman from Hendricks a deliberate intention to charge us with what would be little short of corruption. Does he mean to say that the publishers have come to members of this Convention and induced them, by some undue influences, to vote money into their pockets?

Mr. NAVE. I had no intention in anything that I said to impute any such motives.

Mr. OWEN. I take it all back, sir, but I am sorry that the wording of the honorable gentleman's remarks would seem to convey the imputation. If this resolution for taking the newspapers had no reference to paying for composition, I do not know that I should object; yet, probably the Convention, if they hereafter determine to pay for composition, might choose to order one or two copies of the paper for each member.

Mr. COOKERLY rose to a question of order. He desired to know if the debate was in order.

The PRESIDENT. The question is on the resolution of the gentleman from Putnam. Debate is in order.

Mr. SMITH of Ripley said, it appeared to him that there was a good deal of misunderstanding in regard to this matter of printing, especially in regard to the expense. I desire, said he, to direct some interrogatories to the gentleman last up, who, I presume, is as competent to give us information as to the manner in which this work is to be done, and as to whether the reports of our debates are to be published promptly, as any other gentleman. We have now a printer to this Convention, and I desire to know if the gentleman can give us the information whether our debates can be published daily, so that a copy may be laid upon the desk of every member on the morning of the day succeeding that on which the debate takes place?

Mr. OWEN. I understand, sir, that if we adopt the resolution to pay for the composition—and I believe that if we pay twenty cents per

thousand ems for the work the printers will be satisfied—but, at any rate, if we pay for the composition, we shall have the debates and proceedings of one day laid upon our tables on the morning of the next.

Mr. SMITH. It was to that point that I wished to call the attention of the Convention. Then I understand that the journal and debates can be kept up in book form, and laid, in that form, upon the desks of members every day, if the Convention now vote twenty or twenty-five cents per thousand ems for composition. I desire to know if that will be sufficient to pay in full for all this work.

Mr. OWEN. I do not say that that will be sufficient to pay for the publication in book form. I am not prepared to say that. I merely said that the proceedings could be published from day to day for that amount of expense.

Mr. SMITH. Well, sir, I desire to ascertain if an arrangement of that kind could not be made to bring out the debates in book form.

Mr. McCLELLAND (addressing the President). What is the question before the Convention?

The PRESIDENT. The question is on the resolution of the gentleman from Putnam.

Mr. McCLELLAND. Well, sir, I am in favor of the resolution. I am opposed to taking these newspapers at the public expense. I have no feeling against any of the publishers of newspapers in this city, but I conceive that we have no right to appropriate the money of the people for the purchase of newspapers. I represent some three thousand voters. Suppose I have three newspapers every day to send to my constituents how much will the whole of them be benefitted? I think it could not fail to operate unjustly and unequally. I do not conceive that we were sent here for any such purpose. I am opposed to appropriating money which does not belong to us for the purpose of benefitting a portion of the people of this State. If the gentleman from Monroe would offer his resolution again, that the expense of these newspapers should be borne by the members themselves, I would appropriate my own money as liberally as any member of this Convention; but when gentlemen propose to appropriate for this purpose the money belonging to my constituents, I cannot go with them. If some Delegate would move an amendment, declaring that we will take so many copies at the expense of the members of the Convention, I would support the proposition.

Mr. COLFAX said he rose for the purpose of making a single remark, which was elicited by what had been said by the gentleman from Ripley.

It seemed to be considered desirable that the expense of these newspapers should not be thrown upon the public treasury, and one of the propositions that had been submitted was, that members of the Convention should sub-

scribe and pay for the newspapers, out of their own private resources. The voluntary subscriptions of members, he apprehended, would go but a little way towards remunerating the publishers for the expense to be incurred in publishing the debates, and it appeared to him that the object contemplated by the appointment of a Stenographer to report the debates of the Convention would not by any means be attained by reserving the reports to be published in book form after the close of the sitting of the Convention, and if reserved to be so published in book form, members would have no opportunity to correct any errors that might be made in the reports; and to suppose there would be no errors would be to suppose that which had never happened in the case of the reports of any deliberative body. How often was it that members misapprehended each other—was it to be supposed that, amidst the din and confusion which frequently prevailed, the reporter could comprehend every thing that was said, with perfect accuracy? Clearly not, and it was important therefore, that an opportunity should be afforded to make the necessary corrections before the reports became a permanent record. It appeared to him, therefore, that it would be proper for many reasons, that the Convention should agree to the resolution, which proposed to give a moderate compensation to the publishers, and to subscribe for one copy of the paper for each member.

Mr. MORRISON of Marion said, he was inclined to believe that if the members of the Convention, generally, knew as much about this business of publishing as he did they would entertain a different opinion from that which seemed to prevail. Some delegates, however, might perhaps think that it was proper that information should be withheld from the people. Such gentlemen he would have no hope of convincing, but as there were some, who were desirous that information should be disseminated, he would give them the benefit of his opinions which were derived from experience, and which might therefore be worth something. From the demonstration that had been made after the committee had reported a plan, it appeared that the Convention looked upon the expense as being too great, and he would say that the committee were compelled to report as they did, from the fact that the publishers declared that they could not set up the debates from the manuscript unless they were paid for the composition. By reducing the number of papers to be taken, as contemplated by the amendment of the gentleman from Dubois, the whole expense attendant on the publication would not exceed \$2,500. Whether the Convention would subscribe for any papers to send abroad among the people would be for themselves to determine. He desired that there should be a fair distribution, however, of the work among the different papers—not as was intimated by the gentleman

from Hendricks, to fill the pockets of the publishers with money, but to disseminate the reports of our proceedings among the people of the State, because information of this character was only derivable from papers printed at the Seat of Government, and if the papers here did not receive the patronage of the Convention to enable them to publish these reports they could not be sent abroad in any other way. How, he would ask, were the people to be enabled to arrive at a correct conclusion, and to give a vote understandingly upon the amended Constitution, unless they were furnished with the reports of the proceedings and debates of the Convention? Under this view of the subject he would leave it to the Convention to determine whether they think it is doing justice to the community to withhold from them that information which was only attainable through the newspapers of this city, under the patronage of the Convention.

Mr. WOLFE remarked, that gentlemen could accomplish the object proposed by putting their hands in their pockets and paying for the papers. He was not for suppressing information, and he was ready to contribute his proportion of the expense out of his own pocket. As regarded taking three copies of the daily newspapers for each member, he thought it was wholly unnecessary; they would go a very little way towards affording a correct view of what was done.

Mr. MAGUIRE said that, in his opinion, this was simply a business transaction, and it should be so considered and treated. If these papers were useless to the people they should not be taken. The arrangement was not, he supposed, a matter of very great importance to the publishers of newspapers, and if it were, it would not be proper to make it for their benefit unless it would be really advantageous and useful to the people. It had long been the custom of the Legislature to take the papers here for the purpose of sending out their proceedings to the people; and if it were important that the proceedings of a Legislative body should be known, he regarded it as of much more importance that this Convention should disseminate information as to their action. Sir, the people are to be called upon at an early period—perhaps in the spring or early part of the summer—to vote on the amended Constitution, and without these papers they would have very little opportunity to investigate the nature of the amendments or the arguments, by which they were sustained or opposed. He cared but little about the matter personally, as he did not expect to make many speeches, but he did think it important that the constituents of members should have as much opportunity as could reasonably be afforded them to see the proceedings of this Convention as they came fresh from the newspaper press. That was probably the only way in which any information could be received by the people pre-

vious to the time when they will be called upon to accept or reject the labors of the Convention. It is not yet determined that the Debates shall be published in a volume by the order of this Convention, and if that should be done it will probably be several months before it will be completed—and furthermore, after it shall be published, very few of our constituents will have time to examine its contents. It had been correctly remarked by the gentleman from St. Joseph, (Mr. Colfax,) that the proceedings and debates here would be a sealed book to the members unless they were published in the newspapers, and an opportunity thus afforded to gentlemen to revise the reports of their speeches; and the volume containing them would forever remain a sealed book to the mass of the people unless its contents were made known to them through the press here in the first place, and then copied by the papers in other parts of the State. The volume of course will be printed, either by order of this Convention or of the Legislature, but the number of copies will be small, and nine-tenths of the people perhaps will never see it. To the proposition that each member should pay for his portion of the paper he had no personal objection. He would say however that if the papers would be valuable to the people—and if not they should not be subscribed for—there was no impropriety in paying for them out of the Treasury. As the agents of the people we send them the papers for their own benefit and not for the benefit of the members. The constituents whom he had the honor in part to represent could feel but little interest in the result of the question. They all had the best opportunity to make themselves acquainted with the doings of the Convention, both by personal attendance upon the sessions of the body, and through the medium of the city press. He trusted that the question would be decided at once. It had been several days under consideration, and he thought it must be well understood by this time. He again disclaimed any personal interest in the matter. He repeated that it was a mere business transaction. If the papers were not worth the price demanded for them they should not be taken. If however it was important, both to members of the Convention and to their constituents, that information should be disseminated through that channel, let the papers be taken.

Mr. WATTS said, he was constrained to acknowledge that his constituents, generally, had more information than himself; therefore, he did not feel like distributing much of what information we possessed, to be scattered broadcast over the State, for fear it might produce a bankruptcy here. But, as he had said on a former occasion, this proposition to send out newspapers was not a means by which the people could be informed of the proceedings here. If they could give the people regular files of these papers, daily or weekly, something could be

known by them; but sending them out in the detached parcels, as proposed, they could know from them nothing satisfactory about what had been done here. He had no objections to taking newspapers, two or three from each office of the city press, and sending them to their constituents, or to the local papers. The people at home, he believed, were as well advised of the requisite constitutional amendments, as their delegates here, and there was as much uniformity of judgment amongst them. Therefore, when the Convention should have completed their work, he thought it would be advisable to print all the amendments in pamphlet form, and scatter them broadcast amongst the people. For the people desired chiefly to know what was done. They cared but very little about the whys and wherefores which might be employed here. These were his views. He thought them correct, and intended to act upon them. He was disposed to take the newspapers here, but not at the expense of his constituents. He did not think it a correct principle to tax the many for the benefit of the few.

Mr. FOSTER proposed to amend by striking out all after the word "resolved," and inserting the following:

"That one copy of each of the newspapers in this city shall be taken."

Mr. KELSO said, that if anything at all could be done with this matter, it appeared to him that it must be by way of compromise, and if he was not mistaken, the gentleman from St. Joseph (Mr. Colfax,) had submitted the most practicable view of the case. He would therefore suggest, that, in the first place, they should refuse to amend, and then vote down the proposition of the gentleman from Putnam (Mr. Badger) for the purpose of affording an opportunity for a proposition of this kind to be made, namely: That there be taken one copy for each member, of such daily papers as would agree to furnish the proceedings and debates in full. One of the advantages of this arrangement, was this: whenever the arrangement should be made for publishing the proceedings and debates in full, though but a single copy for each member were taken, the proceedings and debates in full would necessarily run through the whole edition of the paper, furnishing a good opportunity, on all hands, for those gentlemen who talk about paying for their papers out of their own pockets, to go to the publishers and order any number of copies, which, in their benevolence, they might be disposed to distribute. For himself, he was too poor to distribute many papers in this way; but, if this arrangement were made, he would purchase and distribute as freely as he could afford to do. He would like, also, as a part of this arrangement, to bind the publishers of these proceedings to exchange with all the local editors of the State.

Mr. McCLELLAND proposed to amend the amendment, by inserting at the proper place

the words, "at the individual expense of members."

Mr. READ of Clark said, he was satisfied that a majority were in favor of this proposition in some shape or other; but it seemed they could not come together. He thought there would have to be a compromise, and, preferring that compromises should be made in a committee room, he would move that the resolution and pending amendments be referred to a select committee of one member from each Congressional District.

Mr. OWEN said, for the purpose of bringing this matter to a point in a few words, he would ask leave to read a resolution, which, as soon as it might be in order, he proposed to offer. It might be that upon hearing it, the Convention would be willing to adopt it. The original proposition involved an expenditure of about \$4,000, while the resolution in his hand would incur an expense of less than \$400—striking off nine-tenths of the original amount; and he thought it would attain very nearly the same object.

Mr. OWEN read his proposed amendment as follows:

Strike out all after the word "resolved," and insert:

"That the Secretary of the Convention be authorized to ascertain from the Editors of the Daily Journal and Tri-Weekly Sentinel, whether the Daily Journal will publish in its daily issue, the entire debates of the Convention, if paid for the same at the rate of twenty-five cents per thousand ems, the said debates being thence copied, in whole or in part, into the Tri-Weekly Sentinel: *Provided*, that one copy of each paper be subscribed for, for each member and officer of the Convention; and if he agree to the proposal, then the Secretary be authorized to make such an arrangement.

The question being taken on the motion to refer, it was decided in the negative.

Mr. EDMONSTON moved to lay the resolution and amendments on the table.

Mr. BORDEN demanded the yeas and nays. They were ordered, and being taken were yeas 60, nays 63, as follows:

Those who voted in the affirmative were,

Messrs Alexander, Anthony, Balingall, Barbour, Beach, Beard, Biddle, Borden, Bracken, Butler, Carter, Colfax, Crumbacker, Davis of Madison, Davis of Parke, Dick, Dunn of Perry, Edmonston, Garvin, Gootee, Haddon, Holliday, Hawkins, Hitt, Holman, Hovey, Johnson, Jones, Kelso, Kendall of Wabash, Kinley, Lockhart, Logan, March, May, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Moore, Morgan, Morrison of Washington, Newman, Niles, Pepper of Crawford, Prather, Schoonover, Shannon, Smiley, Snook, Smith of Ripley, Spann, Steele, Tannehill, Taylor, Thomas, Trimbley, Work, Wunderlich, and Yocum—60.

Those who voted in the negative were,

Messrs. Allen, Badger, Bascom, Berry, Bicknell, Blythe, Bourne, Bowers, Bryant, Carr, Chapman, Chenoweth, Coats, Cookerly, Crawford, Davis of Vermillion, Dobson, Dunn of Jefferson, Duzan, Farrow, Fisher, Foley, Foster, Frisbie, Gibson, Graham of Miami, Graham of Werrick, Gregg, Hall, Harbolt, Hardin, Helmer, Hendricks, Hogin, Howe, Huff, Kent, Kendall of Warren, Maguire, Mather, Mathis, McClelland, McFarland, Mooney, Morrison of Marion, Nave, Nofsinger, Owen, Pepper of Ohio, Reed of Clark, Ristine, Sherrod, Sims, Smith of Park, Stevenson, Terry, Todd, Vanbenthussen, Watts, Wheeler, Wolfe, Zenor, and Mr. President—63.

So the resolution and amendments were not laid on the table.

Mr. KELSO called for the reading of the resolution and amendments, and they were accordingly read by the Secretary.

Mr. TAYLOR, in order to give the gentleman from Posey an opportunity to offer his proposition, moved to lay the pending amendments on the table; which motion was agreed to.

The question then recurring upon the original resolution offered by the gentleman from Putnam, (Mr. Badger,)

Mr. OWEN moved to amend by striking out and inserting the proposition which he had just before read.

The amendment being read by the Secretary,

Mr. KELSO said, if he understood the reading, members were to subscribe at their individual expense.

Mr. OWEN. One copy for each member at the public expense.

At the request of several members, the amendment was again read by the Secretary.

Mr. BERRY said, he believed the object would be best attained by taking the vote directly upon the proposition of the gentleman from Putnam, and so determine, at once, whether they would take the papers or not; and in order to bring the proposition before the Convention, he would call for the previous question.

Mr. COLFAX inquired what would be the effect of the previous question?

The PRESIDENT said, the first question would be upon the amendment.

The call for the previous question was seconded by a majority of the Convention.

Mr. BORDEN demanded the yeas and nays upon the main question, and there was a second.

The PRESIDENT remarked, that heretofore the effect of the previous question had been to cut off all amendments; but under the 18th rule for the government of the Convention, the first question would be upon the pending amendment.

The main question being upon the adoption of the amendment of the gentleman from Posey, was ordered to be now put.

The yeas and nays being taken upon this question, the Secretary reported—yeas 76, nays 49, as follows :

Those who voted in the affirmative were,

Messrs. Alexander, Allen, Anthony, Balingall, Barbour, Bascom, Beach, Beard, Biddle, Blythe, Boone, Bowers, Bracken, Bryant, Butler, Carr, Chapman, Chenowith, Clark of Tippecanoe, Colfax, Cookerly, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, Edmonston, Fisher, Foley, Foster, Frisbie, Garvin, Gootee, Graham of Warrick, Gregg, Harbolt, Hawkins, Hendricks, Hitt, Hogin, Huff, Johnson, Jones, Kelso, Kent, Kendall of Wabash, Kendall of Warren, Kindley, Maguire, March, McFarland, Miller of Clinton, Miller of Fulton, Milroy, Mooney, Morgan, Morrison of Marion, Murray, Niles, Owen, Pepper of Ohio, Prather, Ristine, Smith of Ripley, Smith of Scott, Steele, Taylor, Terry, Thomas, Todd, Vanbenthusem, Wiley, and Mr. President—76.

Those who voted in the negative were,

Messrs. Badger, Berry, Bicknell, Borden, Carter, Coats, Crawford, Duzan, Farrow, Gibson, Graham of Miami, Haddon, Hall, Holliday, Hardin, Helmer, Holman, Hovey, Howe, Lockhart, Logan, Mather, Mathis, May, McClelland, Miller of Gibson, Moore, Morrison of Washington, Nave, Newman, Nofsinger, Pepper of Crawford, Read of Clark, Schoonover, Shannon, Sherrod, Sims, Smiley, Snook, Spann, Stevenson, Tannehill, Trimble, Watts, Wheeler, Wolfe, Wunderlich, Yocum, and Zenor—49.

So the amendment was adopted:

And the question recurred upon the adoption of the resolution as amended.

The yeas and nays being demanded, ordered and taken upon this question, it was decided in the affirmative.

AYES—Messrs. Alexander, Allen, Anthony, Balingall, Barbour, Bascom, Beach, Beary, Biddle, Blythe, Bourne, Bowers, Bracken, Bryant, Butler, Carr, Chapman, Chenowith, Clark of Tippecanoe, Colfax, Cookerly, Crumbacker, Davis of Madison, Davis of Parke, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, Foley, Foster, Frisbie, Garvin, Graham of Warrick, Gregg, Harbolt, Hawkins, Hendricks, Hitt, Hogin, Huff, Johnson, Jones, Kelso, Kent, Kendall of Wabash, Kinley, Maguire, March, McFarland, Miller of Clinton, Miller of Fulton, Milroy, Mooney, Morgan, Morrison of Marion, Murray, Niles, Owen, Pepper of Ohio, Ristine, Smith of Ripley, Smith of Scott, Steele, Taylor, Terry, Thomas, Todd, Vanbenthusem, and Mr. President—69.

NOES—Messrs. Badger, Berry, Bicknell, Borden, Carter, Coats, Crawford, Davis of Vermillion, Duzan, Edmonston, Farrow, Fisher,

Gibson, Gootee, Graham of Miami, Haddon, Hall, Holliday, Hardin, Holman, Hovey, Howe, Lockhart, Logan, Mather, Mathis, May, McClelland, Moore, Morrison of Washington, Nave, Newman, Nofsinger, Pepper of Crawford, Prather, Read of Clark, Schoonover, Shannon, non, Sherrod, Sims, Smiley, Snook, Spann, Stevenson, Tannehill, Trimble, Watts, Wheeler, Wiley, Wolfe, Work, Underlich, Yocum, and Zenor—55.

Mr. COOKERLY moved that Mr. Niles be added to the committee on the Practice of Law and Law Reform.

Mr. COLFAX moved to amend by substituting the committee on the organization of the Courts. He thought there would be a peculiar fitness in his occupying a place on that committee.

Mr. NILES remarked that he was obliged to the gentlemen for the compliment, if that was its character, but that they would justify him in the assertion that it was in no way sought or desired by him.

Mr. BORDEN believed that the State would be benefitted by the services of the gentleman from Laporte on both of the law committees.

Mr. NILES was then added, by a vote of the Convention to committees number five and seven.

THE PROCEEDINGS AND DEBATES IN BOOK FORM.

Mr. MAGUIRE asked and obtained the unanimous consent of the Convention for a suspension of the rules to enable him to offer the following resolution :

Resolved, That the Printer to this Convention be directed to print — copies of the proceedings and debates of this Convention.

But, before the question was taken thereon,

On motion of Mr. WILEY,

The Convention adjourned till Monday morning 9 o'clock.

MONDAY, OCT. 21st.

The Convention met pursuant to adjournment.

Prayer by the Rev. Mr. CAMP.

The journal having been read.

Mr. KELSO rose and said, that he should be under the necessity of asking the Convention to suspend the order of business for the purpose of enabling him to introduce a resolution, and making this request, he supposed it would be proper for him to explain the object of the resolution which he desired to offer. It seemed that, as they were now proceeding, the Convention was making up more journal, to be published at the public expense, than could be either useful or proper. They were making out a complete journal by the Stenographer, and the Secretary was keeping his journal, as he, most rightfully, ought to do. He maintained that one complete journal was enough, and it was the object of his

resolution to define what portion of the journal should be furnished for the Stenographic report. For the purpose of settling this question now, he asked for a suspension of the rules to enable him to introduce a resolution, which he read as follows:

Resolved, That a record of the proceedings of this Convention shall be kept in the following manner, to-wit: All that class of legislative matter usually contained in the journals of the Legislature shall be journalized under the direction of the Principal Secretary. He shall prepare, or cause to be prepared, an index to said journal, and if the printing of said journal be ordered, he shall superintend the same. He shall also prepare, or cause to be prepared, a manuscript copy, to be deposited by the President and Secretary in the office of the Secretary of State, in pursuance of the 14th section of the act entitled an act to provide for the call of a Convention of the people of the State of Indiana, to revise, amend, or alter, the Constitution of said State.

There shall also be kept a journal of debates under the direction of the Stenographer; but said journal of debates shall not contain that class of matter usually embraced in Legislative journals, farther than may be actually necessary to identify and give a correct understanding of the subject matter under discussion.

The rules were suspended, and the resolution having been read by the Secretary, it was adopted by unanimous consent.

THE CONTESTED SEAT OF THE DELEGATE FOR UNION COUNTY.

Mr. KELSO, from the committee on elections, submitted a report, concluding with the following resolution:

Resolved, That in the opinion of this Convention, no person has been legally elected to the office of Representative Delegate to this Convention from the county of Union, and that the seat of such Representative Delegate in this Convention is vacant.

The question being upon the adoption of the resolution,

Mr. RARIDEN said, he would like to inquire of the chairman of the committee, whether there was, or was not, evidence before the committee, that the sitting member (Mr. Brookbank) was familiarly called and known by all the various Christian names found upon the tickets in the ballot box, which were referred to in the report?

Mr. KELSO said, there was no evidence of that fact, but the committee had given him credit for every such vote, including the votes given for I. Brookbank, and Franklin V. Brookbank.

Mr. RARIDEN said, he understood then that only two votes for Brookbank were rejected, one which he received for Senatorial Delegate, and the other decided to be illegal because the voter, having previously resided in

Union county, had removed to Ohio, and remained there some ten or eleven months, and then returned, sometime in the month of February last, and located himself again in the same county.

He would confess that this was rather a delicate case, but he was not exactly satisfied with the conclusion that the committee had come to, although they had investigated the case with better opportunities for arriving at a just result than he possessed. But in a case of this kind, he was in favor of waiving all matters of mere form, and settling down upon the individual whom the people had intended to designate as their delegate. This was all he wanted to know in regard to any election. This matter, it seemed, had been in the first place duly investigated by the men presiding over the ballot boxes in Union county.

He understood that the committee on elections were not disposed to disturb any of the conclusions which the officers of the election had come to, except to exclude from Brookbank the two votes he had named. Now it struck him that since this man, Brookbank, was running for Representative Delegate, and other gentlemen were running for Senatorial Delegate, the manner in which the votes were printed would render the voter very liable to misname his candidate, as was manifest in the result. The name of the sitting member had been written upon the ticket in the place of the candidate for Senatorial Delegate, by mistake. It was obvious to him, from the circumstances, that the voter intended to cast that vote for Brookbank for Representative Delegate; although there was nothing of the kind in the report. He would like to have heard whether, upon the same paper, there was a Senatorial Delegate voted for. If that fact could be ascertained, the mistake would be most certain and obvious.

He was not sufficiently conversant with the law regulating the elective franchise, to enable him to discuss the legality of these votes which had been discarded. Whether a voter, who had been living in the county of Union, by going to the State of Ohio and remaining there ten or eleven months—raising a crop there and then returning to Union county—whether such a voter would lose the right of citizenship, so far as to require a twelve-month's residence in the State to regain it, he could not determine; but it struck him that when such an individual had voted, by the consent of those who resided in the county, and when the officers of the election had decided upon his right to vote as a matter of certainty, and when the committee reporting were far from being decided upon which side the right was, it would be better to leave the matter where it was placed by the authority of the canvassers in the county. If there could not be found some obvious reason for reversing the decision of the

canvassers, he was for allowing the matter to remain where they had placed it. For this reason, and for the purpose of testing the opinion of the Convention, with reference to the case, he would move to modify the resolution reported by the committee, so as to declare, that the seat of Representative Delegate from Union county, was rightfully filled by Mr. Brookbank.

The PRESIDENT requested the gentleman to send up his amendment in writing.

Mr. KELSO said, that, for himself, he did not care the weight of a feather what disposition the Convention might make of the report. He did not object to taking the question upon the amendment. The committee had come to their conclusion upon this ground: there were some two or three different aspects of the case which would have enabled them to come to different conclusions; so that they could have decided, with about the same plausibility, either for the contestant or for the sitting member. The committee were satisfied, in the first place, with respect to the first vote claimed for Brookbank by the gentleman from Wayne, (Mr. Rariden,) that no other man for Senatorial Delegate was voted for upon that ticket but Brookbank. Could it be contended, then, that the vote was for Representative Delegate? It seemed, from the evidence, that a large number of tickets were printed at the instigation of a Major Watt, who was a candidate for Representative in the Legislature, in which all the names were left blank except his own: and, as it appeared at home, by the use of these tickets several of the friends of Brookbank had mistaken the writing of his name. In all these cases, where the canvassers had determined that the intention was to vote for the sitting member, the committee had left the matter as they determined: although no witness swore that he ever was known by any other than his proper name, and although it appeared that he had a brother by the name of *F. Brookbank*. But the case of the vote for Senatorial Delegate was so palpably miscounted that they could not but deduct it. The next vote rejected was that of *Knowlton*, who had removed to the State of Ohio, raised a crop there, remained eleven and a half months, and then removed back, in February last. This man voted for Brookbank, whilst he admitted, himself, that he had no right to vote; but he did so because the judges told him he might. The committee considered this vote, also, to have been illegally counted, and, being taken away from Brookbank, it left a tie between the candidates. The committee being unable to come to any more correct conclusion, thought it best to let the people determine the case for themselves. They could not think themselves any better judge of the case than the people at home.

Mr. ANTHONY said that both of the votes that had been rejected by the committee, were rejected with the approbation of counsel, and

yielded without argument, and he believed that if the depositions in relation to all the contested votes were examined here, the decision of the committee would be sustained by the Convention. With regard to the other vote—referred to in the report—the ticket printed upon both sides which seemed to have been fairly intended for Osborn—it was excluded, under the law, by the judges of the election. The committee considered that that vote should have been included, but they did not feel disposed to disturb the decision of the canvassers, and if they had included it, there would have been other votes to be included or excluded, which would have kept the balance even. In short, they found the matter surrounded with so many difficulties, which could not be explained by testimony, and which, as they were informed by counsel, were totally inexplicable, that they were constrained from a desire to do exact justice in the case, to make the report which had been submitted. He had entered upon the investigation with his mind prejudiced, if either way, rather in favor of the claims of the sitting member, but he found that he could not discharge his duty in any other manner than by subscribing to this report.

Mr. SMITH of Ripley said, he understood that the ticket alluded to, with Osborn's name upon it, was not a double ticket, but printed on both sides.

Mr. ANTHONY said, it was a single piece of paper printed on both sides with the same matter.

Mr. HOLMAN remarked, that the decision upon this report would involve the question whether the county of Union should have a representative delegate in this Convention: for it was probable the principal portion of the business of the Convention would be transacted before a return could be had from another election. Considering the large body of information brought before the Convention by the report of the committee on elections; and considering the fact that many members were totally unadvised of the circumstances of the case, it would be extremely difficult to arrive at any degree of correctness in any decision to be made at this time; and considering further, that that they had no opportunity of investigating the matter at once, and that perhaps many members would like to have time to examine the evidence before the committee, and by which the committee had conceived themselves to be justified in making their report. Upon this ground, he would be glad to have the subject postponed until to-morrow, at any rate, and if no other gentleman desired to be heard, he would make that motion. He would move that the further consideration of the subject be postponed, and that it be made the special order for to-morrow morning at ten o'clock.

Mr. KELSO said, he hoped the gentleman would modify his motion so as to lay on the table and allow the evidence to be printed.

[Several voices—"No, no, no."]

Mr. HOLMAN said, he would confine his motion to the report itself. His motion was, that the report be laid on the table and printed, and be made the special order for to-morrow morning at ten o'clock; but at the request of Mr. Colfax, Mr. Holman withdrew the motion.

Mr. COLFAX said, it seemed to him that, in any deliberative body, the members should endeavor to settle contests like this, if possible, so as to have every seat constantly filled; that every county entitled to a representation should have that representative here, and thus be entitled to an equal right and privilege and vote with others. In his estimation, the sitting member from Union county had been fairly and legally elected; and if they should send that gentleman home, and refer the contest to the people, the gentleman who might be successful in that contest, could not arrive here until towards the close of the Convention, and Union county would be thus virtually disfranchised so far as her representative delegate was concerned. He concurred, therefore, with the suggestion and motion of the gentleman from Wayne (Mr. Rariden). Notwithstanding his belief that the committee had done their duty honestly, faithfully—composed, as that committee was, of members of both political parties, and making a unanimous report, it would seem that their report would certainly meet with the acquiescence of the majority. But, notwithstanding all this, he was reluctantly compelled to differ with them; not because he sympathised politically with the sitting member, but because he differed with them in their conclusions, as set forth in the report itself. After stating that they had dismissed all matters of mere form, presented by the contestor, and had given to Brookbank all the votes claimed for him, as it was proper that they should, they say that, upon this count, he had a majority of two votes. But subsequently, upon a re-count, it appeared that his majority was increased to four; however, the committee would not consent to allowing these two additional votes for Brookbank, discovered upon a re-count made at Mr. Osborn's demand; though, if the contestor had found two extra votes for himself, as he doubtless hoped, he would certainly have claimed them as sustaining his contest. Then, by throwing out the vote of the man who removed for ten months to the State of Ohio, and the vote cast for Brookbank for Senatorial delegate, the result was a tie. Now, he was compelled, first, to dissent from the disallowance of the two additional votes found for Brookbank at the new count; because this re-count was taken at the instance and demand of the contestor himself, and made, too, officially by the officers of the election board. He would ask the chairman of the committee if this fact was not clearly in evidence?

Mr. KELSO replied that it was.

Mr. COLFAX. The re-count, then, was made at the request of the contestor, in the hope that, by so doing, he might be able to *diminish* the majority of Brookbank; but, upon the result of this second count, it appeared that Brookbank's majority, instead of being diminished, was *increased* to four votes. The committee decided that this count should not be regarded, for it had elicited the further information, that two more votes were counted than there were names recorded on the clerk's list; whereas, in this case, it would have been more properly the duty of the judges of the election, upon ascertaining this discrepancy, to have drawn out two votes from the ballot box. If the officers had done so in this case, it was in the highest degree probable that they would have, at least, drawn out one vote for Brookbank and one vote for Osborne. Making then, an equal division of the loss of these two extra votes—and what would be fairer, (for might not the clerks have casually omitted the names of the voters, as often is the case?)—Brookbank's majority, upon the second count, would be increased to THREE votes; and then, even according to the report and conclusions of the committee, he would be elected by a majority of one. Should it be presumed that *both* of these extra votes were cast by Mr. Brookbank's friends? If so, why?

He admitted, however, that the vote of Knowlton, who removed to Ohio, was, as the committee reported, clearly illegal. But the vote for Senatorial delegate, it seemed to him, should be counted for Brookbank. It was clearly the wish of the voter that that gentleman should represent him here—should be his delegate. This is not denied. Besides, the language of the law was, that the officers of the election should count the vote, if they could satisfy themselves as to "the office intended" by the voter. Every body who thought of the distinction between Senatorial and Representative delegate, knew that Brookbank was not a candidate for Senatorial delegate, but for Representative delegate. This distinction which the law had made between Senatorial and Representative districts, had made confusion too in other parts of the State. The mistake occurred by merely putting the name into the wrong blank; and it was a matter clear enough, it appears, to the board of canvassers, that the vote was *intended* for Brookbank as Representative delegate. According to the calculation which he made, Brookbank was entitled to his seat by two majority.

Mr. BALINGALL proposed to amend the amendment, by substituting a proposition to the effect that both the contestor and the contestee have a right to be heard in the Convention, either by themselves or their counsel.

The PRESIDENT ruled the proposition to be out of order, on account of incongruity.

Mr. NAVE said, if the question was to be settled at this time he desired that the ayes and nays should be taken.

Ten members rising to second the demand, The yeas and nays were ordered.

Mr. FOSTER said, he had no doubt that the committee had bestowed considerable labor and attention upon the subject, but still he must dissent from the conclusion to which they had come. It appeared to him that they had rejected two legal votes for the sitting member; one of which was cast by mistake for Senatorial Delegate, and another, which was cast by the individual who moved to the State of Ohio, but was not absent from the State so long as twelve months. It was suggested by a gentleman on his right, that a man could not lose his residence until he had actually obtained a residence in another State. He thought it would be a very pertinent question to know whether this individual was a land-holder in this State. It might appear, from the answer to this question, that his residence in Ohio was intended to be only temporary. He would ask the chairman of the committee whether it was in evidence that this individual owned any landed property in this State?

Mr. KELSO said, the evidence was, that he expected to get a place from his brother-in-law, but failing in that, he went off to Ohio.

Mr. FOSTER said, he had always understood (without pretending to be anything of a legal man himself) that no man could lose his residence in this State, (a laugh,) at least unless he had been absent twelve months. He understood that to be the case in so many words, and it was generally so understood in his diggings. But, from the evidence, it appeared that this man was absent from the State only eleven and a half months. If that was the case he thought that the sitting member was entitled to his seat.

Mr. BERRY said, that he had as much confidence as any man in the committee on elections; but yet he thought they had rejected some testimony, which the committee could not reject if they understood the history of the case. Osborn claimed that five illegal votes had been cast for Brookbank, and proved it by heresy testimony. And when the question was asked of one of the men themselves, "For whom did you vote?" Brookbank stopped him and arrested the answer, upon the plea that it was illegal; thus taking advantage of this kind of testimony, and throwing the contestant back upon his second-class evidence. When Osborn was ready to produce first-class testimony they refused to receive it. He understood, from the report, that the evidence on the part of the contestant was thrown out entirely. He was satisfied that if the testimony were read before the Convention, they could not resist the conclusion that Brookbank had received the number of illegal votes which Osborn alleged that he had. He moved to lay the motion on the table; but at the request of Mr. Kelso, withdrew the motion.

Mr. KELSO said, that the law was, that you might call on a voter and require him to testify and declare who he voted for, if it should appear that he had voted illegally. But this man went on and made it out that he had cast a legal vote, therefore it was decided that he should not be asked how he voted.

Mr. BERRY enquired whether the papers did not show that Brookbank objected to the man's telling for whom he voted.

Mr. KELSO replied that they did not.

Mr. BERRY. Was it not in evidence that more than one illegal vote was cast for Brookbank?

Mr. KELSO. It was in evidence that four or five voters were charged with voting illegally for Brookbank. There was evidence of charges being made of illegal voting on both sides.

Mr. BERRY. Was it not in evidence that *Van Metre* voted for Brookbank?

Mr. KELSO said that it was; but he was not going to accuse any man of perjury.

Mr. BERRY then renewed his motion to lay on the table;

Which was rejected.

The question recurring upon Mr. RARIDEN'S amendment,

Mr. MORRISON of Marion said, that when the report of the committee was presented, he noted as carefully as he was able, the points made in it; and he thought the committee had acted liberally in coming to the decision reported, and he thought their liberality was especially extended toward the sitting member. He certainly felt nothing but a desire to do justice to both of these parties, and settle the question upon its merits. He was a little astonished at the motion of the gentleman from Wayne, to amend the resolution reported. He could see no very good reason why gentlemen advocating the cause of the sitting member, should be desirous of disturbing the report. The report was too liberal to the sitting member. The committee had assumed the position, that they would not go behind any decision of the county board of canvassers. The Convention, under the law by which it was authorized, was clothed with power to determine upon the qualifications of its members. This being the case, there certainly could be no reason why the committee should not have submitted the facts, and called upon the Convention to decide, notwithstanding the action of the board of canvassers. If he understood the report, the committee took all the votes, as decided upon by the board of county canvassers, except one vote, which was cast in duplicate for Osborn—not deceitfully as he believed—and this left them equally balanced. The gentleman from Wayne had said, that all he desired was to get at what was really the intention of the voter. He concurred with the gentleman in this. It was a correct principle, that the voice of the people should be heard; and he considered that a vote taken in this

manner as clearly indicated that the man wished to vote for Osborn, as it was manifest that the man who voted for Brookbank for Senatorial Delegate, intended to vote for him as a Representative Delegate. The law prescribed that when a vote was cast deceitfully it was illegal; and if this position could be maintained, with reference to this vote for Osborn, then it was rightfully cast out. But, upon going into the facts, it appeared that the man only neglected to tear two tickets apart, and that, there being no deceit in the act, the vote should have been counted for Osborn. Then was it not a stretch of liberality to say to the man holding the seat, merely, that he should hold over? It was a very delicate matter to say to a man holding a seat here, that he should take his hat and be off. But still, he wanted the matter determined exactly upon the principles of right and wrong. He was a democrat, and Mr. Osborn was a democrat; the gentleman holding the seat for Union county was a whig, and the gentleman from Wayne (Mr. Rariden) was a whig; but he could not see how any gentleman could appropriate every favorable consideration presented upon one side, and eschew everything favorable upon the other side.

The PRESIDENT announced that the hour had arrived for the consideration of the special order of the day; the resolution for the abolition of the Grand Jury system.

Mr. PETTIT remarked, that this special order was made on his motion; but he had been impressed with the idea, that the consideration of the matter of the report of the committee on elections was privileged above all other questions.

The PRESIDENT. The Chair understands that a special order supersedes all general orders.

Mr. PETTIT then moved that the special order be postponed until 2 o'clock this afternoon; which was agreed to.

Mr. KELSO said, he should vote against the amendment of the gentleman from Wayne (Mr. Rariden). The committee on elections had taken up and considered only such as they were well assured was safe and positive testimony, and from that they had come to the conclusion which he had submitted. The committee could not go any further without a resort to guessing; and he had ascertained to his satisfaction, that if they went into guessing, the chances were about two to one in favor of Osborn; therefore he should vote against the amendment.

Mr. RARIDEN said, he did not know but that the course proposed by the committee was wiser than the course he had proposed; nor would he hesitate to withdraw his proposition, if he thought it was likely to be a means of embroiling the House in an angry and ill-natured debate. He did not look upon the question whether one or the other of these gentlemen should occupy a seat in this Convention, as so

important a matter as to justify an ill-natured discussion in this body.

But he was going to say a word with reference to his position, in order that his course might be clearly understood. He did think that his position was now quite above and beyond the influence of party. He asked nothing of party, he wanted nothing of it, and he expected nothing from it. He had at length arrived at that period of life when he could afford to pay the debt he owed to a generous community as well as any other man; and that debt was to do his duty. He admitted that the report might be liberal and fair, and a just *expose* of the testimony, in setting aside the two votes which had been counted for Brookbank; and he admitted that he might entertain the opinion expressed by the gentleman from Marion, (Mr. Morrison,) with reference to the double ticket—that, properly, it should have been counted for Osborn; yet all this would not exclude Brookbank. The case was well illustrated by the gentleman from St. Joseph (Mr. Colfax). It was the dissatisfaction of Osborn as to the original count, which called together all the elements of the case for a new count; and from this new count it appeared, that two votes more should be added to the majority for his competitor, which made Brookbank's majority four votes instead of two. But it was ascertained out of doors, that, in two townships, there was one ballot more in each box than there could be found names on the tally-papers. There were two ballots in the boxes for which there could be found no names corresponding upon the clerk's list. These two names were rejected; and they were stricken off from the majority of the sitting member. Why this was so, he had not yet heard. Brookbank only got the votes which were cast for him. Why then should it be supposed that the two ballots for which there could be found upon the lists no names corresponding, were given for Brookbank? This was the ground over which the committee went; and although it could be accounted for in various ways honorable to the committee and to both parties; yet, the only rational way in which this discrepancy could be accounted for, was, to suppose, that the clerks who kept the lists were negligent and neglected to record these names. There was no inference, no suspicion, that there was any double or false voting. It was not pretended that any votes were found deceitfully folded together, but only, that there were two votes, one in each township, for which there was not a correspondent name upon the tally-papers. Upon this ground, alone, two votes were stricken off from the number given to the sitting member; but that would still leave him—counting the double ticket that was rejected for Osborn, and giving to him those two votes to which he at the first referred—a majority of one vote.

Notwithstanding, these were the settled con-

victions of his mind, he would feel as though he was serving his country better by withdrawing his proposition to amend the resolution, in preference to having one hour's angry debate upon this floor. He would not hesitate one moment to withdraw it if he thought such would be the consequence of its introduction; but, like all other men, he was desirous to see how many would agree with him. Nevertheless, if it were to be the means of irritation or of plunging the Convention into the broad ocean of guessing, he would withdraw it. For, almost anybody could out-guess him. He would not set himself up in competition with any man upon that subject. If the spirit of irritation were engendered, he knew too well how that would act; and would much rather withdraw his proposition, and let the subject go to the people, unless there should appear to be a decided opinion in favor of the sitting member, and that he was entitled to the seat.

The yeas and nays were then taken upon Mr. RARIDEN'S amendment, and the Secretary reported yeas 36, nays 92, as follows:

AYES.—Messrs. Barbour, Biddle, Blythe, Bourne, Bowers, Clark of Hamilton, Clark of Tippecanoe, Colfax, Crawford, Davis of Madison, Dunn of Jefferson, Foley, Foster, Frisbie, Gregg, Hall, Hamilton, Hogin, Holman, Kendall of Wabash, Maguire, Mather, McFarland, Morgan, Murray, Nave, Newman, Niles, Pepper of Crawford, Prather, Rariden, Steele, Stevenson, Terry, Thomas, and Todd—36.

NOES.—Messrs. Alexander, Allen, Anthony, Badger, Balingall, Bascom, Beard, Berry, Borden, Bracken, Bryant, Butler, Carr, Carter, Chapman, Chenowith, Coats, Cookerly, Crumbacker, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, &c., Duzan, Edmonston, Farrow, Fisher, Garvin, Gibson, Gootee, Graham of Miami, Graham of Warrick, Haddon, Holliday, Harbolt, Hardin, Hawkins, Helmer, Hitt, Hovey, Howe, Huff, Johnson, Jones, Kelso, Kent, Kendall of Warren, Kinley, Lockhart, Logan, March, Mathis, May, McClelland, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Moore, Morrison of Marion, Morrison of Washington, Mowrer, Nofsinger, Owen, Pepper of Ohio, Pettit, Read of Clark, Ristine, Schoonover, Shannon, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Tague, Taylor, Trimby, Vanbenthusen, Wallace, Watts, Wheeler, Wiley, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President—92.

So the amendment was rejected.

Mr. BASCOM proposed to amend the resolution reported by the committee, by striking out all after the word "Resolved," and inserting the following:

"That JAMES OSBORN is duly elected Representative Delegate for the County of Union, and hereby admitted to his seat."

The question being upon the amendment of-

ferred by the gentleman from Wells, (Mr. BASCOM,)

Mr. SMITH of Ripley said, that he regretted exceedingly that the gentleman from Wayne, (Mr. Rariden,) with all his experience upon matters of this kind, and upon a proposition so liberal under the circumstances as that offered by the committee, should propose that the gentleman now occupying the contested seat shall retain it. He had anticipated that a proposition of that character could not be offered without the presentation of a counter-proposition, like that which had just now been submitted. He regretted it the more, because it must be apparent to every gentleman, that there was a great deal of doubt hanging over the election of both of the claimants to the contested seat—a doubt, too, which was calculated to arouse a general feeling of excitement among the members of the Convention. He thought that the committee on elections had acted upon the most generous and liberal principles possible, in making out their report. The question, to say the least of it, was a very doubtful one, and the committee, in the report they had made he thought, had acted perfectly right. If they had acted upon probabilities, they would have been two to one in favor of Mr. Osborn; but he trusted that the pending amendment would be voted down; and that the Convention, by an unanimous vote, would send the question back to the people, and thus prevent any exhibition of party feeling, or any kind of excitement upon the question in this Hall. He did not wish that any feeling of the kind should be aroused among the members of the Convention during its sittings, and he hoped that the amendment would be voted down, and that the report of the committee would be concurred in.

Mr. BASCOM said, that as the gentleman from Wayne (Mr. Rariden) had seen fit to propose that Mr. Brookbank should be considered the delegate to fill the contested seat, he thought it perfectly proper and right to present the claims of Mr. Osborn, and let the Convention decide between them. He thought that as the committee had not been able to decide in favor of either of the gentlemen claiming the contested seat, that the Convention, if it were possible, should decide the question, either in favor of one, or the other. If the matter was sent back to the people of Union County, they all knew that by the time the new election was held, the sittings of the Convention would be nearly completed; and, therefore, that the election would be almost unnecessary.

As the delay in the decision of this question had almost virtually deprived the people of Union County of a representation in that Hall, he thought that they should not adopt the report of the committee, but endeavor to fill the contested seat with one of the two gentlemen claiming it. Perhaps the report had

better be printed before they finally decided the question.

SEVERAL MEMBERS. Withdraw the motion.

Mr. BASCOM accordingly withdrew his motion.

The question recurring upon the adoption of the report of the committee, the yeas and nays were demanded, and, being taken, resulted as follows :

Those who voted in the affirmative were ,

Messrs. Alexander, Allen, Anthony, Badger, Balingall, Beard, Bicknell, Bowers, Bracken, Bryant, Butler, Carr, Carter, Chapman, Chenowith, Clark of Tippecanoe, Colfax, Cookerly, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, Duzan, Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Gibson, Graham of Miami, Graham of Warrick, Haddon, Holliday, Hamilton, Harbolt, Hawkins, Helmer, Hendricks, Hitt, Hogan, Holman, Hovey, Howe, Huff, Jones, Kelso, Kent, Kendall of Warren, Kinley, Lockhart, Logan, Maguire, March, Mather, Mathis, McClelland, McFarland, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Morrison of Marion, Morrison of Washington, Mowrer, Murray, Newman, Niles, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Rariden, Read of Clark, Ristine, Schoonover, Shannon, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Tague, Taylor, Terry, Thomas, Todd, Vanbenthusen, Wallace, Watts, Wheeler, Wolfe, Wunderlich, Zenor, and Mr. President—103.

Those who voted in the negative were,

Messrs. Bascomb, Berry, Biddle, Blythe, Borden, Bourne, Clark of Hamilton, Crawford, Edmonston, Gootee, Gregg, Johnson, Kendall of Wabash, May, Moore, Morgan, Nave, Prather, Steele, Stevenson, Trimby, Wiley, and Yocum—23.

So the report of the committee was concurred in.

PROCEEDINGS AND DEBATES.

The resolution offered by **Mr. MAGUIRE** on Saturday, in relation to the number of copies of the proceedings and debates to be printed, was taken up for consideration.

Mr. MAGUIRE said, that in offering this resolution he was influenced by no feelings of ill will whatever to the present State Printer ; he disclaimed any other motive than that of desiring to forward the business of the Convention. It was exceedingly important for the Printer to know how many copies were desired by the Convention, as the work would probably progress in connection with the newspaper publication of the proceedings. He made this explanation because he did not wish that it should be supposed that he had brought forward this

motion for the purpose of interfering with any existing legal right which the State Printer might think he had to do the printing.

The question being upon the adoption of the resolution,

Mr. KELSO remarked, that there was a blank to be filled.

Mr. BORDEN moved to amend the resolution by striking out all after the word resolved, and inserting the following : "That the State Printer shall print one thousand copies of the proceedings and debates of the Convention in book form, with an index."

Mr. KELSO said, he was very much inclined to think that they could get along with the Printer they had already elected.

Mr. BORDEN desired to have the yeas and nays on his amendment. The Legislature, he said, had provided a Stenographer to report the proceedings and debates, and it seemed clear to him, whatever might be said in regard to the printing of the Convention, that the printing ordered by the Legislature should be given to the State Printer. Entertaining this opinion, he wished to have his vote on the question recorded.

Mr. WOLFE thought the Convention, before ordering the printing to be done, should find out whether it could be done any cheaper than it was generally, by transferring the printed matter in the newspaper to the book form. If not, he should move to fill the blank with one copy, which it was requisite should be deposited in the office of the Secretary of State, and let the Legislature attend to the printing of the extra copies. He would inquire of the President if he knew anything about the matter.

The **PRESIDENT** said, he could give the gentleman no information on the subject.

Mr. LOCKHART moved to lay the amendment of the gentleman from Allen (Mr. Borden) on the table.

Mr. BORDEN asked for the yeas and nays, and they were ordered and taken with the following result—yeas 92, nays 25.

YEAS—Messrs. Alexander, Allen, Badger, Barbour, Bascom, Beard, Berry, Biddle, Blythe, Bourne, Bowers, Bryant, Butler, Carr, Chenowith, Clark of Tippecanoe, Cookerly, Crawford, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Duzan, Edmonston, Farrow, Fisher, Frisbie, Garvin, Gibson, Gootee, Graham of Miami, Graham of Warrick, Haddon, Holliday, Harbolt, Helmer, Hendricks, Hitt, Holman, Hovey, Huff, Johnson, Jones, Kelso, Kent, Kendall of Wabash, Kendall of Warren, Lockhart, Logan, Mathis, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Morgan, Morrison of Marion, Morrison of Washington, Mowrer, Murray, Niles, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Rariden, Ristine, Schoonover, Shannon, Sherrod, Sims, Snook, Smith of Ripley, Smith of Scott, Steele, Steven-

son, Tague, Taylor, Thomas, Trimby, Vanbenthusen, Watts, Wheeler, Wiley, Wolfe, Yocum, Zenor, and Mr. President—92.

YAYS—Messrs. Anthony, Balingall, Bicknell, Borden, Clark of Hamilton, Colfax, Crumbacker, Dunn of Jefferson, Gregg, Hamilton, Hardin, Hawkins, Hogin, Howe, Kinley, Mather, McClelland, McFarland, Nave, Newman, Read of Clark, Smiley, Spann, Terry, and Wallace.

—25.

So the amendment was laid on the table.

The question then being upon the adoption of the resolution offered by the gentleman from Marion, (Mr. Maguire,)

Mr. PETTIT said, that he had voted to lay the amendment offered by the gentleman from Allen on the table, not because he had altered his views as to the correctness of the claim of the State Printer to do the printing of the Convention, but because he thought that the Convention had no authority whatever to authorize the printing of their proceedings in book form; for that reason, also, he should vote against the resolution. The fourteenth section of the act providing for the call of the Convention contained the following language:

“The roll containing the draught of the amended Constitution adopted by the Convention, and the proceedings of said Convention, shall be deposited by the President and Secretary thereof in the office of the Secretary of State, who shall file the same, and cause said Constitution to be entered on record in his office.”

By this clause it was plainly evident, that when the Convention had deposited the journal of its proceedings, and a manuscript copy of the new Constitution in the Secretary of State's office, its work would be ended. There was no authority given for the printing of any number of copies of their proceedings in book form at all. It was upon this ground that he had voted against the amendment proposed by the gentleman from Allen; and it was upon this ground that he should vote against the pending resolution.

Mr. KELSO moved to fill the blank with “one thousand.”

The question was taken upon the amendment of the gentleman from Switzerland. (Mr. Kelso,) and it was not agreed to.

The question recurring upon the original resolution,

Mr. SMITH of Ripley said, that he hoped some gentleman was prepared to inform the Convention as to the number of copies necessary to be struck off. He supposed every member of the Convention would be entitled to a copy, and that a copy should be deposited in the office of the clerk of every county in the State, and a number distributed among the various colleges, libraries, and public institutions of the State. It was necessary to ascertain the number that would be wanted for sale, as well as for distribution.

He trusted some gentleman would make a calculation, and inform the Convention of the number of copies necessary to be printed.

Mr. BORDEN said, that he would state in reply to the inquiry of the gentleman from Ripley, that he thought, if the Convention should determine to have their proceedings and debates published in book form, they should order at least one thousand copies. He supposed that one copy would be supplied to each member and officer of this Convention, one to each member of the last and the succeeding Legislature, one to each of the counties of the State, and one to each of the states of the Union; and he thought the remainder should be placed in the State Library, to be disposed of hereafter, as the Legislature should direct.

While he was up he would avail himself of the opportunity to say a few words as to who should do this printing. He looked upon the proposition of the gentleman from Marion, (Mr. Maguire,) to employ the printer to the Convention to publish their proceedings and debates, as a direct infraction of the law passed at the last session of the Legislature, calling this Convention. He had had something to do with preparing that bill—he did not speak of it boastingly, but simply for the purpose of explaining the views of those who were instrumental in drafting it. Several years since a vote of the people had been taken on the question to call a Convention to revise and amend the Constitution of this State. His venerable friend from Clark (Mr. Read) and himself, had then prepared a bill, to be introduced into the Legislature, calling a Convention. It was introduced by him, in the Senate, and ordered to be printed, and a copy of it sent to him (Mr. B.) by that gentleman. About a year since, the Senator from the district which he represented, and a member of the House of Representatives, from a portion of the district which he (Mr. B.) represented, prepared the bill convoking this assembly, which was finally enacted into a law. They made the bill, originally prepared by his friend from Clark (Mr. Read) and himself, the basis of the present law. Some very important amendments to it were made in the two Houses, particularly in the Senate, and he had been informed by the Secretary of State, that it had been so badly engrossed as to have caused some egregious blunders, not only in the phraseology, but also in the substance of the law. One of the important alterations made in the Senate, was in regard to the stenographer. The bill, as originally drawn, had left it optional with the Convention to elect such an officer or not, as they chose, and to fix his pay. This was struck out, and it was so amended as to peremptorily require such an officer; and the power was taken from the Convention to appoint him, and was conferred on the Governor. Provision also was made for the payment of his services and the mode of that payment, thus taking the whole matter of the

reporting and printing of the proceedings and debates of this body out of the hands of the Convention.

He would further remark, that it was the intention of those who drew up the act to fix the compensation of every officer of the Convention, so that no discretion should be allowed to the Convention in the matter. The reason why the Stenographer's compensation was not fixed, was because—as the act originally stood—it was not known whether the Convention would, or would not, elect a Stenographer. It was, however, the intention, with regard to every other officer, to fix permanently the compensation that should be paid beyond cavil or dispute. It was unquestionably the design that the Convention, under no pretence whatever, should attempt to draw money out of the treasury otherwise than as specially authorized by that act. The first thing done was to provide for the payment of the members, which, in the twelfth section, was fixed at three dollars per day. Now he would ask if any gentleman would rise in his place and contend for a moment that they could add one dollar to, or subtract one from, the compensation fixed by the act? It would be seen also, by the same section, that the compensation of other officers and attendants was to be the same that was paid to the officers of the General Assembly for similar services. The next thing was to provide for stationery; and by the thirteenth section of the act, it would be seen that it was the duty of the proper officers to furnish the members with such stationery as they might require during the session, to be paid for in the same manner, and out of the same fund, that the contingent expenses of the General Assembly were paid. This was a particular fund, and over it the Convention possessed no control whatever. He presumed it would not be contended that the Convention could proceed to rescind the contract which the officers of the State had made for supplying the State with stationery, and if they could, would some gentleman be so kind as to point him to any law of the State authorizing them to draw money out of the treasury for such a purpose? The law having thus provided for all the expenses of the Convention except printing, the question next arose as to who should do the printing for the Convention. By turning to the Revised Statutes of the State for 1843, it would be found that all the public printing of the State was provided for by law, and that that law had not only placed the matter beyond the control of the Convention, but beyond the control of the Legislature itself for three years; and he would assert, without fear of successful contradiction, that the Legislature itself had not the power, much less could it have conferred it upon that body, to rescind the contract with the State Printer, and to confer the public printing of this body upon another. It appeared to him that no one could read that law without coming to the conclusion

that all the printing ordered by the Convention should be done by the Public Printer, and that the taking of the smallest portion of the printing away from him was a violation of the contract, and entitled him to compensation from the State for such violation. Much less could the Convention, without even the authority of the Legislature to justify such a course, proceed to take it from the present State Printer and confer it upon another.

He knew it had been asserted by some gentlemen on that floor—for whose legal opinions he had the highest respect—that this body could go beyond the act convoking it, and not only elect a printer, but draw the money out of the treasury to pay him for his services. But there were other gentlemen for whose opinions he entertained also the highest respect, and in whose opinions he concurred, who thought that to attempt to give the publication of the proceedings away, other than to the Public Printer, would be an open violation of the existing contract, and in its consequences draw an additional sum of fifteen hundred or two thousand dollars out of the treasury to pay the damages sustained by the loss of said contract. He supposed, however, that a combination had been formed in regard to the printing, too powerful to be resisted, and he spoke under the embarrassment of addressing an assembly which had already prejudged the case. The people of Indiana were already borne down with a heavy taxation to pay the interest on their State debt, and he could not sit by in silence and permit this, the proposed action to which he had been alluding, without, in behalf of those he represented, entering his protest. He had heard the opinion expressed by one of the ablest jurists in the State, that the bond which this Convention had a few days since required from the person they had elected as Printer, was entirely nugatory, because there was no law authorizing the taking of such a bond. If the Convention would leave the printing where the law had placed it, no difficulty would arise, as the law provided what compensation should be paid for doing the public printing—the manner in which it should be measured and certified, and out of what fund it should be paid. Over this fund the Convention possessed no control, and he was at a loss to see how money could be drawn from the treasury under the act providing for the payment of the printing, unless it was done under the general law of '43, which provided for the public printing. If they went on and directed their proceedings and debates to be published by the printer they had elected, he would inquire what price they intended to pay, and who was to measure and certify the work? The Secretary of State, who was authorized to attend to this work for the State under the law as it now stood, was not compelled to perform this duty for the Convention. Again, if they took this duty out of the hands of State officers, who would

be responsible for the manner in which this contract was to be executed? He desired to say nothing against the gentleman who had been elected, for he presumed he would do his duty; but was it wise or prudent in them to take this business out of the hands of the officer of the State, and then leave every thing in regard to the public printing in an unsettled condition? Again, if these officers believed that they could not either give the warrant or pay the money for this printing, he was fearful they would involve themselves in difficulty with them, for whatever they might say there in regard to the extent of their power, still the drawing of money out of the treasury was a practical matter and must be done in pursuance of the law. The old Constitution, was not yet abrogated, which required them to bear constantly in mind that no money could be drawn from the treasury only in consequence of appropriations made by law. These officers would be liable to impeachment and removal from office if they were to audit or pay any money out of the treasury unless authorized to do so by law. He hoped the Convention would take time to reflect upon this subject before they voted definitely in regard to it, as he apprehended that it required a more mature consideration than from present appearances they were disposed to give it.

Mr. OWEN hoped that the printing would go where the Legislature desired it to go, and that no engagement would be entered into with any other printer than the one authorized by the State. He was in favor of postponing any action upon this subject, and leaving it entirely in the hands of the Legislature. He would not assert that under the existing law authorizing that Convention, that they were compelled to delay the publication in book form of their proceedings, but it did appear to him from the reading of the law, that that was the design of the Legislature. A copy of their proceedings had to be filed in the Secretary's office at the close of the sittings of the Convention, that copy to be at the disposal of the Legislature. They had already very wisely made provision for the publication of their debates in newspaper form, and if, in connection with their publication in this manner, some arrangement could be effected whereby the type used in those papers could be transferred to the book edition, thus lessening the expense of the publication, why it was a matter worthy of consideration. In a few weeks, however, the Legislature would be in session, and the question could be settled by that body satisfactorily. He considered if there was any doubt as to whether they should give the printing of the Convention to the State Printer or to the Printer of the Convention, that they should postpone action upon the subject and leave it to the consideration of the Legislature. He thought, also, that the members of the Convention would prefer obtaining a copy of their proceedings and debates by a vote of the

Legislature than from any vote they might take among themselves.

Mr. GREGG moved to lay the resolution on the table.

The question was taken upon the motion of the gentleman from Jefferson, (Mr. Gregg,) and it was agreed to.

So the resolution was laid on the table.

Mr. OWEN said: Mr. President, I hold in my hands a resolution which if acted upon at all, should be acted upon now, and for the purpose of offering it for the consideration of the Convention at this time, I will ask for a suspension of the rules. The resolution which I presented on Saturday, relative to the publication of the debates and proceedings of this Convention in the daily papers of Indianapolis, and which was adopted, was hastily drawn up, and I wish now to amend it by adding these words, (where it is resolved to take one copy of the Indiana State Journal,) "one copy of the *Indiana Statesman*, and one copy of the *Volkstblatt*." When I offered that resolution I had no intention whatever to make an invidious distinction between the newspapers published at the Capital.

The Convention refused to suspend the rules.

Mr. PEPPER of Ohio offered a resolution, in substance as follows:

Resolved, That from and after the expiration of the present charter of the State Bank of Indiana, all connection between the State and Banks shall cease.

Mr. KELSO. I believe, Mr. President, that the resolution just offered by the gentleman from Ohio, is an *imperative* resolution; if so, I would move to amend it so as to make it a resolution of inquiry, simply.

Mr. PEPPER of Ohio. I was in hopes, sir, that the gentleman (Mr. Kelso) would have permitted me to say one word, relative to the object and import of the resolution which I have just now offered, before he made a motion to change its entire character. I desire to make a few remarks upon the subject involved in that proposition, for I deem it a very important one; but, although I am firmly of the opinion that we should engraft upon the Constitution we are about to frame, a principle in consonance with the spirit of that resolution; although I believe the highest and best interests of the State would be secured and furthered by its adoption, still the matter is under the control of the Convention, and I shall cheerfully acquiesce in whatever disposition it may see fit to make of it. It is due to every member here, that he be allowed the right fully to discuss every proposition presented in this chamber. I do not intend to make a long speech upon the subject; it is not my habit to make lengthy speeches; but as it is near the hour of adjournment, and as gentlemen would listen to what little I have to say, with less patience now than at another time, I will,

if it meet the wishes of gentlemen, move that the Convention adjourn until 2 o'clock.

The motion was agreed to, and the Convention adjourned until 2 o'clock this afternoon.

AFTERNOON SESSION.

Mr. PETTIT rose and said: I know, Mr. President, that there is a resolution pending, which has been made the special order for this hour, and I would not, without sufficient cause, move a suspension of the rules which preclude all other business, but there is a matter, connected with the contested election case which was reported upon this morning, which should receive the immediate attention of the Convention. I shall, therefore, move a suspension of the rules for the purpose of offering a resolution.

The rules were suspended by unanimous consent.

Mr. PETTIT then offered the following resolution:

Resolved, That the President certify the mileage and *per diem* of Benjamin F. Brookbank and Joseph Osborn, up to this day inclusive, allowing each of them the legal rates of a member of this Convention; and the President inform the Governor that there is a vacancy in this Convention of a Representative Delegate from the county of Union.

The resolution having been read,

Mr. PETTIT remarked, that the object of the resolution was so obviously right and proper, that he should not make any further remarks on the subject.

The resolution was adopted.

GRAND JURY SYSTEM.

The special order, being the consideration of the resolution relative to the abolition of the present Grand Jury system, was then taken up.

Mr. ANTHONY rose and said: Mr. President, I have paid some attention to the subject embraced in the proposition now before us, and feeling considerable interest in it, I will offer a few remarks in relation thereto, more, however, for the purpose of opening the discussion, and preparing the way for those who are fully competent to discuss the subject, than to make a speech myself. At this time I will merely look at the subject in its economical relations. We have in Indiana ninety counties. The Grand Jury, along with the Circuit Court, assembles twice each year, and is generally composed of from sixteen to eighteen individuals. We generally sit ten days, and as we may set down their *per diem* at one dollar and twenty-five cents each, the total expense of Grand Juries to the people of this State, is some twenty thousand dollars each year. And, sir, for the payment of this large sum, remember, that the people must be taxed, in addition to their other burthens, twenty thousand dollars for Grand Juries alone! In addition to this should be es-

timated the fees of bailiffs and other incidental expenses, occasioned by the finding of unjustifiable indictments by the Grand Juries, in their secret sessions. And we might add the expenses of petit juries, engaged in trying individuals upon these indictments, so many of which would never have been found had the sittings of the Grand Jury been in public, and their decisions found after an impartial hearing of the testimony on both sides.

I am not so well prepared, sir, to discuss this question as I should have been, had we been supplied with the additional information this Convention has endeavored to obtain. But there is enough already known to show us that the expenses entailed by Grand Juries are greater than the entire expense of our whole judicial system besides. We should thoroughly investigate this matter, and if it is possible to establish a more economical system, and one which should secure all the ends of justice and social order, we are bound to do so.

It has been remarked and objected, that we have not the Constitutional right to abolish the system of Grand Juries. We have cited to us the fifth article of the Constitution of the United States, which says that, "In criminal prosecutions, no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment by a Grand Jury, except in cases occurring in the land or naval forces, or in the militia when in actual service in time of war or public danger; nor shall any person be subject for the same offense, to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

But, sir, I have not thus construed that provision of the Federal Constitution. I do not consider that the terms of the fifth article were intended to, or do, prohibit the sovereign States from doing away with what may indeed be "the time honored institution" of the Grand Jury. If we examine the history of the formation and adoption of the Federal Constitution, we shall discover that at the time it was sent to the several States for their consideration and adoption, this identical clause—the fifth article now relied upon as a conclusive bar to the abolition of the Grand Jury—was not in the Constitution at all! It was one of the amendments afterwards made and adopted, and it was introduced to limit the Constitution and to confine the powers of the General Government. It was for the purpose of forever prohibiting the General Government from taking the life, liberty, or property of a citizen of any of the United States without his being first indicted by a Grand Jury and afterwards tried by a jury of his peers. It has been decided by more than one court, that those articles of a *general nature* in the Consti-

tation of the United States were designed to restrict and confine the powers of the Federal Constitution—not to extend them. Such was the decision of the Supreme Court of New York, reported in Wendell; and in the Supreme Court of the United States, reported in the seventh of Peter's, Marshall, Judge says:—"The provision of the fifth amendment to the Constitution of the United States as claiming that private property shall not be taken for public use, without just compensation is intended, solely, as a limitation on the exercise of power by the government of the United States, and that the Constitution was ordained and established by the people of the United States for themselves; for the government of individual States. Each State established a Constitution for itself, and in local Constitutions, provided such limitations and restrictions on the powers of its particular government as its judgment dictated. The people framed such a government for the United States as they supposed best adapted to their situation, and best calculated to promote their interests. The powers they conferred on this Government were to be exercised by itself, and the limitations on powers, if expressed in general terms, are naturally and necessarily applicable to the government created by the instrument. They are limitations of powers granted in the instrument itself; not of distinct governments framed by different persons and for different purposes."

This decision of Judge Marshall is deserving of great consideration, as is every opinion emanating from that distinguished jurist, but this decision comes to us with additional weight when we reflect that Mr. Marshall was one of those who, at the organization of the Government, was strongly in favor of *extending* the powers of the Federal Government. When such a Judge, holding such a peculiar position in this regard, gives such a decision as I have quoted, there can no longer remain any doubts in the minds of gentlemen as to the right and the power under the Constitution to abolish Grand Juries whenever the people through their delegates shall demand such a change. Behind these decisions we intrench ourselves, and here, for the present, we will leave the consideration of the Constitutional feature of this question.

It is alleged that the Grand Jury system was established, originally to protect the rights and privileges of the subject against the encroachments of kingly and unlimited power. It is very easy for us, Mr. President, to understand the reason why all English writers have uniformly given this as the reason for the establishment of Grand Juries. If we look at the Constitution of England, though ever so cursorily, we shall discover a vast difference between it and our own. In England all power is lodged in the King, the House of Lords and the House of Commons. All power, all authority, and all patronage flows directly and exclusively

from the King, who is Supreme Head of the State, and also of the Church.

Every officer in the kingdom is the agent and servant, not of the people, sir, but of the King, to whom, and to whom alone he is responsible for all his acts, and on whom he is dependent for the amount and payment of his salary. The Sovereign appoints even the Justices of the Peace as well as all Judges. It is true that by virtue of recent acts of Parliament, forced from that body by the irresistible pressure of a public opinion and a popular will, which, even in absolute monarchies, cannot be wholly suppressed, the Judges are made somewhat more independent of the Crown. From this glance at the British Constitution, it is evident that if the King wanted an indictment found against an individual, no matter how slight the cause, personal pique, or animosity may prompt the whole, he has but to command it and the thing is done. Thus we see that the real object of the institution of the Grand Jury system in England—that it was not so much for the protection of the people's rights and franchise, as it was a convenient and most powerful prerogative of the Crown to the aggrandizement and strengthening of which it has always contributed.

But in this country every thing is different. Instead of the King or the Government in any form, and under any name, being the fountain and primal source of honor and patronage, the people is the acknowledged source of all honor and every officer in the Republic, from the President of the Union down to a township "fence viewer," is responsible solely and directly to the people; hence no such institution as a Grand Jury is needed to stand between the people and of a King or the Sovereign authority. To those who tell us that the Grand Jury was established in England, and has been used for the protection of the rights and privileges and freedom of the people, I would reply, that History does not sustain them in that position. In all the important State trials in England, from the time of Sidney down to the trial of the great Irish agitator, O'Connel, the Grand Jury has not been effective in the service of popular rights. When the whole British Empire was searched to discover the author of "Juries" the system was not thus effective. The Grand Jury system did not shield and foster popular rights when it found a bill of indictment against Thomas Paine for publishing some of the soundest and most brilliant essays on Political Economy and the inherent rights of man, that have appeared in any age of the World. The Grand Jury, in our own times, did not serve the noble ends attributed to it, when it found a bill of indictment of Daniel O'Connel for libel. History will bear me out in the assertion that whenever it has suited the interests or the will of the King to have this or that subject indicted, whether the object was the ruin of private character or the against sequestration of rich estates, or the grati-

fication of private pique and animosity, the Grand Jury has ever been found the willing instrument of the Crown.

But, sir, admitting for the moment, that Grand Juries originated in a desire to protect the people from the encroachments of kingly prerogative—that they were instituted to protect the liberties of the people, and to stand between the subject and the Crown, and saying to the latter “thus far shalt thou come and no farther.” I say admitting all this, we in these United States, need no such barrier to the encroachments of the Government on the rights of the people, for the object of the assembling of every Legislature—the object of every law that is enacted, is for the protection and guaranteeing of the rights of the citizens. In England, laws are passed for the benefit of the Crown and an hereditary aristocracy.

It is true, sir, that the resolution now before the Convention proposes a radical reform, and one that has not yet been so extensively and fully discussed as it should be. But the abolition of the Grand Jury system, should we be able to effect so desirable an object, and one that would relieve the tax-payers of the State from a burthen of some twenty thousand dollars a year, would be no more radical than that other reform, which will unquestionably be made by this Convention—the election of all State officers by the people. It is not so radical and uncertain in its policy as the proposed reform in the practice and forms of the law. I consider the doing away with all special pleading, and the abolition of all distinctions in the form of different actions, a much more radical reform than the one of which I am an humble advocate. Experience, which should be our great light and guide in the formation of an organic law for the people of this great State, has clearly demonstrated that the election of Judges by the people has been productive of all those beneficial results which were anticipated and predicted by its friends. Experience has also proven that the abolition of special pleading, so far as it has been tried, works well. And, sir, allow me to say that experience will demonstrate the practicability and the great utility of doing away with our system of Grand Juries. It would be the accomplishing of another stride forward in the march of reform and progress.

But, sir, this objection to a good measure, on the ground of its being radical and “ultra,” is not a new one, nor is it now first urged against this proposition. The same reasons were urged and the same argument used against the proposition for the election of Judges by the people. The same cry of “too radical,” and “too ultra,” was raised in opposition to the measure for the abolition of life terms in office, irrespective of good behavior. This custom of making the Judges’ term of office for life, without the tenure being dependent upon the condition of good

behavior, was, like the Grand Jury system, copied from England.

But, Mr. President, gentlemen ask us “what do you propose to substitute in the place of Grand Juries, should this Convention see fit to abolish that system?” The resolution before us proposes to substitute, in the place of the discarded Grand Jury, a system of public examinations. At another time I will go more fully into the subject of a substitute, unless, in the mean time, other friends of this measure discuss that branch of the proposition. I have already occupied more time than I had designed, and, for the present, will leave the discussion to abler hands.

Mr. RARIDEN Being one of the “seniors” in this Convention of the delegates of the people of Indiana, as well as one of the “seniors” in the legal profession, it becomes me, perhaps, to take some humble share in this discussion. The law has been the study of my life—especially those legal institutions connected with the administration of justice, and I shall, in a few brief remarks, endeavor to place the institution of the Grand Jury before this Convention, in the position in which it justly belongs.

And first, sir, let me apprise gentlemen, old or young, experienced or inexperienced, that, when they undertake to pull down and rashly demolish this part of the American Judicial system, they are embarking in a cause too weak to carry them, and too heavy to be carried by them. Yes, sir, the Grand Jury system is too deeply rooted in the confidence and the respect of the people of this State, and the people of the American Union, to be torn up in this day of light and general information.

In briefly remarking upon this subject, I shall refer to no books—shall quote no authorities, but shall discuss in an elementary manner, merely, the philosophy of our Government, and the reason of the introduction of this Grand Jury system into American Jurisprudence. I shall endeavor to show that, whatever the system may have been under a monarchy—for whatever purpose instituted—its workings have been highly beneficial in this country since the period of the revolution.

It has been claimed and asserted, that Grand Juries have, in England, been an auxiliary to kingly prerogative—an ever-willing instrument in the hands of the king to strengthen his position, and maintain his power. I am ready to admit all this, and I believe that I shall succeed in convincing the Convention that this very fact strengthens my position in favor of the perpetuity of the Grand Jury. In all governments, other than this, which, I believe, is *sui generis*—has no parallel in the world—(I mean in all monarchical governments)—their very existence is based upon the theory that all power vests absolutely and solely in the sovereign, and that the people have no power and no rights, except

those which are specifically vouchsafed to them by the sovereign. Now, to enable the king to sit securely on his throne, and to maintain, unbroken, all his prerogatives, it was necessary that there should be an institution like the Grand Jury, for he could not be perpetually traveling in all parts of his empire, and visiting each borough and neighborhood, for the purpose of inquiring what offences had been committed against the peace, what treason had been contemplated against the security of his rule and the permanence of his throne. Hence arose the necessity for the Grand Jury, for the strengthening of those prerogatives which he was kindly presumed to use for the good of the subject. All mankind admitted the source and repository of all power to be in the crown, and assented to any provision, having for its object the maintaining of the power and prerogatives of the crown in all their vigor, trusting that, in proportion as the hands of the sovereign were strengthened, and his power made absolute, the greater would be his willingness and ability to protect the rights of the subject. Now, sir, by the American Revolution, we overturned this whole system of things. We turned the whole fabric of government "bottom upwards," so to speak. We based the whole theory of government on the great principle that all power resides originally with the people absolutely, and that the crown, the Government or the President, whatever you choose to call the representative of power, had no prerogatives, no power, except what was expressly and specifically delegated to it by the people. We may call the State the crown, and I will speak of this matter at this time as though there was but one state. While the founders of our Government based all their action upon the principle that all political power was inherent in the people, they still admitted and acted, upon that definition of civil liberty given by Blackstone, and assented to by every sensible statesman; viz: "Civil liberty comports with such restrictions upon individuals as are necessary for the good of the community or of society." Then we readily perceive that, although all power is vested in the people, still the people must impose upon themselves such restraints, and must yield the exercise of such natural rights and privileges as would conflict with the well-being and prosperity of the community at large. It is evident that it would not do to allow all men the unrestrained and unlimited exercise of all their natural rights; the property, the reputation, and the personal security of each individual member of society, the poorest as well as the richest, the weak as well as the powerful, would not be secure. So, with the admission and reception of such general principles, by common consent we made a King, which we call a State, and clothed it with power enough to enforce and execute the will of the community, expressed through its delegates. A way was prescribed in which that will of the whole should be carried out.

There was another thing—another right which, in the compact of government, was surrendered by individuals—the right to redress private and personal wrongs. I do not mean, sir, that we surrendered the natural right of self-defence, but I mean that in becoming members of a great political society, each individual binds himself not to take into his own hands the adjudication and the settlement of his own wrongs where his life is not in immediate peril, but yields to the King or the State the exclusive right of redressing wrongs. Then, in order to enable the government to carry out and perform its duty of hearing all complaints and redressing all wrongs, it must have an additional power conferred upon it to enable it to execute all the behests of society and regulate its intercourse. We declared that government should consist of a legislative, an executive, and a judicial department. The legislative department is to provide remedies for wrongs—to enact that a certain punishment shall follow every crime. Then the judicial department was organized to think, if I may so speak, for the body politic. We could not assert our own rights and redress our own wrongs, so we agreed to take the opinion and the judgment of the judiciary, and to yield our private judgment implicitly to its decisions. Then an executive department was organized, to fulfil and carry out the will of the other departments.

A fundamental idea at the basis of this Government, thus constituted with its legislative, judicial, and executive functions, is, that the majority—the great mass of community—is moral and virtuous, and that the Government must be so administered as to give a virtuous direction to the public mind; for if vice and evil triumph over virtue and good morals, no power could be bestowed upon any government to maintain and protect the rights of individual members of society. But the judicial department, constituted of supreme, circuit, and other judges, cannot, from the very nature of the case, inquire into the habits and conduct of every man, and cannot go to every individual and tell him what he must do and what he must omit doing, for the good and peace of society. So we write out a code of morals for the community, prescribing what acts may be committed and what the good of the community requires should not be done. The theory of our government in all this is, that it prohibits only what is wrong and ought not to be done, while it protects the exercise of those acts deemed to be right. Government also affixes certain penalties to the omission or commission of certain acts. But the judges, as I before stated, could not ride into every neighborhood and inquire into the propriety of the acts of this and that individual, in order to decide whether there was sufficient cause for the expense and exposure of a public trial, and hence the institution, most wise, in my opinion, of grand juries. And

although this institution, in the hands of arbitrary and irresponsible power, may have been abused, yet in this country it can be productive only of good and promotive only of good order.

In England, to which we have been cited, the members of the grand jury were selected by the King, or indicated by him, and it is easy to see how unjust practices may have been countenanced and wrong done; but in this country the case is entirely different, and all cavils and objections founded on the construction of this jury in England, fall to the ground when applied to the system in this country. Here there is no patronage to corrupt the grand juror; the office is neither one of profit or of particular honor, and as it is held but for one term, all temptations to do wrong are excluded. Here the grand jurors are the representatives of the people, of whom they form a part, and in the midst of whom they sit and act, and are directly affected by the good or bad example, the beneficial or the pernicious tendency of their acts. It is more to their interest to act for the interests of the community in which they live than for the interests of any designing men high in place and power; in a word, sir, the grand juror has, comparatively speaking, no temptation to do wrong.

The gentleman who preceded me (Mr. Anthony) points us to the examples of the perversion of the institution of the grand jury in England, in assailing the rights and liberties of the people when indictments were sought to be found against Thomas Paine, Daniel O'Connell, and the author of the Letters appearing over the anonymous signature of "Junius." I reply, that the very fact that neither of these men were victimized, as might have suited the desire of government, is an evidence that this very system of grand juries had so impregnated the community with liberal notions that it was found to be impossible to crush these men by their means. Imbued with the spirit of liberty, which had its inception in the institution of grand juries, they brooked the King and all his minions; and, sir, that spirit went on and grew stronger as it grew louder, until it reached its climax in the Revolution.

As I before remarked, the whole of the old theory of government is turned bottom upwards in this country; the pyramid, to illustrate my meaning, which before the period of the American Revolution, was placed by the monarchists of the old world upon its apex or little end, was reversed and set upon its base—the big end down—just as it ought to be. [Applause.] All power emanates from the people, and we have only delegated power to the State of Indiana so far as is necessary for the protection and welfare of the people of Indiana. The grand jury system is but an auxiliary to the system of common schools, and churches, and Sabbath schools, and all institutions for the further-

ance of good morals and the well-being of society.

But, sir, if it is determined to abolish grand juries, let us make clean work of it, and abolish the criminal code altogether, by voting it in unjust, unnecessary, and inconvenient restriction upon the exercise of our natural rights. I presume that this would be a great convenience to some aspiring men. There are many men of an aspiring turn of mind, of large expectations in the future, who exceedingly much dislike to be brought up before a grand jury, and there have their iniquitous practices disclosed. I know that it is very humiliating, especially for political men, who are exceedingly anxious to stand well before the country, to be subject to such an annoyance as a grand jury; and I presume that some such will be found ready to lend a hearty support to this measure for its abolition. But, sir, none but the guilty need be afraid. The Bible says that the wicked flee when no man pursueth, and so it is of a class who are so desperately fearful of some unjust proceeding on the part of a grand jury. I know that it is humiliating to be brought before this tribunal; but, sir, it is not so bad as under the old Jewish law. There the culprit was brought up before the judges, with the eye of all Israel upon him. That was more humiliating to a proud, aspiring man, but then the penalty was not so severe, for the Israelite got off with an offering of incense and a sacrificed calf, [laughter,] whereas we send the culprit to the State's Prison. [Renewed laughter.]

I shall not deny but that there may be some abuses connected with the system of grand juries, but they are easily remedied. One of these incidental evils may be mentioned: the facility with which the guilty sometimes escape punishment. This, in very many cases, results from the election of young and inexperienced lawyers to the responsible and important office of prosecuting attorney, which should be filled with the ablest lawyers and men of the soundest judgment in the circuit. And it not unfrequently happens that an innocent man is convicted, through the over-zeal of a young prosecuting attorney, who is over anxious to distinguish himself by procuring the conviction of every indicted person. But these are evils which are the fault, not of the system, but of the people in the selection of officers. The system itself is a most valuable one. Let us protect and guard it from abuses—growing up around it as around every good system—on the one hand, and from the rash attempts of innovators on the other.

Mr. NAVE said, it had always been the case that when any change was proposed to be made in any of the long established usages of courts of justice, those who had been all their lives accustomed to those usages, and who had consequently become wedded to them, were invariably found to set themselves in opposition to

all change or improvement. In like manner every effort that had heretofore, at any time, been made to reform and simplify any of the forms of proceedings of government, by which the destinies of mankind were controlled and regulated, was invariably opposed by those who had been taught from their infancy to reverence those forms. Such was the case with his venerable friend from Wayne—a gentleman for whose opinions he had the highest respect, and whose talents he admired—in reference to the Grand Jury system; that gentleman was wedded to the system. He had been educated to admire it, and to cherish it, as had indeed the American people generally, and, therefore, they could expect nothing else than to find him standing up in opposition to the proposition that had been introduced by the gentleman from Tippecanoe; neither was it surprising to find him denouncing those who advocated the abolition of the Grand Jury system, as persons desirous of opening up the flood gates of vice and immorality, by which he apprehended the country was to be overwhelmed. Let us, said Mr. Nave, look for a moment at the facts of the case now presented before us, which are derivable from our experience. Let us see if the Grand Jury system is essential to the administration of justice, and the suppression of vice. Let us ask ourselves if it has heretofore had this salutary effect upon the people of Indiana. How are we to come to this conclusion?

There is, I will venture to say, no individual in favor of abolishing the Grand Jury system who does not act from the best of motives, who does not desire as anxiously as any gentleman on this floor can do, that vice, immorality, and crime, may be punished; and it cannot be denied that, to a great extent, crimes at present go unpunished. I think I can prove the truth of this assertion by the testimony of every gentleman who is in the practice of law in Indiana, that not more than one out of every two that are indicted are convicted.

Let us examine this matter in a different point of view. All those offences that are capital, or that amount to felonies, are cognizable in the first instance before a justice of the peace, and it is this which has produced the confusion and difficulty, and which has occasioned the Grand Jury system to receive from the people of Indiana condemnation instead of approbation. It is trivial breaches of the peace, alone, that Justices of the Peace ought ever to have jurisdiction of. There is no case, unless it be committed at the time of the sitting of the Grand Jury, which has not gone before a Justice of the Peace for preliminary inquiry, and afterwards it is submitted to the Grand Jury for inspection or investigation. Then we discover that under the present Grand Jury system while the blessings contemplated by the gentleman from Wayne have not been enjoyed by the people of Indiana, they have been taxed heavily to

keep up the system without any commensurate result in the punishment of crime. The object of every penal code of laws should be to make the punishment of crime certain, for by making it certain you deter men from committing crime; but under the present Grand Jury system, it is uncertain, therefore, men are not deterred from the commission of crime. It becomes important, therefore, that we should ascertain whether a better system may not be devised, so that when crime is committed it may be punished, and speedily punished, whereby offenders against the law, and those who feel disposed to offend, may be deterred from the commission of crime.

As the law anciently stood in England, Trustees of Assizes and Justices of the Peace had jurisdiction of every offence committed, including treason. But in the reign of Henry VIII, at the instance of Cardinal Woolsey, this law was repealed, for the purpose of enabling the administrators of the law to bring innocent men to the scaffold for high treason, when they had committed a mere breach of the peace.

When you trace this system, continued Mr. NAVE, as it has existed, and as it now exists, you will find that the more uninformed and unenlightened the people, the more has it been revered. It has always been used as an instrument of cruelty and oppression. And when you trace its workings in this Republic, you will find it a machine, by means of which the worst portion of mankind are enabled to carry on their evil practices in security; for when brought before the Grand Jury, a great portion of what is disclosed in the jury-room—where only the eye which beholdeth all things sees them—becomes known, and the culprit is acquitted on his final trial by the traverse jury.

I ask, then, if it is not the policy of a free people to introduce public examinations? Let a man be accused publicly, and let him confront the witnesses against him face to face. What objection can there be to this? If a man commits a felony, let the witnesses be examined in the presence of the accused; let their testimony be taken down, both for the accused and against him. I ask, then, what is the object of a Grand Jury? It is clearly contrary to the spirit of our republican Government.

Is it absolutely necessary, sir, that, in order to prove the crime and commit the criminal, the testimony in the case should be brought before the Grand Jury, and considered by them in secret? Would not an open court of justice effect the same object in less time, and with greater certainty, without the action of a Grand Jury in the premises? Suppose that A steals a horse, and B is acquainted with the fact, and C is the owner of the horse that A stole. C then goes before a Justice of the Peace and swears to the ownership of the horse, and B testifies to the theft. Is not this sufficient to justify the Prosecuting Attorney in drafting an indictment

against A? Would the case be any stronger if it were brought before a Grand Jury? Upon what principle, then, can gentlemen insist on continuing the system of Grand Juries?

An objection may be advanced to the total abolition of Grand Juries, that an individual who commits a crime and flees the county, cannot be brought to justice. Let us look at the question for a moment. If an individual commits a crime, and leaves the county wherein it was committed, then a Justice of the Peace can constitute a Court of Inquiry, call all the witnesses who are cognizant of the crime before him, and take down their evidence. A copy of the evidence can then be filed in the office of the County Clerk, and the Prosecuting Attorney can cause a writ to be issued for the capture of the fugitive criminal. If he has fled to a neighboring State, a requisition from the Governor of this State upon the Governor of the State to which he has fled will insure his capture, and then the punishment can be meted out to him that the crime deserves.

I reiterate, sir, my former assertion, that I am in favor of the entire abolition of the Grand Jury system; for I consider that it has been an instrument in the hands of bad and designing men to set aside the claims of justice; and I insist that the system of public examinations is better calculated to suppress vice and punish crime.

Mr. BASCOM moved to amend the resolution of the gentleman from Tippecanoe (Mr. Pettit) by making it a resolution of inquiry as to the expediency of abolishing the Grand Jury System.

Mr. KELSO moved to amend the amendment of the gentleman from Wells, to inquire into the expediency of abolishing the Grand Jury System, by making it an inquiry as to the expediency of changing that system.

Mr. BASCOM said, he would accept the amendment of the gentleman from Switzerland as a substitute for the one he had offered.

Mr. KELSO. I wish, sir, to say a few words in regard to this subject. I do not see how gentlemen can be serious in proposing to abolish the Grand Jury System unless they offer something in its place that will fully accomplish the object for which that system was instituted. The gentleman from Hendricks (Mr. Nave) has suggested a plan in lieu of it, which, with all due deference to his learning and abilities, I consider the most abominable thing I ever heard in my life—and he is the only one who has attempted to suggest anything to take the place of it. It certainly cannot be expected that men will be put on trial without having a charge of some kind preferred against them.

The gentleman from Hendricks is of opinion that a justice of the peace can be substituted in the place of the Grand Jury to perform its duties. Now, sir, if this proposition had come from any other source I should have thought it

was offered in jest. Talk about the expense of the present system! why, if justices of the peace are to be invested with this power they will not only make a good living but get rich at it. Does the gentleman from Hendricks suppose that they will discharge this duty without fee or reward? You could not get the most stupid individual in the community to accept of that office and perform its duties without receiving a remuneration for his labors. You have in this county, I believe, ten townships, and the lowest number of justices allowed to each township is two. This will make twenty for the county. This township has at least four and thus you have twenty-four justices in the county of Marion. Invest these justices with the powers of the Grand Jury and you will have twenty-four Grand Juries instead of one; and you would have them continually in session instead of occasionally, thus greatly augmenting the expense of the system. What benefit, sir, would accrue from the adoption of such a course? A justice of the peace has to hear the cause of a man who may be brought before him on some charge of misdemeanor—and then recognize the man before he can be indicted. It is then made the duty of the Prosecuting Attorney to draft a bill of indictment; that bill is then filed and the court issues a writ for the arrest of the criminal. But, sir, the evidence must be there, the witnesses in the case must be subpoenaed before an indictment can be had. Why may not the Grand Jury pursue this course and ransom the county for witnesses instead of having twenty justices of the peace sending out their officers with pockets crammed full of subpoenas to call men before them for the same purpose?

But the grand objection made to this tribunal is its secrecy. How, I ask, will the adoption of the plan that has been offered be an improvement so far as this point is concerned? I have no objection to let the subject go to a committee for the purpose of inquiring into its expediency, and if the committee after due investigation, believe that an improvement can be made by making these examinations public instead of private, let them bring in a recommendation to that effect, and we can decide as to whether it shall be adopted. Let us for a moment look at this proposed change. Suppose you make these examinations public, and even go further and receive testimony on both sides of the case—what is that short of a trial of the man? You have the man brought before the Grand Jury. If evidence is to be heard against him, will it not be right to give the accused the benefit of counsel—the Constitution of the United States awards to him that protection, and they are to appoint him counsel, if he be too poor to employ counsel. Will not this be trying the man? Why not give the Grand Jury at this stage of the trial, the right to decide upon the punishment of the offender? That would shorten the proceedings, and save the

State considerable expense. If gentlemen wish to make the Grand Jury a trial jury, and to try men without the aid of courts, why, then, let them abolish the courts, and retain the Grand Jury.

I will not pretend to say, sir, that a change may not be made in this system, from which good may result. I am desirous that an investigation shall be made into the subject and that the committee shall report upon it, and then we shall be better prepared to act. I trust that the amendment will be adopted.

Mr. CARTER. This resolution, sir, as it now stands without any amendment, imperatively requires that the proposition embraced in it shall be referred to the committee on the organization of courts, and that the committee shall report favorable to the total abolition of the Grand Jury system.

Now there is a committee appointed, having for its proper object, all matters pertaining to criminal law, and I am of opinion that to this committee this subject should be referred.

If I understand the object of Grand Juries they have been constituted as much for the benefit of the criminal, as the security of the people, against the perpetration of crime, and, although the Grand Jury has a connection with the court, that connection does not render it either solely an appendage to, or subordinate to the court.

It is true the court fills the vacancies occurring in the Grand Jury, &c., and instructs them in the law and the proper spheres of its duties, but in many other respects it is viewed as an independent body, sitting on its own adjournments, and receiving its own business, and as much as it may deem proper, so that I conceive that the whole matter more properly belongs to the committee on criminal law. And, indeed, one of the designs of organizing this committee was in reference to this very subject.

But, sir, as I am called to vote on this resolution, and its being of an imperative character, I must say that I am opposed to it, and upon reasons different from those advanced by gentlemen who concur with me in opposition to the resolution.

I am aware that the Grand Jury is a secret and *ex parte* tribunal, and that its origin is English, and comes from an age of despotism; but it is equally true that but two governments in the world know anything of Grand Juries, and they, too, are the most free and independent governments on earth. I refer to England and the United States. It is true, we long since separated ourselves from, and dissolved all connection with the British Crown; but it is equally true, that there are many valuable laws and institutions which we have derived from the mother country—a fact which we are compelled to acknowledge, however much we may oppose and condemn the general system of English Government.

I do not base any argument in favor of Grand Juries on the fact of the antiquity of the system. I am not one of those who constantly dread the innovations of the present on the workings of the past—who would rather, bear the burthens of ancient wrongs, simply because they are ancient, than boldly assail their incorrectness; but I do say that I am unwilling boldly to throw aside the accumulated wisdom of ages, the precepts of our National Constitution—a work without blemish, and the pride of every freeman—the opinions of the fathers of the Constitution of 1816, and the corroborating testimony of at least twenty other American Constitutions, for an experiment untried and new, and so far undefined.

The imperfections of the Grand Jury system I have seen, and I wish to see the remedy applied.

It is an expensive system, its annual cost being to the State about one hundred thousand dollars each year; and this is an argument against it, and I am willing to admit that this defect should be remedied right speedily, if possible, not, however, by opening a flood-gate to crime; for dollars and cents weigh but lightly in the balance against public security, the dignity, and violated laws of the State.

The secret of opposition to the Grand Jury is not owing to any material defect in itself, but in the abuse which is made of it, and the defects arising out of our statutory laws. To that tribunal now is sent the most trifling and insignificant violations against our penal code. Crime of a high order is comparatively unknown in our State to what it exists in older communities. Now, in a county of ordinary dimensions, it is natural to suppose, instances of the perpetration of minor crimes will be numerous. By our laws, it is the duty of the Grand Jury to inquire into these. The result is, that some man or set of men, feeling that the salvation of the community rests on their shoulders, are very officious in bringing offenders before the Court; witnesses are subpoenaed without number, the jury sits some six or twelve days, finds a number of indictments against men for retailing, gambling, or an occasional fisticuff, and at the end of six months the prosecuting witnesses are called to testify in court again, and generally receive no pay, besides losing much time. Now, the offenses on which they have been called to testify are of such a character as do not particularly outrage the feelings of community as a robbery or a higher crime, and the consequence is, that witnesses feel a grievance at the hardship the law places them under in losing time without an equivalent. Or the man is prosecuted by an enemy, then the accused and his friends, having their feelings aroused, abuse the system which permits malice to be the incentive to prosecution. But such is not the case in crimes of a higher order, such as startle and alarm the community;

and I venture that no gentleman on this floor can say when any community ever felt aggrieved at a Grand Jury finding a bill against a horse thief, unless, indeed, it be the rascal himself; and you know,

"The thief who felt the halter draw
Ne'er had a good opinion of the law."

And, sir, another reason why I imagine the Grand Jury has become to a certain degree unpopular is the present mode of the election of Prosecuting Attorneys. The office is a most responsible one; but by the present law the compensation is so small, and so arranged, that able men will not accept the post. The result is that either the youngest or weakest member of the bar is selected. His office becomes to him his means of livelihood, and the law fixing his compensation holds out to him a continual bribe, in the shape of contingent fees, allowing him payment in case of successful prosecution only. He prosecutes for dollars and cents, and the law makes him do it, too, and not for the dignity and character of the State. Every inducement is held out to him to become a common informer, and with a zeal to prosecute the criminal for hire and pay; and in too many cases he is not qualified to give wholesome counsel to the jury. Is there much wonder that the system should get into disrepute? Then a simple modification of the present system will accomplish all that is desired. Say that the Grand Jury shall sit in cases of felony alone, or, in other words, bring it back to its original position, and let the petty offences go to the townships and neighborhoods in which they occur, to be punished by Justices of the Peace, and let the Grand Jury be divested of such offences, and the whole object will be accomplished. The expense will be curtailed. Each community will punish its own petty offenders and violators of the law, and more good will be done than by carrying into effect the plan embodied in the resolution before us.

And I inquire again what this resolution proposes? Does it give us any other system in detail, of the correctness of which we can form an opinion? It gives us no such information, and we are compelled to judge solely by the arguments of gentlemen in its defence, that those public examinations will be before Justices of the Peace. Suppose that we adopt the plan, in all prosecutions of an aggravated character. I ask, will one man called a Justice of the Peace, under a bond of a few hundred dollars, for the faithful performance of his duties, be more honest or reliable than sixteen free holders chosen from among the most intelligent citizens, and bound by oath to perform these duties without fear or malice, and having no extraneous influences working upon them? He may be as honest, but can he be as reliable? I am unwilling to wholly adopt this system, and thus place the life and liberty of the citizens in the

hands of one man, rather than sixteen high-minded and intelligent men, under the able advice of the bench, and under a solemn oath, too, taken before a high tribunal, and in the presence of high Heaven, that they will present no man through malice or withhold from presenting him through fear, favor, or affection. The many is the safer depository of power, than the one individual, and above all when the dungeon and the scaffold are the impending penalties.

Then, sir, I oppose the resolution, and favor a modification of the system, from a belief that it is right and an obligation imposed on me by those who sent me here; and whenever that modification is proposed I will vote for it. I will do more. Propose a plan in which I can have an assurance that it will be safe, and better than the system now in use, and I will vote for it. But I can see no change for the better in the resolution now under discussion.

Mr. HOLMAN. There is a view of this question that has not yet been taken that strikes my mind as an improvement upon any that gentlemen have seen fit to present. I think that the various arguments that have been introduced here in defence of, and in opposition to, the present Grand Jury system plainly show that this subject is more appropriately a subject for legislation than of constitutional reform. At the proper time I propose to offer a resolution providing for the reference of this subject to the Legislature, as a substitute for the resolution now before the Convention. I think it comes more appropriately under the cognizance of the Legislative Department of Government than it does under the revision of this Convention.

There are many arguments advanced against the present Grand Jury system which I am inclined to think would justify considerable modification in the system. Recently there have been certain acts passed by the Legislature, however, which are in operation in some twenty or thirty counties in this State, that have greatly ameliorated the evils resulting from this system. By the Constitution of the United States, no person shall be held to answer for capital or otherwise infamous crimes, except upon the presentment or indictment of a Grand Jury. The Constitution of the State of Indiana provides that no person can be held to answer to any criminal charge in this State except upon presentment, indictment, or impeachment, and the words indictment and impeachment have a technical signification and must be interpreted by reference to the common law. Under this provision of the Constitution of Indiana, by acts of the Legislature it was thought that criminals could not be brought to trial except upon indictment or presentment. This has prevented to a great extent, any efforts being made to remedy the evils of the Grand Jury system. One of these evils was the entailment upon the

State of a vast expenditure of money for the support of these Grand Juries in punishing petit offences. Another evil is to be found in the great hardships inflicted upon those citizens who are compelled to leave their families and their ordinary avocations of business to appear as witnesses against men guilty of the most trivial offences.

It should be observed, however, that during the last three or four years, a more enlightened view had been taken of the subject. In twenty or thirty counties of the State a very important reform has taken place. The justices of the peace in those counties, by special enactment of the Legislature, have been exercising exclusive jurisdiction in all cases where the offences committed were of a trivial character, and the Grand Jury can only take cognizance of the higher misdemeanors, and those offences that are punishable by confinement in the Penitentiary, or capital crimes.

It appears to me, sir, that the object of the people of the State of Indiana, in calling together this Convention, was to organize a basis, upon which the necessary legislation of the government could be built, and certainly with all deference to the opinions of able men around me, this is a subject strictly legislative in its character, and one with which the Convention has nothing to do. The subject of the punishment of crime, in no wise comes under our supervision. The present evils of the Grand Jury system of which the people are so justly complaining, results from the clause in regard to the indictment of criminals, to which I have already alluded, which was inserted in the Constitution of 1816. As that clause providing for the indictment, presentment, and impeachment of criminals, necessarily implies the organization of the Grand Jury, and consequently no reform until recently has been attempted to be made in that system. Instead, therefore, of making this a matter for constitutional reform, it should be left to the action of the Legislature. All that the Convention can do, is in the formation of the new Constitution, and leave out entirely any provision for the continuance of the system of Grand Juries. The subject will be then entirely under the control of the legislative department of government to which it appropriately belongs.

Mr. BORDEN said, that there was a motion to refer this subject to the committee on the organization of courts of justice, and he understood that there was also a proposition, or, perhaps, only an intimation from some gentleman that it should go to the committee on matters pertaining to criminal law. He had not risen for the purpose of entering into a discussion of the merits of the Grand Jury system, but to suggest that the whole subject should be referred to the committee on the rights and privileges of the inhabitants of the state. If he was not greatly mistaken, the right and privi-

lege of being presented for trial only by his peers, was considered and treated, not only in our own constitution, but in the constitution of the other states of the Union, as among the natural rights of the citizen and inhabitant. The bill of rights of our own state, which secured this inestimable privilege, sections five and twelve, had already been referred, with the remainder of the first article, to the committee on the rights and privileges of the inhabitants of this state; and he thought that the resolution now under consideration, whether mandatory in character, or passed only as a matter of inquiry, should also take the same direction. It appeared to him that they were getting into some confusion in sending the same subject matter to different committees; he, however, would make no motion, but rose only to make this suggestion to those who seemed to have charge of this matter, and who were participating in the debate.

Mr. PETTIT said, he should ask the indulgence of the Convention, after a few words, to entertain a motion to adjourn. He certainly had not intended to allow this resolution to go over without speaking upon it himself. He supposed it might be that there were other gentlemen who desired to speak; and if there was, he would be most willing to listen; but if no other gentleman desired to speak, inasmuch as it was now nearly four o'clock, and the length of time which he expected to occupy would extend beyond the usual hour of adjournment, he would now move.

Mr. BIDDLE interposing, said he did not wish to speak upon the resolution. The question, he believed, was upon the amendment of the gentleman from Wells, (Mr. Bascom,) which was to change the proposition from a resolution of instruction to a resolution of inquiry. If the amendment were to pass it would end the discussion, but if it should not pass, he should like to have an opportunity to be heard. He wished to see a full and free discussion of the subject, but that could not be obtained, at present, if the resolution were referred as a matter of inquiry.

Mr. PETTIT said, he should insist upon instruction—the positive resolution. If no gentleman desired to speak, he would now make his motion, that the Convention adjourn.

And thereupon the Convention adjourned until to-morrow morning at 9 o'clock.

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TUESDAY, OCT. 22, 1850.

The Convention met pursuant to adjournment.

Prayer by Rev. Mr. Hull.

The Journal of yesterday was read and approved.

#### THE GRAND JURY SYSTEM.

The PRESIDENT announced the first business in order to be the consideration of Mr. PET-



TIT'S resolution instructing the committee on the organization of courts of justice, to report a proposition for the abolition of the Grand Jury system—the question being upon Mr. BASCOM's amendment, changing the character of the proposition so as to make it a resolution of inquiry.

Mr. PETTIT rose and said: Mr. PRESIDENT: I come to the consideration of this question with the full conviction, in my own mind, of its propriety. Of the correctness of the position which I occupy—that the resolution ought to be adopted—I have no doubt at all; and I trust much to this conviction—this strong persuasion in my own mind—to carry me safely through the labor before me. And I would devoutly pray that the spirit of persuasion may so rest upon my lips and guide my tongue, that others may be impressed as I am. For I protest that in this, as in every other action here, I am guided only by that spirit so eloquently prayed for by the reverend gentleman [Rev. Mr. Hull] who has just addressed the Throne of Grace before us; and an earnest wish that we may do nothing here but what shall redound to the glory of God, and the advantage of the people of the State of Indiana. I am guided by no other desire, or feeling, or motive, than this.

Mr. President, the question before the Convention, for consideration to-day, is the adoption of a resolution directing the committee on the organization of the courts of justice, to bring in a constitutional provision abolishing our present Grand Jury system, and substituting public examination of criminals in its stead.

I know that people are wont to approach long established customs, for the purpose of abolishing them, with timidity and doubt; and it is perhaps well that we should so approach them; but it bespeaks the coward to hesitate faithfully, and boldly, and readily, to apply the pruning knife to all the decayed and worthless branches of the political system. Nor should we distrust our own capacity in such a course as this, any sooner than we would distrust our integrity. We are certainly as competent now to change, modify, and re-arrange our political system, as were those people in barbarous ages, before the dawn of civilization had fairly swept the mists of moral darkness from the mental vision of the inhabitants of Great Britain.

These remarks, Mr. President, are merely preliminary—they do not touch the question. They are only made with reference to the temerity evinced by some gentlemen in alledging that we ought to be careful about touching any measure which comes down to us with a hoary head, and sanctioned by time. If it were a mere question of time, sir,—if we were bound to maintain this system merely because it has existed for so long a time that, to the contrary thereof the memory of man runneth not, then there are other measures which we would have to adopt for the same cause. While the advocate of the Grand Jury system can look

back for a thousand years, and say it has existed throughout that period, in one form or another, in the hands of our ancestors, I can say to that same advocate, that, for twenty-five hundred years back we can see the gems glittering in the British crown; and if this is any good reason for sustaining the one, why not adopt the other? I thank the gentleman from Wayne, (Mr. Rariden)—I will not say "I thank thee Jew for that word," but I do thank the gentleman—for his admission, that, in the first organization of the Grand Jury system, it was designed as a prop and support to the crown of Great Britain. No more certain and truthful history could be given of the origin of this system. Its design was to operate as a secret spy for the King, which he should have and maintain in every part of his dominion—consisting always of a body of wealthy land-holders well affianced to the crown—that they should meet in secret conclave for the purpose of bringing in witnesses, and informing upon all who were suspected of infidelity to the crown of Great Britain. I repeat, that this system was created as a prop to the crown of Great Britain—without which it could not possibly have stood so long. And now, in the classic language of the gentleman from Wayne, since "we have turned this crown bottom side upward," why should we continue to maintain this, its most efficient prop? You have hurled the crown into nothingness, why then maintain the very instrument by which, more than by any other means, the authority of the crown was so long maintained? It is a solecism without a parallel in the history of argument, reason, or debate.

Well, sir, my sole object in introducing this resolution is, to establish for the people of Indiana such a system of criminal jurisprudence and practice, as shall certainly punish the guilty and as certainly shield the innocent from blight and mildew. If this Grand Jury system is best calculated to produce these two objects and ends, if the Grand Jury be best calculated to insure the conviction, the certain conviction, of the guilty, and secure to the innocent portion of our citizens all the enjoyments and immunities of freedom and free government, without spot or taint, then I am for it. But if there be another system that shall bring the punishment of crime to the guilty as rapidly and certainly as the thunder follows the lightning's flash, and that will as certainly shield the innocent, then for that system am I. And, though the other system may have gray hairs, and the hoary head of the dotard, it shall have no reverence from me.

Well, sir, how then stands this matter? In the way of preliminaries, I have made, perhaps, remarks enough. The origin of Grand Juries was as has been named. The first authentic traces of the system are to be found in Great Britain, for, let me say distinctly, that Grand Juries never existed in any other country than Great Britain and the United States. It is an

appendage of the common law, but I will not deviate from my track for the purpose of passing an eulogy upon that ancient system of law, which, like every other thing beautiful and useful, has its spots and its defects, which we ought either to hide or remove. This system had its origin in Great Britain, whence we have derived it. It would be in vain to think of finding anything like it in the institutes of the twelve judges, or in the legal remains of Rome, of Greece, or of Sparta. If we search all these, we shall find nothing that runs a parallel with this institution. It had its origin in Great Britain more than a thousand years ago. It is first found under the reign of king Ethelred, in the early part of the ninth century—a little earlier in that century than we are now in the nineteenth century—and it has existed in that realm ever since. I grant that it has had different forms in different ages, such as different modes of summoning, and different grades of power, but in one form or other it has existed in that country for ten hundred years past. But still it is “the self-same old jack-knife,” no more nor no less. If the Convention will indulge me, I will relate the anecdote of the boy’s jack-knife. Said one boy to his fellow, “There is my jack-knife, which was owned by my grandfather, and handed down to me.” “Well, but,” says the other, “has it never had a new handle?” “Of course,” replied the owner of the knife, “it has had four new handles and six new blades, but it is the same jack-knife yet.” And this Grand Jury system is the same system yet. It is the same secret spy, the same inquisition, inefficient to punish the guilty or protect the innocent.

Its original design was, that it should stand as a prop to the British crown. But have we any crown which needs to be propped up? The metamorphosis presented yesterday by the gentleman from Wayne, I am utterly unable to master. It is utterly out of my power to ascertain the parallel which he would seem to draw between the fact that we have turned the British crown bottom side up, and the necessity of the existence of this system as a part of our free institutions. Our government has no secret enemies, while the other government has them. While the crown of Great Britain has had frequent occasion to punish those suspected of infidelity, we neither have nor can have any such occasion. I think it the wiser policy for the State of Indiana to show to the world, by the abolition of this system, that her citizens are incapable of committing a crime that needs to be examined in secret. Thus it would appear that our citizens are not over anxious to clog the Jeffersonville Penitentiary with convicts, either guilty or suspected of crime.

Sir, in the proportion that you have convicted felons in the penitentiary, in the same proportion is our whole population disgraced. How would you feel, sir, away from home, suppose you were in New York or Philadelphia, and

were to hear a comparison instituted between the number of convicted felons and the number of the inhabitants of each state in the Union, and it should turn out that Indiana had a greater proportion of convicts than any other; I say how would you feel as a citizen of the State of Indiana, upon being caught abroad under such circumstances? I admit that, at home, you should be very desirous of punishing criminals; but out of the State, if such a comparison would show that Indiana has more felons in the penitentiary, in proportion to her population, than any other state, (having sent her people to the penitentiary, whether guilty or not, it would be set down that they were really guilty,) the fact would affect you. I say to you, whatever might be your position, fellow-delegate, you would feel that you were greatly bored; you would take the suggestion as an unkind cut, and feel it sensibly, so that your State pride would not run so high as you would be glad to have it. I make this appeal to show that it is more desirable for the State, that she should save from punishment those who are not guilty, than that she should actually punish to the fullest extent every guilty man; and that maxim of the law comes in here, which says, “It is better that ninety-nine guilty persons should go unpunished, than that one innocent man should suffer.” This is a maxim of the common law, and which has long been very generally approved by civilized man.

Well, sir, with reference to the mode of prosecution, by Grand Juries. The proceedings here are all *ex parte*, and let us inquire for a moment, how far this mode of proceeding can favor the elicitation of truth? Let us suppose a Grand Jury to be empaneled; it must consist of over twelve men, and under twenty-four men. They come into the court, and although the young gentleman in my eye says they were entirely independent of the court, I shall not take the trouble to contradict him expressly; but old practitioners know better. They know that Grand Juries are subordinate to the court. They cannot adjourn finally without the permission of the court, although they may have the gracious privilege of adjourning an hour before the court, or an hour afterwards; they are not servilely compelled to hold on to the garments of the court all day. But, as I was saying, the Grand Jury come in, and they are seated by the court, and the judge turns round a little to the left and charges them. You have all heard many a charge to a Grand Jury. I have heard very creditable stump speeches made in this way. I have heard the system extolled by those who approve of it, on such an occasion, by hoary headed dotards upon the bench. [A voice —“who does he refer to?”] He will know who I mean when he sees this. But now what is the charge of the judge. I will give you an example. I will epitomise a common charge to a Grand Jury: “Gentlemen of the Grand Jury,



you are called here for a very important purpose. You are to go into your room secretly, gentlemen, for the purpose of receiving and giving information whether there has been any crime, high or low, large or small, committed in your county." This is the first charge. The judge then says: "You will consider the dignity and importance of your station, and to aid you in the prosecution of your work, you will send in to the clerk a slip of paper containing the names of such witnesses as you may be advised will be able to develop crime, and give the best information of criminals, and you may be assured, gentleman, that these witnesses will be brought in privately by a special bailiff, appointed for the purpose." This is another charge, which rendered into plain English is this: You will send out for the names of men to bear witness secretly against their fellow-citizens, and hear one side only; and refuse to allow of any kind of cross-examination, or the introduction of any exculpatory evidence whatever. This is the charge, and the judge proceeds: You very well know, gentlemen, that you are to keep all your proceedings, all the sayings of witnesses, and all that may be said by the counsellor for the State, a most profound secret. Let all this be forever buried in your bosom of bosoms, which is only to be unlocked in eternity. Such, sir, is the sum of the instructions of the judge to the Grand Jury. And now, I ask, if this savors anything, either of the spirit of republicanism, or of common justice. I protest now, and here, against the whole system. There is neither fairness nor honesty about it. No sir, let me have a system which admits foe to foe, complainant and complained of, and witnesses, face to face.

Sir, is there any reason for continuing this system; is there any justice in it; is there any necessity for it? None whatever, that I can find. With all due deference to the gentleman from Wayne, to whose arguments I listened with all attention, I would suggest that we came here to repair a dilapidated system, and to consult together, and to act like men of discretion. We came not here for the purpose of seeking any advantage for any particular institution, or of desiring any provision in the Constitution that our judgment does not approve, having had full opportunity for discussion and reflection.

Sir, the whole Convention will bear me out in saying that in this matter I have not been precipitate. I first gave notice that I would introduce a positive resolution on this subject. I did introduce such a resolution. It lay over a day, and I then moved to make it the special order for that day week. That day came and it was again put off; and now that it is before the Convention, regarding it, as I do, as a question of the utmost importance, I hope the Convention will duly deliberate upon it. Let us have no catch-penny work; but all know when

questions of importance are to be discussed, and let all take part in those discussions who may desire it.

Well, sir, have not Grand Juries their weaknesses—their errors—like all other men? All experience tells us that they have. Sir, I have undertaken to say—and I know that I shall be borne out by all the members of the bar, by the clerks of the circuit courts, from whencesoever they may come, and by many others whose testimony is of equal weight—that in cases of felony, where the incipient steps have been taken before a Grand Jury, not one in twenty ever result in conviction. Now, sir, I repeat it. Here is this boasted institution for which so much perfection is claimed; and it is provable beyond question, that of the number of indictments for felony in which the incipient step is taken before a Grand Jury, and no previous arrest or examination has taken place, not one out of twenty result in a conviction. And so it will ever be. A reflecting man will ask himself the question: "Why is this so?" Why, sir, it is just as plain as that misfortune follows error and falsehood; it is just as certain as that good follows truth, that wretchedness follows vice, or happiness, virtue. This arises from the very organization of Grand Juries. When they undertake an examination of a case, we all know that that examination is merely *ex parte*. They hear but one side of the evidence, with, perhaps, all the coloring of the State witnesses, to which, in ninety-nine cases out of a hundred, the bitterness of the heart is put forth with all the venom of the serpent's tongue. There is no cross examination; no contradicting of witnesses; all—all is one-sided, *ex parte*, unfair; and hence a Grand Jury, however pure their motives may be, however excellent men of themselves, cannot, in the very nature of the system, arrive at the truth. If they should happen to do so, it is more by accident than as a consequence of the system. I repeat and insist, that by the very constitution of the Grand Jury system, it is not once in twenty times that they arrive at the truth at all. They may find honestly and purely; they may act with the utmost purity of motive—nor would I have it thought for a moment that I would impugn the motives of any of them. As a general practice, they are selected from the best men of the county; they are generally men of some standing, and who are supposed to combine among themselves both education and intelligence. But, sir, I care not for all that. No, sir. The fault is not with the jurors, but with the system. You may take the angels of Heaven, and lock them up in a Grand Jury room, and with the evidence of devils before them, it will be impossible for them to do right.

A MEMBER (in his seat). That's a pretty strong figure.

MR. PETTIT. Not a whit too strong. That

is precisely the character of the Grand Jury. It is our duty to protect the character of the people as well as to protect their persons and their property. No one will doubt that it is of as much importance that we should establish such institutions as will preserve the character and reputation of our people unspotted, unblemished, untarnished—that we should establish such institutions as shall prevent the indelible spot from being placed upon the escutcheon of an innocent man—as that we should make acceptable provision for the protection of his property and person. The one is not more nor less our duty than the other. Well, sir, then upon the point I have taken, that out of twenty indictments for felony which originate before a Grand Jury, not more than one results in a conviction—upon that point, I say, I defy contradiction. I know, indeed, that it is not improbable, that when some gentleman comes to answer me, he will probably advert to all the little indictments for whiskey selling, betting, &c. That is not my point. I refer to indictments for felonies only; and if the position I have taken be true, what is the consequence? Why, that nineteen out of every twenty of the population thus indicted are subjected to a most material injury. Tell me not, gentlemen of the Convention, that he who, being innocent, is yet indicted for larceny, or perjury, or forgery, or arson, is not injured in his reputation in consequence, even when a traverse jury have set him free. Tell me not that the foul breath of suspicion is thus easily exhaled—the foul stain thus easily wiped away. It is not so. There is scarcely a gentleman on this floor who cannot point to some victim of this secret inquisition in his own county, upon whom the pestilential and blighting hand of this Grand Jury system has not been laid without cause, without justice, without reason of any kind whatever.

I have no complaints to make against this Grand Jury system, for any personal inconvenience I have ever suffered by it—none whatever. My opposition to the system is generated in feelings of a higher purpose. I come not here opposing this system, with the view of redressing any wrong of my own, but to aid in laying the foundation of a system for the administration of justice, both civil and criminal, in this State, that shall operate equally upon all, and produce the great end for which all such systems ought to be framed. Some men will say, that it does no harm to present a man before a Grand Jury of sixteen men, and have him indicted, and then to put him on his trial before a traverse jury, six months or a year afterwards. Is there no harm in all this? Grant that a man can give bail, and is not confined in jail during the interval between indictment and trial—an interval which often extends over a period of twelve months—the thing is still hanging over him. He is finally brought to trial, and then, after a labored prosecution,

the traverse jury says, he is not guilty. Every one who hears the trial admits that there is neither truth nor color in the charge; and why is it then, that by our institutions we should thus call upon an innocent man, not only to sacrifice time and money, but character, and everything dear to him, to a secret inquisition like this. You say that he is not injured. I contend that he is injured; and that most materially. The Grand Jury who sat in secret, and heard the evidence against him, and found that there was evidence enough to indict him, will ever afterwards have the impression of his guilt upon their minds. They are not present a year afterwards when he is tried; they have not heard the plain and evident statement of the man's innocence before the traverse jury; and they, together with their bailiff, go off, and forever after believe the man to be guilty.

Let me say here, Mr. President, that I have been a practicing counsel in our State for twenty years, and have had no little to do with the defence of criminals, as well as with prosecutions. I never, indeed, was before a Grand Jury except in the capacity of representative of the United States, in this State; but in that capacity I have had sufficient means of becoming acquainted with the transactions of Grand Juries. I have not been an unobserving member of society on this subject, and you may depend upon it, gentlemen, that that Grand Jury will go away with the impression that the man was guilty. They will say, "Now that fellow has got off; but I know very well he is guilty, for I heard all the evidence; I would not trust him any more at all." Another will reply, "Then how came it that he was acquitted by the traverse jury, where he had an opportunity of meeting his enemy, and being before his accuser face to face?" To which it is again answered, "Oh, the witnesses, perhaps, were not all there; if they had been, you would have seen a different state of the case." Again, it may be said, and the gentleman from Wayne knows it very well, that the defendant had the ablest lawyer; that he escaped through the trickery of his attorney, and the ignorance of the prosecuting attorney. That is the whole amount of it; and you never can erase the impression of his guilt from their minds.

And thus it is not only with the Grand Jury themselves, but with the man's neighbors and acquaintances. By holding up to their gaze the finding of the traverse jury and the instructions of the court, you never can efface either from the minds of the grand jurors themselves or that of the public the suspicion of the man's guilt. You never can eradicate it. It goes with him wherever he goes, and follows him like a stalking pestilence. That is not all. Let a little trouble arise politically, or in the church, if you please—and I have known some instances of this sort—no matter how good his character may be, or how virtuous and reli-



gious he really is, you will hear it tauntingly said in his hearing, "I would not like to have been indicted for perjury or for larceny," and thus the unfortunate man who has been accused perhaps with no better foundation of his guilt than the mere malice of an enemy, is wounded in the most sensitive part—his honorable name—and feels that he would rather have parted with property and perhaps with life than have been subjected to such ignominy. I think there can be very little doubt that almost every gentleman here will be able to recollect one or more cases of that kind. Let it not be said that a man thus presented and indicted is not injured! Sir, he is injured? A stain has been cast upon his character; an injury has been inflicted upon him from which he can never escape, but which he must carry with him to his grave as certainly as the grave awaits him—as certainly as that that faithful grand juror will carry to his grave the secret of the evidence which fixed that stain upon his neighbor's fame. These, then, are some of the errors that arise under this system. I think that men under this system are more subject to be led astray, that they are more liable to be made the dupes of secret machinations and secret influences, than they would be in having an open investigation of the case before a public magistrate. It is, then, a system on which secret influence may operate, and it is one which may be led into the commission of error, however pure and excellent the motives of those who are called upon to act under it. It is a useless and an expensive system, and for the reasons which I have assigned, and those which I shall hereafter assign, I think it is one which ought to be dispensed with, and I shall therefore propose a substitute for it. I have spoken of the expensiveness of this system. Allow me to say, however, that I merely mentioned this incidentally; because if I could be satisfied that Grand Juries were necessary for the punishment of crime or the protection of innocence, I should regard the expense as nothing; I should care nothing about it; I would not even enter into the consideration of it. I would say, give me that institution which will secure the punishment of crime, and under which innocence will be safe, and I will not inquire at all into the expense. Any society whatever that deserves to live is capable of and willing to incur all the expense necessary to eradicate crime and to punish it, and to protect the innocent members of its body from unjust prosecutions and disgrace. As to the question of expense, then, I will not regard that, although, as has been said by the gentleman from Porter, it costs you more than all your judges of all your courts. Supreme Court Judges, and Circuit Court Judges, and your Probate Judges, and all others put together do not cost you as much money as holding these secret inquisitions, to say nothing in regard to the loss of character

and reputation. Why not, then, have an open investigation! The one is a sure safeguard, acting in open day and before all the people; the other is a certain blight and mildew acting in secret. Is it at all strange then, Mr. PRESIDENT, that a secret inquisition held in each county should cost you more than all the other expenses of the administration of justice? No sir; it is not strange at all; for in all countries wherever secret inquisitions have been resorted to they have cost the governments more to maintain them than all the other departments in the administration of justice. Let me point you to the Inquisition of Spain. It cost the government of that country more money to maintain that unholy inquisition than it did to sustain all the other departments of the judicial authority.

It is not strange, sir, that this institution, in this particular, should resemble the secret inquisition in Spain; for like things have like tendencies.

It was my intention next, Mr. President, to proceed to the consideration of the argument involved in the question of the legal power of the people of this State to abandon this system, but I am informed that it is the intention of the opponents of this reform not to urge that point, but to concede that the people have the power. I am therefore saved a considerable degree of labor so far as that part of the question is concerned. I had made preparation to discuss the legal question, but I will not go into it now, as I understand that all our opponents on this subject have abandoned the idea of raising that objection, and admit the authority of the State to do as she pleases. The doctrine is laid down in 7th Peters' Reports.

I will mention here, in passing, that in February last I wrote an article for the "Sentinel" on the subject of Grand Juries. Shortly afterwards some sprightly young gentleman from Terre Haute came out, thinking he had found a mare's nest in the Constitution of the United States, [laughter,] by which he thought he had satisfactorily proved that there was a provision in the Constitution of the United States which would prevent us from laying a finger upon this Grand Jury system. Well, that young man was very precocious, certainly. I am unwilling to make any personal references, but I must say that I should not be at all surprised if, by next spring, the cows should take him for a cowslip and devour him as something very green. [Laughter.] Sir, the States never surrendered to the General Government the right of determining how they would punish offenders within their jurisdiction, and so the Supreme Court of the United States has said in plain terms. But as that proposition is to be abandoned, I will pass it over, and come to other questions connected with this subject.

Mr. President, in my judgment, this institution, so far as its secrecy is concerned, is anti-

American. Where, in what other department, for what other purpose, either for the protection of property or life, or the protection of character in any other situation—where is it necessary to hold a secret tribunal? I know it is said that the two Houses of Congress may sit with closed doors. But when do they do it? The House of Representatives never sit with closed doors. The Senate of the United States, when they desire to indulge in some debaucheries, or when they want to give some consequence to their secret meetings in ratifying a treaty with a foreign power, the whole of which is known beforehand, and which has been in every newspaper throughout the Union—the Senate of the United States, under these circumstances, must shut themselves up in secret for the consideration of that very secret subject which is known all over the world, [laughter,] and which has come before them for ratification. I assert now, as I have often asserted before, that the practice is useless—utterly useless, and ought to be done away with; that the fact of making treaties ought to be known, and the reasons publicly given why they should be adopted or rejected. There are a few Senators who have always been battling against this secret system of doing business, and some of them have even insisted that even the debates in regard to nominations and appointments should be public. Suppose, sir, that you or I should be nominated for an office there—a thing that did happen with me once, and I believe the nomination was unanimously confirmed—would we not rather that the doors were opened, and that we should have an opportunity of hearing what objections, if any, were urged against us? Most certainly we would. As a usual thing, when a citizen is nominated for an office, they close the doors; and this, I suppose, is done in order that they may have an ample opportunity to abuse him, or to investigate his character precisely as a Grand Jury would investigate a presentment—that is, considering only one side of the case. I have seen the workings of the system, and I know that it gives rise to many abuses. I will not stop here to pass any eulogies on the Tyler administration; but there was a Mr. Henshaw who was nominated for Secretary of the Navy under that administration. Secret information, and anonymous letters, were sent into the Senate, blackening his character. A vote was taken on the nomination, and the gentleman was rejected. Well, sir, to my certain knowledge, many of the Senators asked his pardon for the gross assaults which were made upon his character in executive session. Some of them, to my certain knowledge, have told him that they were deceived; that his character had been belied, and that had they known the truth, they would have voted otherwise. But where is the redress for the injury which that man sustained in his reputation and character? Sir, I am firmly convinced that that, as well as all

other American tribunals in which character is to be tried, should be open to all; open as day; open to every man, if the love of liberty and of truth is to prevail in the country.

I wish to say to you, Mr. President, and through you to the Convention, that this is not a new subject—it is not now broached for the first time. Public opinion has been thoroughly awakened upon this subject, both in this country and in Europe; and I shall ask the indulgence of the Convention while I read, or ask the Secretary to read, several extracts from prominent journals, published in New Orleans and St. Louis, and from English newspapers. I am the more disposed to ask the attention of gentlemen to the reading of these short extracts, because our opponents ask us, "what do you propose to substitute in the place of Grand Juries?" By these extracts from English papers I wish to show the Convention that in Great Britain—the land of the birth of this infamous system of Grand Juries, for it is indigenous to English soil—the system has been abolished in London itself; and a suggestion will be found in these extracts as to the substitute which may be made for the Grand Jury.

Will the Secretary read the extracts which I hand him?

THE GRAND JURY SYSTEM.—We indulged a hope, that a bill doing away forever with Grand Juries and their absurdities, would, ere this, have been introduced to the Assembly. If any further demonstration were needed of the mischief they are capable of inflicting, than that furnished in the Espana case, where, according to Judge McCaleb, the very embodiment of respectability and wisdom presided, we think it can be found in the high English authority which, on the occasion in question, we considered it our duty to place before the public.

We challenge the advocates of the system to adduce a single good reason for the longer toleration of this institution, an obsolete fragment of a remote era; or to furnish on the score of expediency, a sensible plea for its continuance.

If no instance had ever occurred in this city calculated to attract public attention to the nefarious purposes to which Grand Juries may on occasion be applied; still, their secret character, irresponsibility, and anti-republican tendency, are well calculated to produce in the minds of reflecting men an anxious determination to do away with the whole system.

There is nothing so conducive to a healthful dispensation of the laws, as publicity; without it, judicial corruption or tyranny, and dishonesty in the jury box, might be practiced to any extent; while inhuman enactments repulsive to feeling, and disgraceful to legislation, might remain, to disfigure the statute book, for years. Every thing secret, every thing mysterious, should be eschewed in our courts; the accused



should be confronted with his accusers, hear every tittle of evidence that may be adduced against him, so that, if innocent, he may establish it; if guilty, receive the punishment due to his offence. As it is, we trust that we shall not again have occasion to refer to legislative forgetfulness on this point; but hope to be able, at no very distant day, to chronicle the abolition of the system, or such a change in it as will do away with its secret and inquisitorial character; as well as take from the hands of judges the present power they possess, to pack it with favorites, whom they are anxious to serve, or solicitous to use.—*N. O. Delta.*

**THE GRAND JURY SYSTEM.**—Popular opinion, however, has already assailed it, even in England, whilst in the United States, where, and in the British Empire alone, of all the world besides, this clandestine and iron institution prevails; very little has been said, and less thought of, about a matter that pervades every avenue of civil life. The very source from which it derives its origin in this country, would of itself have made it a subject of suspicion amongst us, were it not that the imitation faculty of our nature, and the backwardness to undertake heavy labor in reaching and remedying the foundations of great institutions, have operated, if not as efficiently with a republican people as with others, still so powerfully, as to leave us yet many, very many, vestiges of the abhorrent feudal tyranny of England; hence the Grand Jury system has flourished amongst us since the foundation of this government, in full vigor, producing such fruits as *secrecy of inquisition*, violation of the cardinal rule of civil right, in jeopardizing if not condemning a citizen unheard; encouraging conspiracy and personal enmity, and, most strange of all, demanding of a body of men upon oath, to render a verdict of guilt or innocence against a party without affording them the evidence upon which a conscientious finding could be made, thus encouraging the risk of the commission of an awful crime upon the part of jurors themselves.

The power of fiction over fact, however, has not prevailed of late so strongly in England, as in America, for we find that the Grand Jury system has stood in need of defence from the bench in the former country, against the influence of public opinion.

The following article and extracts are contained in the Worcester (England) Herald:

**THE GRAND JURY SYSTEM.**—The experiment of dispensing with the ceremony of a Grand Jury, in the administration of justice, is about to be made by means of an act now passing through its last stages in [the last] Parliament, which abolishes that tribunal in the metropolitan districts, including, of course, the Central Criminal Court.

We have called the Grand Jury a ceremony, because when it does no mischief it is so, and

nothing more; but it may become, either accidentally or designedly, exceedingly mischievous. For example, it is a ceremony in ninety-nine cases out of one hundred, where true bills are found, as in these the accused parties have been committed after a far more searching judicial investigation of the charge preferred against them, than ever takes place in the Grand Jury room. The intervention between the committing magistrate and the jury, who are to try the accused, of a tribunal, which simply inquires whether there be *prima facie*, that is, a probable ground of suspicion, against them, is at best, therefore, a useless ceremony; but we shall also prove conclusively, that it may be rendered a serious evil. Accidentally it may defeat justice, as where the witnesses against the accused fail, from some fortuitous circumstance, to attend before the Grand Jury; and, designedly, it may have the same effect, as where witnesses are kept out of the way on purpose. There are many other ways in which the noxious capabilities of this weed of our ancient judicial system may be brought into pestilential activity. Two bills cannot be found against any one for the same offence; and, therefore, an accomplice or friend may, in many cases, prefer a bill of indictment, before the Grand Jury, against an individual in order to prevent a party really aggrieved from obtaining justice. In such a case, no evidence is offered before the Petit Jury, and they return a verdict of not guilty. This mode of "cooking" Grand Jury bills, was formerly extensively practiced to extort money from keepers of gambling houses, and probably is so still.

The bill to abolish Grand Juries, above referred to, is founded upon abundant evidence of their plain evils.

Mr. Humphreys, a solicitor in extensive criminal practice, says:

"My objections to the Grand Jury system are, that it is injurious frequently to innocent parties; and that it is a protection very often to guilty parties; and that it assists the compromise of offences which have been investigated fully before the magistrates; for by means of its secret acting, there is no opportunity of knowing what takes place before it, and consequently the evidence which has been given before the magistrate may be increased, repressed, or diminished before the Grand Jury."

Mr. Mirehouse, the assistant Judge of the Central Criminal Court, has tried 25,000 cases, and he says:

"I do not know one single argument in favor of the Grand Jury system. I should be glad to hear any one put any question as to any point in favor of retaining them in the Central Criminal Court. I never heard one argument in favor of it, that has been conclusive in my mind."

The press is nearly unanimous in condemning Grand Juries. The Times, for example, says:

"The Grand Jury is a relic of another condition of society, of a method of administering justice now entirely reformed. Whatever was originally valuable in such a jurisdiction has passed into other hands, and is exercised in a manner far more conducive to the general advantage. The police magistrate, who conducts his inquiry with open doors; who confronts the witnesses with the accused; who admits the legal advisers of the supposed criminal to his court, and permits them to argue against the propriety of his committal, either on grounds of law or fact; and who, above all, must exercise his solemn and important functions without forgetting the reporters in his court, and the great body of the nation out of doors, whom they represent;—such an officer, we say, exercising his jurisdiction in such a manner, offers far more valuable guaranties to the public than any mystical tribunal such as the Grand Jury, whose proceedings are the very reverse of what we have just described. The natural results follow from the existence of such an abnormal jurisdiction in the modern system of administering criminal justice. It is determined to extort money from persons moving in a respectable sphere of society, and who would rather suffer any pecuniary sacrifice than have their names brought before the public in connection with an odious charge? the extortioner prefers a bill of indictment before the Grand Jury. Against the innocent it remains a terrible instrument of oppression. Is it the object of an experienced thief to get off after committal?—it is to the Grand Jury he looks as his sheet anchor. "I consider," said Mr. Mirehouse, who has filled the office of common sergeant of the city of London for the last fifteen or sixteen years, "that a thief has about twelve or fourteen chances to get off, and *that* (the Grand Jury) is the first and great chance. Generally, a man of the swell-mob has plenty of money, or he is connected with those who have. Then he buys off the witnesses, and gets them to stay away, and not go before the Grand Jury." These are the two main and leading reasons for the abolition of the system, inasmuch as they point to the great evils which cannot be suffered to disgrace a modern system of jurisprudence when they have been once pointed out.

It is well urged by the Essex Herald:

"The Grand Jury system is in the present day but a form, and in great cities, as it has been proved, frequently a mischievous one, leading often to the escape of the guilty, and sometimes being made an instrument of extortion. The duties which the Grand Jury was originally intended to discharge, are now performed by the committing magistrate—he stands between a party wrongfully accused, and a long imprisonment before trial; and we see no utility in another shifting of the case before the prisoner is called on to answer the charge

against him. And the alteration would have this advantage—the class now summoned as special Jurymen would be thrown into the general panel, and thus the standard of intelligence in the jury-box would be raised—an improvement which those accustomed to watch the administration of public justice must have often felt to be desirable."

Under certain conditions we can see no danger in committing to one competent, honest man the task of investigating and deciding in charges of a criminal nature to the extent of ascertaining *whether there be probable grounds for sending the prisoner before a jury, who shall hear the evidence on both sides and determine accordingly*. The most important of these conditions would be that every investigation at which any person is committed or discharged by any police magistrate, or justice of the peace, shall take place in an open court, and it shall not be lawful for any magistrate to hear and determine, so far as committing and discharging, any charge whatever in private."

Mr. PETTIT, resuming. And so say I, Mr. President.

I remarked that my desire was not merely to see the Grand Jury system abolished, but to establish in its stead such an institution as would insure punishment to the guilty, and certain protection to the innocent. If the Grand Jury itself be the most eminently desirable institution, and the only one that can effect that object, then I go not only for the present establishment of the Grand Jury, but for its perpetuity. But, sir, I am convinced that such is not its character, and acting up to my convictions I desire to see the system abolished. I have had these extracts from influential and able journals read, not because they are the only ones, or the best that could be brought forward, but because they are convenient, and because the *Espana* case alluded to by the New Orleans *Della* is familiar to all. It seems that in Louisiana there is no Constitutional provision against an abolition of the Grand Jury system by the Legislature, and the newspaper I have quoted very properly wonders why so odious an institution is not immediately done away with. The second extract is from a Missouri paper, and embodies the same principle. The other extracts are from papers published in England—the country from which we derived this hoary-headed relic of a feudal age—and shows that the people of that monarchical form of Government are actually in advance of us, who profess to lead in political reforms of the age. They say that the Grand Jury is but a ceremony, and that it is frequently an injury to innocent parties, while it is very often a protection to the really guilty. And as to a substitute, we find that in the city of London the Police Magistrate, who now takes the place of the discarded Grand Jury, who conducts his inquiry with open doors—who confronts the witnesses with the accused—who ad-



mits the legal advisers of the supposed criminal to his court, and permits them to argue against the propriety of his committal, either on grounds of law or fact—and who, above all, must exercise his solemn functions in full view of the public eye, and in full hearing of the public ear, such an officer is found to offer far more valuable guarantees to the public than any mystical tribunal sitting in secret, such as the Grand Jury, whose operations are the very reverse of those I have just described.

Mr. President, is it not apparent that we, in this country, can easily enough substitute public examinations before a proper officer, for this Grand Jury system, which works quite as badly here as on the soil to which it is indigenous? It is easy enough to select an examining magistrate from one of our judicial officers. We have a Supreme Court Judge, a Circuit Court Judge, Associate Judges, and in some of the counties the Probate Judge has authority. Beside these, there are the Justices of the Peace, who might be empowered to sit as magistrates in public examinations. And now, I would ask, why not make this change—why is it not practicable and expedient? Let us reason together on this subject: if I am wrong do not abuse me, but reason me out of my mistake, if I be laboring under one.

Some have said that they might be induced to support a proposition for the abolition of the Grand Jury system, so far as minor and petty offences were concerned, but they are in favor of retaining the institution for the examination of all crimes and felonies. But, sir, I should support a proposition just the reverse of this. If the Grand Jury must be retained at all, let it be for the minor offences, leaving the charge of crimes and felonies to be made before an examining magistrate sitting in public. But I would much prefer that the institution should be abolished altogether. And let me say to you, and to all, whether agreeing with me or not on this question, that there is no medium course—no middle ground—no half-way line in this matter. You must either nourish and protect this Grand Jury system as it is, or pull it up by the roots.

It has been said here that you may remove from this institution the feature of secrecy and preserve the rest; but when you do this, you make of your Grand Jury something very like a mob—you take away its distinctive character. Remove the injunction of secrecy and the vital force, the existence of the system is gone. Take a jury of sixteen or eighteen men, with the lawyers and witnesses assembled: the prosecutor opens, the counsel for the defendant rejoins, and there will be uselessly spent day after day in an angry contest as to points of law and evidence, for you will have no judge legally appointed, sitting there to decide questions of law and to enforce order, to say thus far you may go; this question is relevant and that ir-

relevant; but all are judges and jurors, and all will be confusion worse confounded. Sir, there is no half-way ground, we must either cut off this noxious weed: lop off these useless branches upon the fair trunk of American jurisprudence, or we must heal up the bruised reed and leave the old and unsightly branch to disfigure the jurisprudence of the State.

Sir, what do you do—for instance, a man steals a horse from your neighborhood, what is the practical use of a Grand Jury? Half a dozen or more men are upon the instant of alarm, in full pursuit of the thief, and there are always enough to file an affidavit against the thief. You will always find men ready to make complaint of the commission of any crime in the dark catalogue of human depravity.

By abolishing this Grand Jury system you will add to the manly firmness and dignity of your population. Teach them that there is a public officer before whom they are liable at any time to be dragged, upon charges made by individuals, and a feeling of fear of suspicion will always influence their minds and actions.

Let us look now at the security of this institution. The man is brought up and examined before a justice of the peace in the manner alluded to in the London Times, which I have just had read. And here let me say to this Convention, that the authority of the London Times is not to be sneered at, for that paper has done more to advance human liberty than all the newspapers of Europe put together have done. It has been the first to rebuke tyranny and oppression, and to defend the rights of humanity, and it deserves an eulogy far greater than my feeble powers could bestow upon it. The defendant is there with his counsel, and the State witnesses are there, and a searching investigation takes place. I ask why not write down the evidence—why not make it a part of the duty of the examining magistrate to take down the evidence of the witnesses for and against the accused and have it filed in the Clerk's office?

The party accused, as I have said before, is brought up before the justice of the peace. The prosecuting attorney for instance then appears in behalf of the State, and I appear in behalf of the accused. The public are all around us, and hear the evidence on both sides, and the justices take down the evidence, and if they are of opinion that the accused is guilty, they file the evidence in the office of the Clerk of the county in which the offence may have been committed. The prosecuting attorney then goes, and upon his oath as an officer and his character as a professional man, decides whether the evidence will sustain an indictment or not—and I ask if the Grand Jury does not then decide in accordance with the opinion of the prosecuting attorney? If the prosecuting attorney tells the Grand Jury to bring in an indictment, do they not bring it in? and if to the contrary, do they not drop the subject? Why, sir, I never found

but one stubborn Grand Jury in the course of my experience as United States District Attorney in my life, and that jury reported me to Judge ——— because I would not write an indictment against a citizen they wanted to prosecute without any just grounds. His honor very properly told them that they ought to be ashamed of themselves to find an indictment on such a state of affairs.

The finding of a Grand Jury is upon the evidence presented under the direction and counsel of the prosecuting attorney. If his counsel is to bring in an indictment, and the evidence in the case is sufficient, they bring it in. If it is his opinion that an indictment should not be found, the case is disposed of very speedily. The prosecuting attorney simply writes out the bill of indictment, and all the Grand Jury have to do is to take a vote upon it, and endorse it a true bill. Sir, the whole system is a ridiculous absurdity. Let us rise a little above the narrow contracted views of early education and prejudices on this question, and take a common sense view of the matter. Why may not the enforcement of law and order and of justice be conducted in this practical way? What is the use of the intervention of the Grand Jury in such a case? Why, the accused has been publicly examined, the evidence is conclusive, and he is required to appear at court to answer the charges made against him, or he is committed for want of bail. Where, then, is the necessity of the intervention of the Grand Jury? The attorney discharges all these duties, prepares the charges, and draws a bill of indictment. The sixteen men composing the Grand Jury are guided entirely by his counsel, and if he were allowed to exercise the authority vested in the Grand Jury, and which he in fact directs as he chooses, there would be no necessity for the intervention of these sixteen men—nor has there ever been. They are the machinery, as it were, which the prosecuting attorney sets in motion. What, then, is the use of this body of men?

But it is suggested to me, by way of objection, that the examining magistrate, upon hearing the evidence adduced, may discharge the accused when he is really guilty. Well, sir, if he should there are ten thousand chances for the correctness of the magistrate's decision, to one for that of the decision of the Grand Jury—and why? The examining magistrate, in the first place, has had more experience in reference to law matters than the Grand Jury, and in the next place, he has heard the evidence of the witnesses on both sides, and the arguments of the counsel for the prosecution and the defendant; he is therefore better prepared to decide with certainty whether the accused be guilty or not guilty.

Every gentleman will admit that we desire, in the administration of the law, to have such organizations only as will insure safety to the innocent and punishment to the guilty. Now how often is it, under the Grand Jury system,

that a man who has been indicted and held to recognizance, has been discharged and had his indictment ignored? We do not know the reason of it. Perhaps the necessary witnesses are not present, or testify differently from what they did before the examining magistrate, or have forgotten the material portions of the evidence, and cannot testify clearly upon the question. The witnesses, perhaps, have been tampered with, and thus the really guilty go unpunished. This is one of the evils attendant upon the delay which characterizes the action of the Grand Jury. Suppose a riot occurs, and it is desired to bring the participants in it to immediate justice. You can get nobody to testify in the case. The Grand Jury will soon set, say the spectators, and then we can give our evidence in secret, and no one will know anything about it. And when the Grand Jury commences its sessions, how often is it that the participants in, and spectators of, the riot have left the county for a few days. Many are paid to keep away during the sittings, and they travel like birds of passage as the Grand Juries are coming on. If, on the contrary, your courts were always open, and these matters were given in charge of the justices of the peace, you would see a speedy administration of justice, and a prompt punishment of all offenders. You would witness none of the scenes that take place during the sittings of the Grand Juries that I have depicted.

But another objection is urged—that the justice might accidentally let the man go, after all this examination, who was really guilty. As I have remarked before, there are ten chances in favor of the magistrate's arriving at the truth of the case, where the Grand Jury have one. These magistrates are greatly less liable to err than the Grand Jury.

In order to make this system of public examinations operate to the satisfaction of all, let the prosecuting attorney, if you choose, in all instances where he may have reasonable doubts as to the guilt of the accused, have the power to order an appeal, which, in behalf of the State, shall operate to stay the charge against the defendant—operate as a sort of recognizance upon him. Whenever he thinks that the justice has decided wrong, let him take an appeal upon his own responsibility. Where is the necessity, then, of the further continuance of this system? I ask gentlemen seriously to say if they do not think a better system can be devised for bringing offenders to justice than this secret inquisition? Great Britain and America, the only two countries in which this system exists, are not the only two governments in the world in which crime is punished. Has not crime been punished, and that, too, with great severity, in France and Germany, and other European countries? Did not Rome punish her offenders with as certain security to her citizens as ever did Great Britain or Amer-



ica? You may now and then find an extravagant case in the books and statutes, where an undue exercise of authority has been made by the presiding magistrate of the country, as in the case of our Saviour, who was so cruelly persecuted by the Jews; I fear, however, in that instance, whether a Grand Jury found a bill of indictment or not, He would have had to suffer.

There is an impression that has gone abroad among the younger members of the bar, that this is an institution that has received the warmest sanction of the most eminent of the English jurists, lawyers, and judges, in their writings.

I would state to the members of this Convention, that this is a mistake; there is not a word to be found in any of the books of the English Jurists, that praises the system of Grand Juries. Their organization is silently admitted; but their utility is not commended. You cannot find in the English law books a paragraph as long as your finger in favor of it—even Bacon in his abridgment says nothing in its favor.

I do not wish gentlemen to mistake this statement. You have read, doubtless, of the opinions of English Jurists upon the subject of trial by jury, and they have advocated it in all its beauty and perfection, as the palladium of their liberty; but you should not be misled or confounded that subject with the Grand Jury system. There is no such intermingling in the legal offices in England. Let me say to gentlemen that the Grand Jury has been a cause of terror in England. Tell me not that it was there the protection of the subject, and the shield from wrong. When it existed in the reign of bloody Henry the Eighth, and of James the Second, with his infamous Jeffries, did this shield the people from the vengeance of those tyrants? Did it stay the hangman's hand, or the axeman's blow? No sir—no sir. Sir, a bad system may possibly be well administered, but we had better have a good system at once, and then we will have less danger of a bad administration of the laws.

It will afford protection to the citizen it is urged. Sir, I deny the possibility of its affording any such protection. I despise the protection which a secret tribunal affords, that examines my enemies behind my back. I loathe the idea of protection from such a body.

But I am told that secrecy is necessary and due from the community to him, who informs of a misdemeanor. I repeat it, sir; none but the dastardly and the cowardly will ask such a shield and protection, for the performance of what should be a solemn duty to society. No; the man who acts from a conscientious desire to rid society of those whose "evil communications corrupt good manners," will always be found willing to make complaint, before an examining magistrate, sitting in public. It becomes every man's interest as he loves his own peace, the security of his property, and the

quiet and happiness of his family, to give prompt information of the disturber of the public peace; and of those whose presence threatens the security of property, or person. Rest assured then, that no crime worthy of punishment will go unwhipped of justice, for the want of complaining parties, should this odious Grand Jury system be abolished, and public examinations substituted in its stead. Aside from volunteer complainants, there are the constables, whose duty it would be to make known the authors of all disturbers of the peace—they are the conservators of the peace, and it is their place *ex-officio*, to enquire into everything militating against good order. But I am told that some mean men have been in the habit of writing anonymous letters to the foreman of the Grand Jury, or other officers, saying, "if you will send for such a man, in such a place, you will receive full information of the commission of such a crime, by such a person, and the time when." But experience tells us that the result will always be that, when the examination or trial comes on, one of the main, and perhaps, most forward witnesses will be the very person who dictated that anonymous letter—he wants it to say hereafter, that he "was dragged into the trial against his will," and that he was "forced" reluctantly to give his testimony in such a case. There are many here who understand the whole *modus operandi* of these very modest persons, who first write anonymous letters, implicating the character of their neighbors, and thus get the opportunity of venting their malice under the cloak of a forced witness. The friends of the Grand Jury tell us that, in this way many criminals have been brought to justice, and punished; whereas, if the system were changed, many evil persons would escape through the unwillingness of their neighbors to prefer open charges against them. This, sir, is a mistake, for even mean and disreputable conduct can be turned to account for the public interests. Will not the same persons write the same anonymous letters, and drop them, or send them into the office of the examining magistrate, telling him what he would tell the Grand Jury? In case of the substitution of some kind of public examination, you make it the sworn duty of all justices of the peace to make diligent inquiry into all cases where misdemeanors have been charged, or even suspected, and, sir, I ask if justices of the peace are any less liable to perform their duty, strictly and faithfully, than Grand Juries? No one well acquainted with the general worth and fidelity of this most useful, though humble class of public officers, will doubt their effectiveness on this score. And how much better would it be to have these open, fair, public examinations of all parties accused of misdemeanors, with the accused having the right to confront his accusers, and to produce in this primary trial, his testimony and his de-

fence. Give me the country to live and to act in, where the judicial department of its government, says boldly and openly to the citizen "Sir, it is thought by some, that you have violated the law, you shall be publicly examined before the proper tribunal, composed of your peers, you shall have the privilege of confronting your accusers, and if you be able to establish your innocence, you shall be clear. You are presumed to be innocent, but if the contrary is proven in the judgment of your peers, you shall be cut off from further intercourse with society. Under such a system criminals would be brought to certain punishment, and the aggregate of crimes against the peace of society, greatly diminished, for, with the Grand Jury abolished, and the substitution of public examinations, the evil doer would know that retribution would follow upon the heel of the criminal, with rapidity and unerring certainty.

A few words more, Mr. President, and I will relieve the attention of the Convention, for which I feel grateful.

I wish to refer to a motion or two which has been made with reference to the resolution now under discussion. There is a motion to refer this resolution to another committee than the one indicated by it. I say to the friends of the resolution, stand by the original proposition in its original shape and wording—vote down all propositions to amend the original resolution or to refer it to a different committee than the one to which, on its face, it is directed. And allow me further to say to the friends of this important proposition for the abolition of the "ceremony" of the Grand Jury, take all the votes upon motions to amend, to alter and to refer, by *ayes* and *noes*, that the people of Indiana may know who is in favor of, and who opposes this most salutary reform. The gentleman from Allen has proposed to send this resolution to the committee on the "bill of rights;" another gentleman advocates its reference to the committee on "criminal law." It is not that I distrust the ability or the integrity of the members of either of these committees, that I oppose a reference of this particular subject to them, for I know them all to be able and just men. The chairman of the criminal law committee, I know is with me *toto coelo*, as to the merits of the proposition, and I certainly could have no fear of its fate in his hands. The chairman of the other committee, whatever might be his personal preferences, would yield to the will of a majority. But, sir, I resist its taking a different direction from the one indicated on its face, upon principle. And here let me say to gentlemen, young or old in the profession, that they are mistaken in thinking that Grand Juries, as a matter of course, do not belong to the organization of courts of justice. A court consists, not of a judge alone, but of a judge, a recorder or clerk, who shall keep a perfect record of its acts, a

sheriff to bring in the subjects upon which the judge shall act, and, in criminal courts as at present constituted, a Grand Jury and a traverse jury, and last, though by no means least, the members of the bar; and these, sir, constitute a court. To the court it properly and legitimately belongs to determine whether it will empanel a Grand Jury or not. For these reasons I say that this resolution ought to go to the committee to which it was originally directed, and that, too, without amendment or revision.

Well, Mr. President, I believe I have exhausted time enough, and perhaps have exerted myself too much. I believe that I have given the subject, which I deem one of the most important that will be brought up for earnest discussion in this Convention, a fair, a full, and a candid consideration. I trust that I have wounded the feelings of no gentleman. I came here to offend no one, but with a sincere desire that we might reason together as to the best measures for attaining the highest interests and prosperity of the people of Indiana. We came here to lay anew our political foundations, upon which a great and a free people may build a political temple of beauteous proportions, under the protection of which they can live in safety, and, unfettered, work out their brilliant destiny. That this may be our good fortune, is my most ardent desire.

MR. PETTIT wishes to add that he approves of the *substitute* of MR. NILES, offered after the delivery of the above speech, as being, in his opinion, better than the one proposed by himself.

MR. NEWMAN. Mr. President: like many of my colleagues upon this floor, I have never before held an office in this State or in the United States, and, therefore, cannot boast of the official experience that some gentlemen present may. But each member is sent up here to represent the views and feelings of his constituents upon the various propositions that will be submitted for the revision or amendment of the old Constitution, and I regard the system of Grand Juries, to abolish which there is now a proposition before the Convention, as one of the most important pillars in our political edifice.

The whole population of the State has a deep interest in this subject. We are here to protect their rights, and, sitting in that capacity, it is our duty to see that nothing shall be incorporated into the organic law we are about to frame, that shall be injurious to their interests. In my opinion, sir, for one gentleman to speak of another here, whose age and experience as a lawyer and a public servant from early life, that "he is a man of another age—of a past generation," is highly improper. It is practically eschewing that old and universally received maxim, "experience brings wisdom," and is in reality discarding the wisdom of ages. Of all men, it is not for us to speak lightly of the wisdom of the past, for it is the great, if not



the only guide we have in our present deliberations.

The institution of the Grand Jury, although in England it may have been prostituted to subserve the interests of the crown, has, nevertheless, been of the greatest practical utility in this country. It has well answered all the ends for which it was designed, and it will be long before the people, who have so much confidence in it, can be persuaded that it is best to adopt something that is new and untried in its place. The Grand Jury, like many other measures which history informs us were concocted for iniquitous purposes by the minions of kings, has redounded to the liberty of the subject. When the monarchs of England enfranchised the nobility, for selfish purposes it is true, they set up a body—an order of men in the realm, that, in the progress of time and the slow but sure development of mind, finally curbed and limited the prerogatives of the crown itself. The great *Magna Charta* and the *Habeas Corpus* act resulted from this. The *Habeas Corpus* has proved to be one of the greatest privileges ever wrested by the subject from his monarch.

The institution of the Grand Jury proved to be another of those popular triumphs which, in the course of time, have resulted in the complete enfranchisement of the people. It was provided that, when any citizen was suspected or accused of a crime, the matter should be brought before sixteen or eighteen discreet men of the vicinity, who were to decide whether or not there was sufficient foundation for the charge to make it worthy of being brought before a jury of his peers in public. Hence, soon after their adoption in Great Britain, they were looked upon as the sheet-anchor of the citizens' rights.

To bring my hasty glance at this subject down to the present day, or rather down to the period of the American Revolution and our separation from the mother country, it was at that time thought to be so just, so important a matter that a person should be tried only upon an indictment having been first found against him by a Grand Jury of his peers, empanelled from the neighborhood in which the offence was adjudged to have been committed, that we find it is one of those solemn and eloquent charges, made by the first American Congress in their world-famed Declaration of Independence, against the King of Great Britain, that he had dragged free citizens of this country to foreign lands beyond the sea, there to be tried by strangers for supposed offences. Sir, in this memorable instance, we see how strong was the principle of the citizen's right to be tried only upon indictment by a jury of his neighbors.

By the operation of the Grand Jury system the supposed offender is first to be tried by men from the population by which he has been surrounded and in the midst of which the offence may have been committed; otherwise he

cannot be put upon his trial before a traverse jury.

We are told by the advocates of the abolition of this system, that it is an institution which is liable to be perverted to subserve the purposes of malice, private enmity, and desire for revenge, on the one hand, and to the escape of criminals deserving of punishment on the other. In return, sir, I ask gentlemen what political, social, or religious system or institution is there which has not been and is not liable to be prostituted to bad ends when in the hands of evil men? It would be very agreeable to suppose a pure state of things, and it may do for the Utopian to dream of a state of perfect purity among men; but, sir, for the purposes of practical legislation, and for the basis of discussions upon organic law, we must take the world as it is, and society as we find it; and it is too true, that in every community there are bad men and evil disposed persons who are ever ready to pervert a good institution to evil purposes; in every community, men who may deceive the people, and be placed in offices of trust, who will abuse that trust. But where can we find a better or a safer repository of power than a selection from the freeholders of a county? Can there be greater security than the position, and character, and interests of these men offer to the community, for the careful and faithful discharge of their solemn duties?

The members of the Grand Jury serve but for one term; there is no prospect of continuing long in office, even if that office were a profitable one; there is no temptation to venality, no opportunity for corruption; for those persons most interested, and most likely to attempt the seduction of a jury by bribery or intimidation, know nothing of the matter until after an indictment is found against him, if he has been adjudged worthy of trial by a petit jury.

The Grand Jury, composed of such men and under such circumstances, assemble, and in a calm and unprejudiced manner review the conduct and character of their fellow citizens. There may be, and doubtless are, hundreds of examinations of this kind, which never do become public, and resulting from this follow the best effects. For there are many instances where if a man were openly accused of crime in public, many in the community would believe him innocent, although a jury should acquit him of the crime for which he stood accused; but do you not see that where all such examinations into the character of the citizen is kept secretly private, as they always are sworn to be kept by Grand Jurors, the innocent persons lives on unscathed even by the suspicion or charge of guilt?

What other tribunal for the same or similar purposes has ever been instituted since the organization of society that has not been liable to abuse? None, sir; nor will there ever be un-

til the frail and erring mind of the lawmaker shall attain the prescience of divinity. There never yet was a court, though never so purely and intelligently constituted, against which slander did not raise the imputation of venality, or the charge of oppression. Corruption, sir! why it has been charged upon the greatest and the purest men that ever lived. And judges and juries, in open court, are much more obnoxious to these charges than those who sit in privacy, for the reason that it is obviously more easy to approach and corrupt the judge on the bench, and the jury in the box, than the tribunal whose sittings are for a good cause, shielded from the public gaze and public approach. The Grand Jury are subject to none of these temptations. They are to find bills or refuse to find, not at the dictation of the court, not by the advice of any officer of the law, but upon their own judgments, based upon the evidence before them.

Allow me, sir, to advert for a moment to the precedent of a tribunal which acted without the suggestion or intervention of a Grand Jury. I mean the *Star Chamber* in England, probably the most infamous court ever allowed to sit in a civilized or a half civilized country;—an institution which contributed more to the decline of the power, and finally to the execution of King Charles, than all other causes combined. Because he suffered a tribunal to sit and pass upon the lives, liberty, and property, of the citizen, without that citizen being first indicted by a jury of his peers, and of his vicinity, was that monarch deemed worthy of the most fearful retribution ever visited upon a sovereign by his people.

And how did our forefathers, who had drank too deeply of the spirit of liberty to submit to the domination of England, view this institution which we, in Indiana, of all the States in the American Union, propose to abolish? It was thought by men of large experience and sound judgment, who had seen the principles of liberty tried to their utmost tension during the Revolutionary struggle, that the Grand Jury system was so important for the protection of the rights and privileges of the citizen that a provision for their institution was incorporated into the Constitution of the United States.

And, sir, I ask if experience has shown that we, at this day, should discard it?

The advocates of the proposition to abolish the Grand Jury system tell us, that in its place there should be a tribunal, before whom public examinations of suspected or accused parties should take place, that the members of this tribunal should be sworn, and that the prosecuting attorney should attend all examinations. Now on the other hand the same gentlemen who recommend these public examinations tell us, in opposition to a proposition to amend the Grand Jury system by having its sittings in public, that such a Grand Jury would be merely a

legalized mob. If so, I ask what gentlemen would call these public examinations that are to be substituted for the Grand Jury? By what term will they characterize such prolix and disorderly scenes as a public examination, with all the parties, their witnesses, counsel, and friends, present, must inevitably be?

But, sir, I wish to inquire of the supporters of the proposition now before the Convention, if we are to have what might be termed a full trial of the accused party at these public examinations, where is the necessity of the form of a second trial after all the time, expense, and publicity of the first? If this proposition to abolish the institution of the Grand Jury fails, and a system of trial by public examination before judges or magistrates prevail, it would be well to introduce another resolution to abolish the second trial, or the trial in the court by a petit jury; for why not let conviction or acquittal follow the decision of the judge at the "public examination," as it is called, but at the *trial* as it is. The friends of the proposition before the Convention, however, propose no abolition of the second trial, and all that they propose for the public examination after a formal citing of all parties, taking testimony, hearing counsel, and going through all the expense of time and money of a regular trial, is simply to bind the parties over to await their second trial at the next session of the court.

But we are told that the Grand Jury is a secret institution. Aye, sir, it is, and one before which the lawless and the disturbers of the public peace feel more terror than any other in the country! If you could go around and visit all the sinks of iniquity that infest society, you would find their inmates are more fearful of Grand Juries and their "true bills of indictment" than of anything else.

It is a maxim of wisdom, though it may be that the gentleman of Tippecanoe (Mr. Pettit) would characterise it as the obsolete opinion of another age, that "the guilty flee when no man pursueth." And so when in a county the time draws near for the session of the Grand Jury, you will find the gamblers, the licentious, and evil doers of every description fleeing all over the country, and then returning at the close of the session, stealing up to this one and that one and stealthily inquiring what bills have been found and who have been indicted by the Grand Jury.

Mr. PETTIT. — That might be urged as an argument against your system.

Mr. NEWMAN. But where offenders are known and it becomes necessary to detain their persons, they are always liable to be recognized and obliged to give bail for their appearance at the next term of the court. Nothing is more common than for witnesses to be attached and recognized—aye, sir, and brought before Court for refusing to testify before a Grand Jury; and I have seen refractory wit-



nesses go to prison and lay there for days rather than testify against their guilty associates.

Would your "public examining" officer send witnesses to prison for refusing to testify?

But this new institution is to be in the nature of an "information."

In England they have a certain law officer of the crown called an attorney general. Where he suspects a crime he goes to a certain office and files an "information" against the suspected person. This is independent of a Grand Jury and the proceeding is a criminal one in its character. But this power is now looked upon as one of the most odious features of the British Constitution; and why? Simply, sir, because the citizen is liable to be put upon final trial for his liberty or life without a jury of his peers having first examined the case, and adjudged his case worthy of solemn trial.

But gentlemen tell us that the witnesses will fly. Why will they fly? To screen their guilty associates. Then why tell us that the very persons who know all about the offenses which have been committed are anxious to avoid being brought before an inquiring tribunal? Why tell us that there will always be persons ready and willing to prosecute on all proper occasions? I agree with the gentleman in regard to the importance of the punishment of certain offenses which are carried on in certain dens throughout the country. Sir, you will find no person to prosecute in such cases; and you will also find that a Grand Jury is the only tribunal which will inquire into it. How often do you hear of an individual being accused of an offense where it is well known that the offense has been committed, and where the evidence is pretty strong to mark its perpetrator, but where there is no Grand Jury in the neighborhood? Why sir, never. The man's neighbors say that they will not move in the matter from considerations of charity to the man himself as well as to his family; and that if the Grand Jury don't get hold of it they will suffer him to escape. There may be certain offenders who escape under the system we practice now, but with such a system as that which it is proposed to substitute you would find that escapes would be much more frequent than they are. An offender, often has powerful friends and associates; and many a right thinking man would say, "I am not willing to go before a public tribunal, and incur the malice and displeasure of these parties by volunteering to prosecute." On the other hand, a Grand Jury is selected from the various parts of the county; and if offenses have been committed they hear of them, they have knowledge of the fact, and whether a private individual is willing to take the responsibility of prosecuting or not, they have taken upon themselves the obligation of an oath that they will diligently inquire into all matters and things, and true presentments make, regardless of fear or favor. Let the in-

dividual be high or low, rich or poor, he cannot escape a presentment if the Grand Jury are faithful to the interests of the country and the rights of the citizens.

Well, sir, we are again told that there is nothing like this system in Greece or Rome, or even in republican France. Let me ask the gentleman to contrast the comparative liberty of the people of this country or Great Britain with that of any of the countries he has named, and then let me ask him which is entitled to the meed of praise? Is it the institutions of these countries, or those of our own and that from which we descended? We know how the people in these countries have been oppressed. We know how they have been committed to the flames on the mere dictum of an arbitrary monarch, and so they would be yet were it not for the powerful influence of public opinion in Great Britain—that country from which we derived our origin. I am a reformer; I believe in the principles of the Reformation; and I also believe that the principles of liberty, as recognised in that country, (Great Britain,) have exercised a salutary influence on the rest of the world. That we have vastly improved on them there can be no doubt; but I see no reason why we should pull down any of the pillars of the great temple of liberty, under whose canopy we all worship.

Again, we are told that this system is expensive. So it is. But what tribunal will you have which is not expensive? The gentleman who proposes to abolish the Grand Jury system, appears to contemplate the establishment of a permanent tribunal from year to year. Will such a tribunal be less expensive? Impossible. It will be four-fold more expensive, to say the least of it. Expense, however, ought never to be taken into consideration where great principles of liberty are concerned, or where there is well grounded reason to suppose that the liberty of the citizen might be protected by incurring that expense. In Great Britain they had another provision. The public prosecutor could cease his prosecution if he chose; and not unfrequently the defendant by making a certain composition was let off, perhaps by the payment of a trivial fine to the king. It is true that a Grand Jury have the same power there which they have here. They can, *ex officio*, file a presentment. Those presentments which are preferred by individuals are styled indictments. Now let me ask if the gentlemen who advocate the proscription of this sacred tribunal, desire to incorporate such a feature into our institutions as that I have named? Are they willing that money should thus be extorted from defendants? It is no doubt under that provision, that enormous sums have been extorted from keepers of gambling houses. But let me ask gentlemen who would do away with this system, whether there ought not to be some tribunal that would bring gambling house keepers, not merely to

make a composition for their offences, but that would eradicate them from the social body? They ought undoubtedly to be put down; and what tribunal is so likely to effect this, as a tribunal composed of the independent, and virtuous, and upright citizens of a community, who look to no interests except to those embraced in the general advancement and welfare of the whole community? A Grand Jury is much more likely to have that feeling, than any other tribunal that can be created; especially when you take into consideration that there is a large number of them, they have to consult together, and that corruption cannot, therefore, be supposed to exist amongst them. As, too, they hold office but for one term of the court, there is no bribe that can be offered to them; and if such a thing could be, they are not the men in all the land who would be likely to accept it. On the other hand let every accusation be taken before an examining magistrate, are you sure that such magistrate could not be corrupted? Is it not in the experience of many members of the Convention, that, where parties are accused, they will change the venue, and have the case examined before some favorite magistrate, who will either inflict a trivial punishment for an infamous crime, or allow the offender to escape all punishment whatever?

Again: the gentleman urged that not one out of twenty indictments originating with Grand Juries were sustained. I will ask the gentleman whether, in the opinion of those who advocate the abolition of this system, there are not more than one in twenty who ought to be convicted? Is not the fact of their escape generally attributable to a want of or defect in the evidence, rather than the absence of guilt on the part of the accused? Is it not owing to the humanity of the law, which requires that a party should be proved guilty beyond all reasonable doubt? Is it not owing to the belief in that principle by doubting juries—by those men who have not seen so much as others have of the crimes of mankind—that will not allow them to put the full force of the laws into operation against the guilty? Nothing is more certain than that a large number of the guilty escape, while it very rarely happens that an innocent man is made to suffer. I have heard it said again and again, by members of the bar, that that maxim of the law which declares that it is better that ninety-nine guilty men should escape, than that one innocent man should suffer, has been fully verified in their experience. Some of them go a little further, and say that ninety-nine guilty men escape where one is convicted. And I am afraid there is too much truth in the remark to make a joke of it. It is a reproach upon the law that there are too many of those who break through all its meshes, and escape all its penalties. It is well known that this is the fact, and that it is not owing to the oppression of the Grand Jury system.

Sir, although I have been in the practice of the law for twenty-two years, I never yet heard a well grounded complaint against the Grand Jury system. Whatever gentlemen may have to say against the evils of the system, this is my experience, and I believe is the very truth in relation to Grand Juries in the section of country in which I reside. No, sir; I never heard a Grand Jury censured even by those who might be supposed to have been injured by any acts they had done. Mr. President, I say as I said before, there is no institution that can do a great deal of good, that is not susceptible of being tortured into an engine of a great deal of harm. The most pure and excellent institutions may degenerate into corruption, if they are not properly guarded. But when you recur to the source of all power—to the great body of the people interested in the observation of the laws, and in the preservation of those liberties which those laws guarantee to themselves and their posterity, where their own rights as well as the rights of posterity depend upon their action—you cannot suppose that they will ever be so corrupt as to do what is absolutely injurious in relation to matters of this kind. If you can suppose that it is a bad state of the case in regard to public morals, it is a progress downwards in the cause of liberty, and may fit us for institutions having less of popular freedom—less of human rights in them than those which we now enjoy.

Mr. President, in the remarks which I have offered, I feel that I have consumed as much of the time of the Convention on this subject as any one member ought to consume. Let me, therefore, in conclusion, ask gentlemen to scan well the effects to be produced by the abolition of this institution, before they give their votes for the measure. Let me ask them to look at the consequences that may result, and the evils which may be produced by the adoption of other forms of procedure, concerning the effects of which we can know but little until we see their practical workings.

Mr. GIBSON having obtained the floor, said, that as the hour for adjournment had nearly arrived, and as he did not wish to occupy the time of the Convention both in the morning and afternoon with the remarks he had to offer, he would now move that the Convention adjourn.

The Convention accordingly adjourned until two o'clock.

#### AFTERNOON SESSION.

##### PROTEST AGAINST THE ELECTION OF PRINTER.

Mr. MAY said, he held in his hand the protest of several members against the election of a Printer to this body. The paper, he believed, would be found sufficiently respectful in its language; and if it were necessary that the rules be suspended for the purpose, he would make that motion in order to enable him to make



another motion, that the protest be entered upon the journal.

The PRESIDENT said, that the motion to enter a protest was a privileged motion, and could be entertained at any time.

The protest was then read by the Secretary; and it is as follows:

*To the Honorable, the Constitutional Convention, now in session:*

The undersigned, members of your honorable body, being of opinion that your honorable body transcended its powers in the election of a Printer, and in deciding that Jacob P. Chapman is not legally authorized to do its printing, as Printer for the State, do most respectfully protest against the above named decision and order of your honorable body, for the following reasons:

1. J. P. Chapinan was duly elected State Printer under the act of 1843, and is still State Printer;—that his election under that act, and giving bond in accordance with it, constitute a contract, under which he is entitled to the printing of this honorable body; and being now ready and willing to execute that printing, this honorable body has not, in the opinion of the undersigned, any power to deprive him of this right, or to cause its printing to be done by any other person.

2. In the opinion of the undersigned, this honorable body has no power to order the payment of its Printer, who has been elected, for his services, and that there is no fund out of which he can be legally paid;—that said printing can neither be superintended, measured, audited, nor paid by any officer or officers of this State; that the President of this honorable body cannot lawfully certify to said printing before the adjournment of this honorable body, and still less afterwards; and that this honorable body has no powers to appropriate money for printing other than those conferred upon it by the act of the General Assembly of this State, authorising the call of this Convention.

The undersigned do, therefore, humbly request that this, their protest, may be entered upon the Journal of this honorable body.

|                |                  |
|----------------|------------------|
| F. HARDIN,     | DAVID WALLACE,   |
| E. S. TERRY,   | EDWARD R. MAY,   |
| JOHN L. SPANN, | JAS. W. BORDEN,  |
| ——— RITCHIE,   | N. B. HAWKINS,   |
| J. B. HOWE,    | J. B. M'FARLAND, |

ISAAC KINLEY.

The protest was ordered to be entered upon the journal.

#### THE GRAND JURY SYSTEM.

The Convention resumed the consideration of the special order.

Mr. PETTIT said, he believed it was according to Parliamentary usage that the mover of a proposition, at any time before a vote is taken upon it, or before the debate has closed, has a right to make or accept of any modification of

the original proposition, as he may see proper to do. If he was correct in this, he would offer the following amendment to his resolution which was now before the Convention, stating, as he should, that it was suggested by his friend, the gentleman from Ohio (Mr. Pepper):

"*Provided*, That the General Assembly may, after the expiration of five years, restore the Grand Jury system."

Mr. GIBSON, being entitled to the floor, said, he had not intended to trouble the Convention with any remarks on this subject, for, until yesterday, he had not believed it was seriously intended to press its adoption. In this he had now reason to believe himself mistaken, but could not yet bring himself to believe that a proposition fraught with so much mischief to the best interests of society, would receive the sanction of this Convention. But under the present aspect of the case, he felt that he would be wanting in duty to himself and his constituents if he did not take occasion to express the deep conviction of his mind against the expediency of adopting so hazardous and untried an experiment.

There was, perhaps, no question likely to engage the attention of this body which called for more careful deliberation than the one now under consideration. It was one that had been but little agitated among the people; one upon which he found that the minds of many members of the Convention were unsettled. In the county which he represented, it had not, to his knowledge, been alluded to by any of the candidates, or made in any way a subject of discussion among the people.

True, they had heard of it as one among the ten thousand changes that had filled the heads of politicians in every nook and corner of the State—changes numerous enough, if all collected, to fill a volume larger than the Revised Code, and many of them absurd enough to have emanated from the Lunatic Asylum of the State. But he found now that the proposition to abolish Grand Juries was to be seriously urged for adoption, and that, too, by gentlemen whose commanding intellect at least entitled them to the most respectful consideration.

What were our Grand Juries; what their powers and duties; and what was it proposed to substitute in their place? He would here take occasion to say, that whatever that substitute might be, once put it into effect and gentlemen would find many difficulties and obstacles springing from its operation, that the most far-reaching intellect would not be able now to foresee.

What was the Grand Jury as it now stood? He disclaimed the picture drawn of it by the gentleman from Tippecanoe (Mr. Pettit). That picture was a caricature, with only that degree of resemblance which is essential to even a good caricature.

The system as it now stands on our Statute Book brings together semi-annually eighteen

of the most respectable citizens of a county, drawn equally from all portions of the county; men who can possibly have no interest as a body to subserve, no malice to gratify, no motive but an honest desire to do their duty under the law. That law is explained to them by the court; the path of duty lies plain before them, and with the oath that they will present no man from malice, and leave no one unpresented through fear, favor, or affection, yet fresh upon their lips, they retire to their room to enter upon the discharge of their duties.

And what is that duty? Simply to inquire into all violations of the law that may come to their knowledge, and if they shall find them sufficiently proved, to return into court a bill of indictment against the offender—this comprises all their duties and all their powers.

He would here ask which one of the substitutes proposed (for no two gentlemen had, he believed, agreed upon any one) offered inducements sufficient to justify us in abandoning a system familiar to us from our infancy?

It was not the part of wisdom to dispense with any one of the accustomed and necessary engines by which government was carried on, without first devising a substitute which should be clearly and indisputably better.

He would now proceed to notice the most plausible substitutes which had been proposed in the debate, for he would here remark that the language of the resolution itself was too vague and indefinite on that branch of the subject to admit of either attack or defence. It simply proposed "public examinations," and that might readily comport with the contuance of Grand Juries.

Taking all the proposed substitutes together, we have a confused mass, in which justices of the peace, prosecuting attorneys, and public informers dance before our vision in glorious confusion.

Were justices of the peace only to take cognizance of a case when brought before them, as under our present practice, by affidavit; or were they each to be erected into a separate Grand Jury, as proposed by the gentleman from Tippecanoe (Mr. Pettit)?

He would examine the two propositions in the order in which he had named them.

Under the system first alluded to, he would ask who would be likely to feel the vengeance of the law which he might have violated? Would it be the wealthy landholder, surrounded by his tenants, endeared to them perhaps by many an act of kindness, and holding the power at any time to eject them and their families from the home that sheltered them? Would such men be likely to go and, in the face of day, enter a complaint against their landlord for an infraction of the law which perhaps did not immediately affect either their feelings or their interests? Unquestionably not.

But there was another class of men but too

common in the country: the bold and reckless desperado—the man to whom the law was a jest, and fear and honesty alike strangers. Who would complain of him?

The Convention had been told by the gentleman from Tippecanoe, that it was the coward and the dastard alone who sought the secrecy of the Grand Jury room to prefer their complaints.

He would tell that gentleman, that it was no part of either wisdom or bravery for a man to risk his life, or the destruction of his property, in order to secure the enforcement of the law in a case in which, perhaps, he had neither personal feeling to gratify, or interest to subserve.

No man of sense would needlessly encounter peril in such a case.

But, if it were true that none but cowards sought the secrecy of the Grand Jury to prefer their complaints, he would ask if the protection of the law was to be withheld from the man whose nerves shrunk from the encounter of physical danger. Men were as God had made them; some are so constituted as to be unmannered by the presence, or even the prospect of danger. Are they for that reason, to be left at the mercy of every desperado, who, to the courage of the bull-dog, unites his ferocity?

Timidity is no crime, and of all men in the world, the constitutional coward is to be pitied, not denounced. And yet, gentlemen would place out of the pale of the laws' protection the very class of men who most need it.

But there was another class whose very helplessness demanded imperiously the laws' protection; to whom was awarded by all the right to be cowardly, without being denounced; in whose timidity was found their greatest charm. Under the proposed system, where was woman to find protection from the brutality of, perhaps, a drunken husband?

Would she dare openly to lay her wrongs at the feet of the law, and ask redress? One who could so far unsex herself as to do it, would be but little likely to need its protection.

But timidity aside, there is that in the very nature of woman which forever precludes the idea of her becoming a voluntary complainant against him whom she has garnered up in her heart of hearts; no matter how brutal may be his conduct towards her. She chooses rather to suffer in silence, and if, when smarting under recent outrage, she might, for a moment, entertain the desire of vengeance, it would be but a passing thought, to be swept away by a thousand recurring memories of the past—a thousand tender recollections would blot out the outrage from her mind, and the offender go unwhipt of justice. Blot out Grand Juries from our code, and you almost place woman out of the pale of the laws' protection.

His objection, then, to the substitute first named, was, that it withdrew protection from the weak and feeble, who most needed it; that,



as to all minor offences, it rendered the law a dead letter, unless when used maliciously, and that it offered immunity to the powerful and the wealthy.

It was true that, for crimes which outraged the feeling of community, there would be no lack of prosecutors; but the great mass of minor offences would pass unnoticed, except when the law was made the engine of private malice, as it now is in the case of the statute against profane swearing. Who would complain of his friend or neighbor for betting on an election, or for any kindred offence? No man would do it unless he had some private pique to gratify. All laws of that class would remain a dead letter on the statute books, except as they were made the convenient tool by which some man should seek to annoy his enemy.

He affirmed that, under such a system, no just, no equitable, or fair administration of the criminal law could be had. That all prosecutions for misdemeanors would result from malice, whereas, under the present system, the same facilities were not offered; men had time for their passions to subside while waiting for a Grand Jury to sit. Malicious men were now accustomed to wait for the sitting of the Grand Jury to prefer their complaints, in preference to instituting a prosecution before a justice, not because they feared the offender, but because an indictment would entail a heavier bill of costs upon conviction. While so waiting, their passions have time to cool, and their purpose is frequently abandoned. Under the proposed system such would not be the case—nothing would be gained by delay, and a tribunal would be found at every man's door, ready, under the pale of the law, to pander to the worst passions of his nature.

He would now proceed to examine the substitute proposed by the gentleman from Tippecanoe (Mr. Pettit). That, as he understood it, was to confer upon justices of the peace precisely the same powers now vested in Grand Juries, except that the examination was to be in public, and both sides were to be heard. Now he undertook to say that such a law would be found to be utterly impracticable. If you give the prisoner notice, if he is guilty he will escape; if you do not give him notice what benefit does he derive from a public examination. You must, to carry out the principle for which the advocates of the resolution contend, notify the offender, and you are reduced to the necessity of either giving a notice, which will be but a warning to him to escape, or of adopting the monstrous rule that he shall be arrested without complaint on oath first made. This is a dilemma from which the friends of the proposed substitute cannot escape.

But his objections to such a system, were not confined to the practical difficulties pointed out.

It was erecting at every man's door a Grand Jury, liable to all the objections so eloquently

urged here against the present order of things, and to a thousand others which time and practical experience could alone fully develop.

It would be erecting in every county, in place of one Grand Jury, meeting semi-annually, some thirty or forty in perpetual session.

He affirmed that it was inconsistent with the nature of man to have this kind of power thrust upon him, and yet bear his honors meekly. Just say to the justices of the peace scattered throughout your land, "you are the guardians of the public morals; upon you is devolved the task of prying into every man's affairs in your neighborhood, and if the slightest breath of suspicion reaches your ears that one of your neighbors has violated the law, send forth your subpoenas; bring before you every man who is likely to know aught about it, and if you can by any means get hold of the proof, bring him to trial, and you shall have your reward in the fees arising from the prosecution."

He would take it upon him to say that whenever such duties were imposed upon the highly respectable body of men who now officiated as justices, that they would resign in disgust, and that such of them as did undertake the duties, would become the most insupportable nuisances that had ever cursed a neighborhood. The natural effect of such power would be to make them the petty tyrants of the village or the neighborhood.

He cared not what might be their natural disposition, or intelligence, time and the gradual operation of such a system, would convert them into what he predicted. Man's nature has been and can be changed by circumstances.

The tyrant who deluged Rome with blood wept when he signed the first death warrant, and wished that he had never learned to write.

Place power, irresponsible power, in the hands of any man, and, as certainly as water runs downwards, he will become a despot in its exercise.

What, he would ask, constituted the difference between the sternest despotism and the freest republic of the earth.

Simply this; that in the one case the power was vested in a single individual, bearing it along with him throughout all his life, and always from the cradle to the tomb accustomed to sway the sceptre; in the other it is vested with a large body of men, constantly changed, and always fresh from the people. Apply the parallel to the case before us, and say which most resembles the despot, which most the free legislature.

The great poet of human nature had never drawn a picture truer to life than that in which he depicts the effects of power when conferred on man:

"Man, proud man, dressed in a little brief authority,  
Plays such fantastic tricks before high Heaven,  
As makes e'en angels weep."

But this would not be the only evil we should

encounter under the system proposed. It would enable the cunning rogue in many instances to defeat the ends of justice, by voluntarily surrendering himself to some magistrate whom he knew would deal leniently with him, or perhaps acquit him altogether; or should the laws guard against such a trick, he could procure some friend to enter a complaint against him in the right quarter, and the same result would surely follow.

But we have been told by the gentleman from Hendricks (Mr. Nave) that all indictments for felony that have ever been found in this State have originated before justices of the peace. In this the gentleman was certainly mistaken, for he could point him to indictments now pending for the highest crime known to the law, which had originated before the Grand Jury, from facts there developed, months after the commission of the offence.

The gentleman from Tippecanoe (Mr. Pettit) had said that nineteen twentieths of all indictments for felony originating with the Grand Jury resulted in an acquittal of the prisoner. He thought that the gentleman was mistaken in the proportion assumed; but if correct, did an acquittal necessarily preclude the idea of guilt? He felt no hesitancy in saying after an experience of twelve years in the practice of the law, that he had never known a dozen indictments found in that time, that would not in his opinion have been sustained if the truth could have been reached on the final trial. A greater portion then of the sympathy which had been expended here then for those persons who had been indicted and acquitted, was wasted.

But if the mere charge of crime fixes such a stigma upon a man's character, he would ask how was the evil to be remedied by the proposed change? Now many charges are made before Grand Juries, which are not sustained; the secret is buried in the bosoms of the jurors, and the man charged is not injured; but under the proposed system, every charge made becomes public property; it is written down on the records of the country, and though no shadow of proof may sustain it, there it must remain for his children, and his children's children to read when he is in his grave.

What difference, he would ask, could it make, so far as the influence upon character was concerned, whether a man was charged with perjury before a Justice of the Peace, or indicted by a Grand Jury.

The Convention had been told that no crime *deserving punishment* would escape under the system proposed by the gentleman from Tippecanoe. But for himself he confessed his inability to draw the distinction between crimes deserving punishment, and crimes not deserving punishment. If the law were violated the offender should be punished. If the law was wrong, or oppressive, let it be repealed; but so

long as it remained on the statute book let it be enforced to the very letter. The man who bets ten cents on a foot race, or the toss of a copper, is as much a violator of the law, as he who stakes his thousands on a hand at poker.

He had been told by one gentleman here as a reason why the Grand Jury should be abolished, that that gentleman had himself once been indicted for betting fifty cents on a petty township election.

Now to his mind such a case was the strongest argument in favor of Grand Juries that could possibly be offered. Without the aid of Grand Juries all such offences would go unpunished. Was it desirable that such laws should not be enforced? If so, repeal the law; but while it is a law enforce it, if you would not bring all law into contempt; and so enforce it that it shall reach all offences whether great or small, and all offenders whether high or low, rich or poor.

But again: in what cases would gentlemen give justices final jurisdiction, and in what constitute them merely an examining court. Shall felony or not felony be the distinguishing line? This is one important feature of their proposed plan that they have not developed.

The probability that rogues might and would escape, either through the favor or incompetency of the Justice's court, could not have escaped the eye of the gentleman from Tippecanoe, and to avoid its force he is driven to make the monstrous proposition that the State may be allowed an appeal;—in other words, that you may twice try a man for the same offense.

He would apply this to a single instance: a traveler, a thousand miles from home, is arrested upon some unfounded charge; the justice discharges him for want of proof, and the State, through an irresponsible prosecutor, appeals; the man is forced to give security for his appearance at court, and either forfeit his bond or come back a thousand miles, months after, to answer a charge which has no foundation. Surely this proposition had been thrown out by the gentleman without having duly weighed its consequences.

It seemed to him, that before this Convention would consent to the adoption of a substitute so odious in all its features, so evidently fraught with mischief to the best interests of society, that they must be convinced that the system sought to be abrogated was monstrous indeed; and this led him naturally to notice some of the objections which had been urged against it.

The first objection which we hear from every advocate of this resolution, when he rises, is, that the Grand Jury is a secret tribunal; and history has been ransacked to find odious parallels. It has been compared to the Inquisition and the Star Chamber, and denounced as unworthy the age or country in which we live. To all this there was one plain and simple an-



swer : that secrecy formed not an essential feature of the institution ; that it was one which the Legislature had had the power to change at any time in the last thirty years, and yet no man in the legislative halls of the State had ever raised his voice for such a change—no petition of the people had ever asked it. This was, to his mind, strong evidence that it was not the people of the State who are stirring in this matter. But to his mind, secrecy, though not an essential, was yet one of the most valuable features of the system, for reasons which he had before given, and would not then recapitulate.

There was one modification of the rule enjoining secrecy which he believed might be safely and profitably made. That would be, to require the Grand Jury, by a competent clerk, to reduce the testimony to writing, read it over to the witnesses, and require their signature to it ; let this testimony be kept a secret until the prisoner was arrested, and then placed on file with the indictment. It would operate as a check on perjury ; would notify the prisoner what he had to meet ; would be a valuable guide to the prosecuting attorney ; and would no more indicate to the offender the name of the man who informed on him, than does the names of the witnesses endorsed on the indictment under the present practice. Such a change he would be glad to see made in the practice. It seemed to him that every reasonable objection to secrecy would be removed by this change, and without producing any confusion in practice.

But we had been told by the gentleman from Tippecanoe, that he wanted some system of administration, by which punishment would as surely and speedily follow crime, as the bolt follows the lightning's flash.

He would ask that gentleman, in all candor, was it possible for human ingenuity to devise such a system ? Above all, he would ask, did the system proposed promise any such results ? Surely no member here was wild enough to propose that Justices should have final jurisdiction of felonies ; and the practical operation would be as now, that the prisoner could not be tried before the term of the court succeeding the commission of the offence. This was all the delay entailed by Grand Juries, and that delay would as surely result from one system as the other.

But should not gentlemen beware lest, in their haste to bring the guilty to punishment, they involved the innocent in the same toils ?

How often was it, that on the commission of great crime, circumstances would at first seem to darken around some individual, and point with damning certainty to him as the criminal ; a day, a week, or perhaps a month later, the cloud would be dispersed, new facts developed, and the true criminal discovered. Under the railroad system of criminal jurisprudence which

some gentlemen seem desirous of establishing, it seemed to him that the innocent would often have as much to fear as the guilty.

The administration of criminal law should be such, that the citizen should have nothing to fear but from his guilt, nothing to hope but from his innocence. Surely such a state of things was not likely to be attained by an indecent haste in the execution of the law.

We had been told that Grand Juries had, in all ages, and all nations, where they had existed, been engines of tyranny in the hands of power, and as an instance, cited to the prosecution of Thomas Paine, in England, for the publication of the Rights of Man. Now it so happened that Paine was prosecuted on an information filed by the Attorney General, and not on a presentment made by the Grand Jury. But if true, what would it prove ? Nothing, but that the Grand Jury did just what its friends now contend it always will do : enforced the laws as they existed. The fault was in the law, not in the instrument which executed that law. As well might history charge the blood of Algernon Sydney upon the executioner at whose feet rolled his gory head. Such objections might do well enough for declamation, but he denied to them the force of argument.

They had been told, with an air of triumph, that Grand Juries were a relic of barbarous ages ; that they originated centuries ago, and were instituted to maintain the power of the crown ; and that they had been used as a pliant tool in the hands of power ever since, to restrain and limit human freedom. Their origin concerned not this Convention. Who, in estimating the value of the giant oak, that for centuries had braved, unscathed, the tempest, would think of delving at the root for the acorn that rotted a thousand years ago in giving it birth ? Who would refuse the shelter of its branches, because in times gone by the wild savage had bound his victim to the stake beneath their shadow ?

He would repeat, that it concerned not this Convention to know what was the origin of the system, or to what base uses it might have been perverted, in past ages and other countries. It was for them a plain, practical question, for the solution of which they had the light of more than half a century's experience, and that experience was worth more to them than all the history of all the world beside.

These were the principal objections which had been urged against the present system, and he would here take occasion to say, that without devoting to the subject a tithe of the time which some gentlemen had expended in hunting up objections to the Grand Jury, he felt no hesitancy in saying, that he could array more and better founded reasons, why the petit jury and the habeas corpus should be abolished, than any that had been yet advanced for the adoption of the pending resolution. Imperfection was a necessary attendant of all human laws ;

and it was much easier to point out defects in existing institutions, than to suggest a more perfect substitute. The first, gentlemen had perhaps done; in the last, in his opinion, they had signally failed.

He was not wedded to the past—not one of those whom his youthful friend from Hendricks (Mr. Nave) accused of belonging to a past age—nor was he young enough to seek the destruction of everything old, merely because it came down to us with the hoar of antiquity stamped upon its features.

If there was any one thing which it behooved this Convention sedulously to guard against, it was that restless love of change, merely for the sake of change, which was characteristic of the Anglo-Saxon race, and especially that portion of it who were located on this side of the Atlantic. It had been frequently remarked by writers, both of our own and other nations, that our fathers in the Revolution in nothing displayed more wisdom, than in the few changes which they made in the internal government of the country. It was the sovereign alone that was changed; and the citizen of the republic died under the laws of the monarchy under which he was born. It has also been remarked as in striking contrast, that the leaders of the French Revolution sought to change everything, from the most trivial rule of law up even to the worship of the Deity—even the reckoning of time, weights, measures—everything old had to be done away, that modern wisdom might supply its place. The results which followed the two revolutions are the best commentaries upon the respective policy which governed them. The one was the foundation of the freest government the world has ever seen: the other led through anarchy to anarchy's sure successor, despotism.

He would repeat, that, for one, he had not lived long enough to dispense with the wisdom of the past. Especially did he look back with reverence upon the acts and opinions of our Revolutionary fathers; those men who first dared the untried experiment of republicanism.

He was not much in the habit of quoting the opinions of others to sustain him in any position he sought to defend; but there was among the proud names of American history one to whose opinions we had always been accustomed to listen with deference. That man was Thomas Jefferson; and he had told us that no nation could be enslaved, between whose liberties and the sovereign stood Grand and Pettit Juries, and that that nation which had them not, held its liberties by but a frail tenure; that if the people were to be excluded from a participation in either the legislative or judiciary department of government, he would prefer them excluded from the former in preference to the latter.

He repeated, that he was always prepared to listen with deference to the opinions of such

men; and when gentlemen here would go back for their quotations to the source of the mighty stream of republicanism which is now sweeping onward like the tide of destiny, promising ere long to cover the whole earth, he, for one, was prepared to listen with pleasure, and to give everything from such a source the weight to which it was entitled.

But when gentlemen busy themselves in raking together the froth and scum cast upon the shores to-day by that same mighty but troubled stream, he, for one, was disposed to grant to what they might thus rake up, neither the force of precedent nor the dignity of argument.

He would repeat that he had not lived long enough to learn to disregard the teachings of the past; and whenever he found himself differing in opinion with the sages who framed our government, he was always disposed to hesitate, and con over again the arguments by which he had reached his conclusions.

He had said before that it matters but little when or where Grand Juries originated; but there was one fact to which he would not shut his eyes, that wherever the standard of human freedom had been raised, and the battle fought and won, Grand Juries would be found a constituent part of the government. It is in company with human freedom that we find it in all the past. The one has never existed without the other. Should we try the doubtful experiment of separating what ages had cemented together?

Mr. CLARK of Tippecanoe next addressed the Convention. He said:

Mr. PRESIDENT: I have but a few remarks to make, and I confess that it is with diffidence that I arise to say one word upon the subject; for the Convention must be already wearied with the length of this day's session, and the gentleman who preceded me has exhausted almost all the arguments upon the side of the question which I take. It is my misfortune, sir, to differ upon this subject with my colleague (Mr. Pettit). This is one of the questions upon which we divided in the canvass before our constituents—he taking honestly and earnestly the side which he has here advocated, and I the opposite side. I am opposed to the resolution, first, because I believe it to be contrary to the genius of our institutions. And, sir, nothing could prove to me more clearly the fickleness of human reason, than the arguments which have been offered here upon this question.

I understand this provision of the Constitution (for the establishment of Grand Juries) to be placed in our bill of rights for the security and protection of the citizen. I regard this provision as an essential feature of free government. It was thought by our fathers to be of so much importance that when it was omitted in the Federal Constitution, they consid-



ered it necessary to provide for it a place in that instrument by way of amendment. Now if the wise men who laid the foundations of our government—if the wise men both of our own country and of the government of Great Britain, have so long regarded this matter as essential to protect the rights of the individual, it would seem to me that we might very well doubt the correctness of the judgment and reasoning of those who have assailed it as an engine of tyranny, and an anti-American institution designed for the purposes of oppression and injury.

I take it that the most of the objections which have been made to this system are objections to its abuse and not to its use; objections springing from the bad administration of our criminal law. Under the administration of our system, we have provided that the prosecutor shall be best paid for the prosecution of the smallest offenses; and it has been customary in all the counties of the State, for this reason, to elect to the office of prosecuting attorney some individual of little or no experience in the practice of law. The persons selected for that office were generally the worst lawyers in the State, to whose hands were entrusted this branch of the execution of the laws—it being provided that they should be remunerated for their services, only by fees, to be paid by the individual prosecuted; and it happens generally, that the persons who are able to pay those fees are only such as would be guilty of trifling offenses; consequently this provision affords a temptation to prosecute vigorously those who are guilty of the smallest crimes. This was one of the reasons why the Grand Jury system had been brought into disrepute. But now, the office of prosecuting attorney ought to be made equal, in point of respectability, with that of the circuit judge. It should be filled by a man of equal talents, and he should be paid an equal salary. If this were the case the people would no longer have to complain that some individuals were hunted up and punished more industriously than others.

Now, Mr. President, I regard this as a simple and plain remedy for so much objection as that made to the Grand Jury system. The gentlemen who object to this system have not shown us how the liberty of the American citizen can be made more secure if it be abolished. They have not shown us that his liberty or his character will be more secure in the hands of a single justice, or a single prosecutor than they would be in the hands of a jury. If, in preferring a charge against a man, the concurrence of twelve men is necessary—men acting under a solemn oath—is it not obvious to all that they would not be so likely to conspire in charging a man with a crime as a single individual would be to abuse his authority? Why, sir, do we not all know that before a man can be falsely charged in our country, under our system, the

prosecutor himself must act in collusion with the Grand Jury. They too must violate their oaths and maliciously present an individual for trial against whom they have not sufficient evidence to create a presumption of guilt.

And, Mr. President, let me inquire what would be the effect of the abolition of this system in case we should ever happen to fall upon troublesome times, such as characterized the revolution in our parent country? If we should happen to be placed in such a position, when men's passions might be excited, the laws violated, and revenge and usurpation take the place of fraternity and equality, what protection would an individual have against the usurpations of the dominant party? Suppose you place the power of lodging an information in the hands of the prosecuting attorney, see you not that he is elected by the dominant party—the party seeking to enforce its power over the opposing one. Now, sir, supposing there were political troubles, would not the citizen be far more in danger from the political authority of the State if there were no power intervening between him and trial, except the prosecutor, than he would be when the power of presenting him for trial was committed to a jury of his fellow-citizens, twelve of whom must concur on their oath in saying that there was just ground to charge him with guilt? Sir, the answer to the question is obvious.

Mr. President, my colleague caused to be read extracts from an English paper, in which this system was assailed as being inefficient, and suggesting that it should be abolished. Let it be remembered, however, sir, that this is only proposed so far as regards the city of London, where there are police courts constantly open. The proposition was by no means for its entire abolition throughout the country. It is asserted in that paper that the examinations which take place in the police courts are much more certain in their operation, and much more satisfactory than they would be if taken before a Grand Jury. Now, even admitting that this may be the case in regard to the city of London, and even in regard to all large cities if you please, it by no means follows that the same result would be achieved among the scattered population of Indiana. We have no police courts, with regular police magistrates, having jurisdiction over offences. All we have of this kind are our ordinary justices of the peace who may hear a charge and hold a party to bail to answer before another tribunal, and the inefficiency of this system has been abundantly shown by the gentleman who preceded me. I do not mean to say that I object to it as far as it goes, but it certainly would be inefficient as an independent system.

Mr. President, the great object of government in the first place, is the protection of human rights. It was for this purpose that governments were first instituted; and any arguments

of economy by which it can be shown that it would be cheaper to do away with any safeguard of this kind, would apply with equal force against the necessity of maintaining governments at all. Such being the primary object of all governments it is clear that there can be no security for human rights unless crimes are punished. But courts of justice, Mr. President, are sources of great expense, and, on the same ground of economy, ought to be abolished. Sir, we all know that there must be tribunals for the punishment of crimes. We all know that there must be authorities who will present criminals to be punished; and, though it might be possible to substitute a cheaper system than courts of justice, yet who can doubt that it would be bad economy in the matter of government? Why, sir, when once you establish that principle, you throw mankind back into an entire state of nature and isolation. No man will then care to exercise his industrial powers, because no man will feel secure in his house, in his liberty, or in his person, unless there be not only laws to punish those who violate rights, but efficient means to carry those laws into execution. This argument of economy, therefore, may be applied against the necessity of all government whatsoever, and cannot, and ought not to have any weight as against one of the great safeguards of our liberty.

Now, Mr. President, it is important in cases of crime, that men be satisfied that the criminal is not only fairly and properly brought before a tribunal, but also that he is fairly and honestly punished, when he is convicted. It is argued that nineteen-twentieths of all the persons indicted for felony, where the indictment originates with the Grand Jury, escape conviction. This is not the fault of the system of presentments. But it is because our law, very properly, does not regard an indictment by a Grand Jury as a trial. It regards it only as a charge that there is a probability of guilt, while at the same time, the law holds that a man is fully and entirely innocent, until he is proved guilty beyond a doubt. On the final trial, the law will not admit that there is any suspicion of guilt, but demands that there shall be proof of it beyond all question. Now, I say that it is important in all governments that the people themselves, who are the subjects of government, should be satisfied that the powers exercised over them are justly and fairly exercised. They must be satisfied that the presentation of persons accused of crimes, is properly and honestly made—made with a view to the promotion of public justice. They must be satisfied that laws prohibiting certain acts are necessary for the public good, and necessary for the protection of individual rights, otherwise they will not be willing to aid in the execution of such laws. Now, I contend that every individual in the community, is far better satisfied with the presentation of an individual by a Grand Jury, under the

direction of a court, with the aid of the prosecutor, than he would be that the prosecution should proceed upon the oath of a single individual, or the information of a single officer.

Some gentlemen had objected to the Grand Jury system on the ground that it is a hoary headed system, and have proceeded to argue as if, because it is ancient it must necessarily be wrong. Why, do gentlemen suppose that truth is a novelty, and that they invent it? On the contrary, truth is eternal; truth always existed. Men may not always have perceived it, and it may be a novelty to a man when he does first perceive it; but because a truth has been known and acted upon for four thousand years, it does not, therefore, cease to be a truth. It is no argument, then, against an institution, or against truth that it has stood the test and examination of men of various ages and countries. On the contrary, it is evidence that men's reason everywhere have conceded it to be a truth. There are many truths embodied in the common law, which existed far anterior to the common law itself. There are many truths which have always been recognised as truths, and that have been acted upon wherever there was a government among men; and it is not our business to overthrow these truths, and reject them because the experience of ages has sanctioned and admitted them.

Mr. President, it has been urged as an objection to the Grand Jury system, that it was used in support of the British crown. The gentleman from Wayne used the argument very properly. He said he traced it to its origin. I do not know whether he did or not; but in England the "crown" is to the British government, what "the people" are to this Government. It represented the power of the State; and if I have read aright the history of the feudal system, there was a period in the history of Great Britain, and indeed of all the nations of Europe, when the crown did truly represent the people, when the crown was the protector of the people, in short when the crown was the State. In the feudal ages of Europe, all the great lords had jurisdiction in their principalities. The only power which represented the state was the king. He was the representative and the protector of the people. It was the crown which granted to the burgesses the privilege of towns and cities and corporations; which secured to these individuals the rights of freedom against the feudal lords; and by the intervention of the crown operating in favor of the people against the feudal system, the germ of civil liberty was established. In that manner the House of Commons, representing the people, arose. I say, therefore, that gentlemen have traced this system properly to the crown; for the crown was to the State then, what the people are to the State now. The crown then undertook to protect the citizens in the enjoyment of those rights, which had been guaran-



tied to them; and so now do the people, in whom our sovereignty resides, undertake to protect the rights of the citizens of this State, as they are guaranteed to them in our Constitution and laws; and among other things, they have undertaken to punish all offences committed against the rights of individuals, whether as regards their persons or their property. The people in their sovereign capacity, have undertaken to punish all crimes, and this (the Grand Jury system) is one of the steps by which they proceed to that punishment.

Now, the gentleman who preceded me very properly said that the weak had no protection except in the law; that the law was devised to protect the weak against the strong, because the strong were able to protect themselves. This is unquestionably the very purpose of the law. Now, I understand my colleague to say that a Grand Jury was the engine of the great man in his county or neighborhood. I think the very reverse, and regard it as the protection of the weak man against the strong one in the county.

For what purpose is a Grand Jury summoned? Why, sir, it is to inquire, among other things, whether the great man has committed a crime, whether the strong man has trespassed upon the rights of the weak, whether the rich man has trampled upon the rights of the poor, and to present all such without fear, or favor, or affection. It is, therefore, emphatically an institution which is the refuge and protection of the weak against the strong. One of the greatest glories of our institutions is that there is no man so high as to be above the law; no man so low as to be beneath its protection; that the law is supreme, above all, and that it provides protection for all. As I have already intimated, if we were to fall upon troublesome times, if crimes were perpetrated partaking of the nature of treason, if offences against the State were to be committed, we all know that under our system, the majority would elect all the officers, both those required to prosecute such offences, and those required to carry the decisions of a court into execution; and who is there that knows not that, when the public mind is inflamed, the officers of justice themselves will partake of the prejudice, if there be any; and in a case like that, what protection would a man have who might be accused of offending against the State. What prosecutor would resist the public opinion? Would not a jury of the county—those citizen sovereigns, who are not responsible to any tribunal, but responsible only to their country and their God—be far less likely to act unjustly, arbitrarily, or tyrannically, than a mere prosecutor, who was the instrument of the majority, and who was elected by the dominant party? Yes, sir, and though it seems very improbable that any such state of things will rise in this country—and I hope in Heaven, that such a calamity is very far from us,

yet it is not wholly impossible. Such a state of things has heretofore existed in our own Revolution, and in the revolutionary times of our Anglo Saxon ancestors, in England. If I read history aright, it was by means of "information" that the bloody-minded Jeffries enacted his bloody executions for political offences. It was not through the intervention of Grand Juries that the patriots of that period were murdered under the sanction of law. The English spirit would have rebelled against it, as it frequently did rebel when juries refused to be brow-beaten into the finding of verdicts to suit the pleasure of the court.

Mr. PETTIT. If my friend will allow me, I will correct him in regard to a matter of history. The "bloody assizes," as they are called, were conducted by eighteen grand jurors. Jeffries put no man to death against whom an indictment had not been found by a Grand Jury.

Mr. CLARK. I am not so thoroughly versed either in the history of those times, or in legal lore, as to speak very positively on this subject, but my impression is, that the history is as I have stated it. At any rate, in the celebrated trial of the five bishops who refused to read the King's proclamation, I think the proceeding was by information, and not by indictment. They were not indicted at all, but were proceeded against by the King's officer, and by the King's command. Those who are familiar with the history of that trial, will unquestionably remember how the feelings of a British Jury were aroused, and that a glorious triumph was achieved for freedom over arbitrary power. It may be that I was mistaken in regard to the victims of the "bloody assizes." If so, it should be remembered that a Grand Jury was the only power which stood between the subject and the power of the monarch, and that under the influence of those institutions of which the Grand Jury system lies at the foundation, the spirit of that people was roused to the assertion of their rights, and the world knows how gloriously they triumphed, and overthrew that despotism.

Now Mr. President, a few words upon the subject of the secrecy of the Grand Jury system. Gentlemen say that a Grand Jury is in the nature of a secret inquisition; that it holds its sessions in secret, for the purpose of aiding the malice, and the enmity of those who wish to injure their fellow-citizens, and they would, therefore, have all the accusatory proceedings in public; and it is proposed to make a kind of history of these proceedings, and to file them in the clerk's office. Now, however secrecy may occasionally be used as an engine of malice, it is designed for no such purpose here. On the contrary, its very object is benevolence, for it is designed to conceal from the eye of the public those investigations which do not result in a charge against the individual. It is designed to screen the individual who

might be suspected of crime, but against whom there was not sufficient evidence to create a probability of guilt. Now, sir, on the other hand it is proposed that all the testimony that can be had against an individual shall be taken down; and when it is taken down, a record is to be made of it, and it is to be kept in the office of the Clerk of the county, there to stand forever as a record of suspicion against the individual. The whole causes of suspicion will thus be placed before the world, and individual character will be infinitely more injured by that system than it can be by the present. Well, sir, before a Grand Jury you have also the very same prosecutor to make a charge which you would have, if all the preliminary investigations were made before justices of the peace. If you can entrust a prosecutor with this high authority, without the concurrence of a Grand Jury, why does he not correct the improper action of the Grand Jury itself, when holding its secret sessions? Why, gentlemen here distrust the very man in whom they are willing to invest this great authority. They say, that although he has sworn to do his duty, he had not done his duty; that he has colluded with the Grand Jury; that he and they have sat as a secret inquisition, seeking maliciously to traduce the characters of their fellow-citizens.

Mr. President, I contend that experience shows, that unless you have a Grand Jury, or something equivalent to it—some tribunal whose duty it is to enquire into the commission of crimes, and present the suspected offender, then all manner of offences will go unpunished. My colleague stated what was true in regard to what we experienced in our own town, in relation to the prosecution of minor offences—that many offences which were committed, and which were not brought before a Grand Jury, were never brought before any tribunal at all; and that the offenders were consequently allowed to escape unpunished. There must, therefore, be some power, some tribunal, whose duty it is to present offenders; and when it is made their duty by law, the citizens do not resent it. They do not oppose their action, but, on the contrary, they regard them as performing their solemn duty, and they require of them that they should perform it. On the other hand, if an individual undertakes to do that which belongs to the public authorities to do, it is regarded as a malicious prosecution. The man who is prosecuted regards it with resentment, and it engenders enmity and ill-feeling between the friends both of the prosecutor and the prosecuted. Widely different is the case where duties devolve upon parties under a well ordered system of law. No man complains of the jury who tries him for his life, knowing that they are compelled to sit and decide upon his case. Every man knows that such a duty is an unpleasant one, and that it is imposed upon jurors by law; but if that same jury and

court, as in the case of a mob, should take upon themselves *voluntarily* to decide upon his guilt or innocence, then he would feel a spirit of revenge, and a spirit of enmity would unavoidably spring up between the accused and the accusers. I say, therefore, that there must be some power in whose hands this duty may be intrusted; and I also say that it cannot, with safety to the public interest, be entrusted to the hands of any individual.

Mr. President, there are many gentlemen much more able to discuss this question than I am, and I will not, therefore, exhaust the time of the Convention by extending these remarks any further.

Mr. BASCOM said he did not rise to prolong the discussion on this question, and with the permission of the Convention he would withdraw his amendment.

The amendment was accordingly withdrawn.

Mr. HOLMAN offered the following as an amendment to the resolution:

“Strike out all after the word, resolved, and insert the following:—

“1. That the public will shall not be restricted by unnecessary limitation of the legislative power.

“2. That the manner of preferring and the mode of prosecuting a criminal accusation are matters purely legislative, and should be left to the legislative department of the government.

“3. That the committee on criminal law be instructed to omit the words ‘indictment, presentment, or impeachment,’ where the same occur in sections twelve and thirteen of article first of the old constitution.”

Mr. BASCOM moved to amend the amendment by inserting the words, “to inquire into the expediency of,” so as to make it a resolution of inquiry.

Mr. PETTIT. I was about to submit a motion, if no other gentleman wishes to address the Convention on the subject, this evening, and that is, that the further consideration of this resolution be postponed for four, five, or ten days.

SEVERAL MEMBERS. No, no, no. Vote, vote.

Mr. PETTIT. If any gentleman wishes to address the Convention I will not make the motion.

SEVERAL MEMBERS. Adjourn; adjourn.

Mr. BIDDLE. I think the question ought to be decided upon the merits of the resolution. I have something to say on the subject, but I am not quite prepared to address the Convention this evening. As so much debate has been had upon the subject, I think it might be as well to proceed with the consideration of the resolution now as to postpone it for five or ten days. But I am well satisfied that I could not obtain the ear of the Convention to-night for my remarks, and as I do not wish the resolution



to go to a vote upon its merits without having an opportunity of saying a few words, I will move that the Convention do now adjourn.

The question being taken on the motion to adjourn, it was decided in the affirmative, and The Convention accordingly adjourned.

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WEDNESDAY, Oct. 23, 1850.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. AMES.

The journal of yesterday was read and approved.

Mr. CRAWFORD announced the arrival of his colleague, ALEXANDER B. CONDUIT, the delegate from the county of Morgan, and, the county of Morgan being called by the Secretary, Mr. CONDUIT appeared, presented his credentials, received the oath at the hand of Judge BIDDLE, and took his seat.

THE SCHOOL FUND.

Mr. MORRISON of Washington moved a suspension of the order of business, to enable him to introduce a resolution of inquiry, directed to the committee on education, and requiring prompt action.

Mr. SMITH of Ripley proposed to amend the motion so as to suspend the rules for the reception of resolutions of reference merely, for half an hour.

The amendment was agreed to, and the motion, as amended, was adopted.

Mr. MORRISON of Washington then offered the following resolution:

Resolved, That the committee on education be instructed to inquire into the expediency of reporting a provision in the amended Constitution, requiring that the proceeds from the sales of all lands which have been or may hereafter be granted by the United States, to this State, for common school purposes; and the proceeds of all lands or other property, given by individuals, or appropriated by the State, for like purpose; and the proceeds from the sales of all lands that have been or may be hereafter granted to this State, and which shall not be granted for any other specific object, shall be and remain a perpetual fund, the interest and increase of which, together with the rents of all such lands as may remain unsold, shall be inviolably appropriated, and annually applied, to the maintenance of common schools, and to no other purpose whatever.

Mr. WALPOLE proposed the following amendment, to be added to the resolution, which was read by the Secretary, to-wit:

That the committee on education be instructed to inquire into the expediency of abrogating so much of section number two of article number nine of the present Constitution of the State, as contemplates "a general system of education, ascending in a regular gradation,

from township schools to a State university," under the patronage of the State.

Mr. WALPOLE explained briefly the object he had in view in proposing this amendment. In the 2d section of the 9th article of the present Constitution of the State, he said, it was prescribed that the Legislature should provide for a general system of education, ascending in a regular gradation, from township schools to a State university. His object was to transfer all the seminary fund, consisting of fines and forfeitures, and all the funds by law appropriated on account of seminaries of learning, including the State university, to the support of district schools. The resolution merely directed the committee to inquire into the propriety of so transferring these funds. But, at the request of the gentleman from Washington, (Mr. Morrison,) he withdrew the amendment, not wishing to embarrass the original proposition, giving notice that he would offer a series of resolutions upon the subject of the amendment, at some future day.

Mr. MORRISON'S resolution was then adopted by unanimous consent.

PUBLICATION OF THE DEBATES IN THE NEWS-PAPERS.

The PRESIDENT laid before the Convention a communication from the principal Secretary, enclosing his correspondence with the publishers of the *Indiana State Journal* and the *Indiana State Sentinel*, with reference to the publication of the Convention Debates, which was read by the Secretary, and is as follows:

INDIANAPOLIS, IND., Oct. 22, 1850.

HON. GEO. W. CABR,

President of the Convention,

SIR: In accordance with the resolution, adopted on the 19th inst., in relation to publishing the proceedings of the Convention in the *Journal* and *Sentinel* of this city, I have the honor to state that I have this day received the following communication from the editors of said papers, in reply to a letter addressed them on the 19th inst., enclosing a copy of the resolution in question.

Very respectfully,

WM. H. ENGLISH, Sec. C. C.

INDIANAPOLIS, Oct. 22, 1850.

WM. H. ENGLISH, ESQR.,

Secretary of Convention,

DEAR SIR: In reply to your note of the 19th, in relation to the publication of the debates in our respective papers, we have to say that we agree to the proposition made by the Convention.

Yours, &c.,

JOHN D. DEFREES,
AUSTIN H. BROWN.

On motion, by Mr. WOLFE, the communication was laid upon the table.

UNIVERSAL SUFFRAGE.

Mr. HAWKINS offered for adoption the following resolution:

Resolved, That the committee on the elective franchise and apportionment of representation be instructed to inquire into the expediency of providing, by a clause in the new Constitution, "that a majority of the legal votes of this State at a general election, by a direct vote upon the subject, may extend the right of universal suffrage."

The question being upon the adoption of the resolution, the yeas and nays were demanded, and they were ordered.

Mr. KELSO. According to our general understanding of the right of universal suffrage, I have no objection to the adoption of the resolution; but if it be the intention of the mover of the resolution to extend the right of suffrage to females and negroes, I am against it. "All free white male citizens over the age of twenty-one years;"—I understand this language to be the measure of universal suffrage: that there shall be no property qualifications, no religious tests, and so I understand the mover of the resolution. I do not wish to detain the Convention. If I do not understand the gentleman aright, he can easily say so.

Mr. HAWKINS. I do not see any necessity for gentlemen being so sensitive. From time to time there have been resolutions, though not exactly of this character, introduced and adopted by this body without objection; resolutions (of inquiry, to be sure) prohibiting not only the right of universal suffrage, but even the right of immigration. This, also, is simply a resolution of inquiry, and if the subject shall be reported against by the committee, I shall be content; but if I can get a report in its favor, it will be another testimony in favor of that democracy which is fast diffusing itself throughout the world. No man can deny that it is a democratic rule or maxim, that a majority of the legal voters of the State have a right to decide who shall be admitted into partnership with them in the direction and administration of public affairs. I admit that the present Constitution is a contract or agreement between the white male population of the State over the age of twenty-one years, and that the Constitution which we may send out (if accepted) will be a compact between such white male citizens; but if the people, who are the contracting parties to that compact, should choose so to do, ought they not to have the right to admit others into that compact? The gentleman by this time, I suppose, understands me to mean that a majority of the legal voters of the State have the right at any time, by their own will, to call upon the colored population to assist them in the administration of public affairs. I say amen to this doctrine. It is an inherent right belonging to all free governments.

Mr. HOVEY proposed to amend the resolution by inserting, in the proper place, the words "except negroes, mulattoes and indians."

Mr. COLFAX said, that he was desirous of

a vote on the original proposition, and would therefore, move to lay the amendment of Mr. Hovey on the table;

And upon this motion he demanded the yeas and nays.

The yeas and nays were ordered.

Mr. EDMONSTON enquired of the Chair if it would be in order to move to amend the motion to lay the amendment on the table so as to include the original resolution?

Mr. BORDEN. What would be gained by an amendment to the motion? The questions would have to be taken separately if a division were demanded.

The PRESIDENT. The Chair is of the opinion that a motion to amend is not in order.

Mr. COLFAX. I would ask how a motion to lay on the table can be amended? For after the motion to lay on the table has been entertained, no person can obtain the floor until that question is disposed of.

The PRESIDENT. The Chair has already decided that the motion to amend is not in order. The question is upon the motion to lay the amendment to the resolution upon the table, upon which the yeas and nays have been ordered. The Secretary will proceed with the call.

The yeas and nays being taken, the Secretary reported—yeas thirty-six, nays one hundred and five, as follows:

AYES.—Messrs. Anthony, Balingall, Beard, Berry, Bicknell, Biddle, Borden, Bracken, Bryant, Chapman, Clark of Tippecanoe, Cole, Colfax, Conduit, Crawford, Davis of Vermillion, Foley, Garvin, Gibson, Gordon, Hamilton, Hawkins, Helm, Kendall of Warren, Kindley, Maguire, March, Mather, May, McClelland, Morgan, Mowrer, Niles, Ritchey, Watts, and Wheeler—36.

NOES.—Messrs. Alexander, Allen, Badger, Barbour, Bascom, Blythe, Bourne, Bowers, Bright, Butler, Carr, Carter, Chandler, Chenowith, Clark of Hamilton, Coats, Cookerly, Davis of Madison, Dick, Dobson, Dunn of Jefferson, Duzan, Edmonston, Farrow, Fisher, Frisbie, Gootee, Graham of Miami, Graham of Warlick, Haddon, Hall, Holliday, Harbolt, Hardin, Helmer, Hendricks, Hogen, Holman, Hovey, Howe, Huff, Johnson, Jones, Kelso, Kendall of Wabash, Lockhart, Logan, Mathis, McLean, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Moore, Morrison of Marion, Morrison of Washington, Murray, Nave, Newman, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Ariden, Read of Clark, Read of Monroe, Ristine, Robinson, Schoonover, Shannon, Sherrod, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Stevenson, Tague, Taylor, Terry, Thomas, Todd, Trimby, Vanbenthusen, Wallace, Walpole, Wiley, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President—105.

So the Convention refused to lay the amendment upon the table.

The **PRESIDENT** announced the expiration of the half hour suspension of the consideration of the special order.

PETITION FOR A NEW COUNTY.

Mr. **ROBINSON** asked and obtained the unanimous consent of the Convention to present the petition of sundry citizens of Decatur, Jennings, Ripley, and Bartholomew counties, asking the Convention to authorize the formation of a new county out of certain territory of said counties, described upon a diagram accompanying the petition; and moved that it be referred to a select committee, to consist of the delegation from these counties.

The petition having been read by the Secretary,

Mr. **ROBINSON**. I thought it due to these petitioners, the citizens of those counties, that their paper should be referred to a select committee consisting of their own delegates. I am not, continued Mr. R., prepared to say that I would vote in favor of the principle contained in the petition. I do not suppose that any member whom I have designated for that committee would be willing, nor do I conceive that this Convention would be willing to take up and consider the subject of the organization of counties. All that that committee could do, or rather all that I would do, as a member of that committee, would be, simply to report a proposition authorizing any future Legislature, if they should see proper, to provide by law for the organization of a new county out of the territory named in the petition, and described in the diagram. Permit me to say further, that I understand that my colleague (Mr. Foley) is in possession of a remonstrance against this petition, and my object is to get the petition in the hands of the parties interested, together with the remonstrance, so that when they shall make their report, it shall settle the question. I only wish to see that the people whom I represent, and who are interested in this matter, shall have an opportunity of being heard. What course I may pursue upon the subject, I am not yet prepared to say. Generally, I am against propositions to change county seats. But any gentleman who will look at the diagram, will readily perceive the hardships which these petitioners suffer on account of the peculiar locations of which they speak.

Mr. **SPANN**. I have some doubt about the propriety of sending this petition, by itself, to a select committee; but as I know that there are other petitions here which will be presented, I presume that it will be proper enough to raise the committee.

Mr. **PRATHER**. I have no objections to the select committee proposed; but I am aware that there are various petitions and remonstrances upon this subject in my county and in

the county adjoining; therefore, I move to lay the petition on the table for the present. After all the petitions and remonstrances shall have come in, then they can be taken up, all at once, and referred to a select committee.

Mr. **ROBINSON**. I hope the gentleman will withdraw his motion. I assure him that I will not press the consideration of the subject until we shall have the most ample opportunity for deliberation.

Mr. **PRATHER** withdrew the motion.

Mr. **READ** of Monroe. I think we should not provide, in the Constitution itself, for any special legislation. My opinion is decided, that this matter should be referred to the general committee on county organization. I hope that this petition, and all the others which may be presented on the same subject, will take that direction.

The **PRESIDENT**. Does the gentleman make that motion?

Mr. **READ**. Yes sir.

Mr. **ROBINSON**. I wish to make an inquiry. If I understand the rules, the mover of the proposition is constituted, for the time, a member of the general committee to which it may be directed?

The **PRESIDENT**. He is.

Mr. **ROBINSON**. Then I am content, and withdraw my motion.

The petition was then referred to the committee on county and township organization.

Mr. **FOLEY** asked and obtained leave to present a remonstrance on the same subject; which, by unanimous consent of the Convention, was referred to the same committee.

THE GRAND JURY SYSTEM.

The **PRESIDENT**. The Convention will now resume the consideration of the special order, viz.: the resolution of the gentleman from Tippecanoe, (Mr. Pettit,) directing the committee on the organization of the courts of justice to report a proposition for the abolition of the Grand Jury system. The question is upon the amendment of the gentleman from Wells (Mr. Bascom) to the amendment of the gentleman from Dearborn, (Mr. Holman,) proposing to make it a resolution of inquiry. Upon this question, the gentleman from Cass (Mr. Biddle) is entitled to the floor.

Mr. **BIDDLE** then rose and said, that last evening the Convention had conceded to him the floor for this morning, and he did not intend to abuse the privilege they had so generously granted to him. He would be brief in the remarks which he was about to offer. He should not have addressed the body at the present time, but he feared the question was in danger; therefore he preferred to do his duty in the case, as far as it might be in his power. He did not expect, by any considerations which he might offer, to change the well-settled opinions of a body of men so experienced as this; but in the

language of his venerable friend from Wabash, (Mr. Steele,) if he fell, he preferred to fall in the discharge of his duty.

He supposed the gentleman from Switzerland (Mr. Kelso) had found out by this time that the mover of this resolution was quite in earnest. He could tell that gentleman that the mover of this resolution was always in earnest. He was a man who held his opinions free as air, and was never at a loss fearlessly to express them; from his knowledge of the man, he was convinced at first that he was really in earnest. He felt some embarrassed in this debate, from the fact that he was compelled to differ with that gentleman, who was chairman of the committee upon which he had the honor to be placed. But as one independent thinker was apt to respect the opinions of another, he doubted not that the independence of this gentleman had taught him the same lesson. The gentleman had presented the question fairly in debate, and he (Mr. B.) intended to meet it fairly; therefore, he invited the special attention of the reasoning ear of the body. He addressed himself especially to that large class of silent thinkers who were not so much in the habit of engaging in debate. He made this appeal, and particularly to this large class of members, because he knew that all those who debate more were apt to have their minds tinged with a desire that the question should carry, and could not approach it with a feeling of entire impartiality. He appealed to that class who were not warmed with debate, to hold fast to their common sense and understanding, so that they might decide dispassionately, for the reason that they compose the largest portion of the Convention, to whom every appeal here of right ought to be made. He would also respectfully ask the attention of his professional brethren. He conjured them that they should not be prejudiced in their minds. He knew that amongst lawyers, there was a feeling of disallowance toward persons interfering in such matters, who are not learned in the profession, and experienced in the administration of justice. With reference to one branch of the administration of justice, he was of the same feeling with them. He did not wish or expect to see any person authorized to expound the law, who was not professionally a learned man. But those who were called upon to decide upon mere facts need not be professionally learned. They were now upon the consideration of a question involving the decision of facts. Then he appealed to his professional brethren, that they should be sure in making up their minds, to do so without this professional bias. He made these appeals because he trusted that what he might be able to say might not be altogether unprofitable; but as he before said, he did not expect materially to effect the settled opinions of experienced men; they were all (if he understood the object of debate) to bring in their contribution of

knowledge to one common stock, and allow everything of value to have its due weight.

He labored under another disadvantage: this question had been debated by many gentlemen, and with much force; and whatever he might say, would come as the pattering of the last drops of rain after the storm had past, or as the murmuring zephyr succeeding the hurricane. But truth might come in whispers, and error might take even the voice of thunder. He felt that a cause, vital to the interests of the people, was in jeopardy, and therefore he wished to be heard, not for himself, but for his cause.

He would now proceed briefly to note some of the arguments in favor of the resolution. The first was that of the gentleman from Porter, (Mr. Anthony,) who advanced it as an argument against Grand Juries, that they were expensive—that they cost nearly as much as the courts. He should not dwell upon this argument. Every free government was expensive. They could not be maintained without expense—expense of time, and money, and often the blood of their supporters. He was not here upon a question of dollars and cents, but upon a question of principle, which, if impaired by this body, would strike a blow at the liberty of the citizen—that liberty which was inherent in this government. Barbarous nations could be governed without Grand Juries. They required not the care, and attention, and learning, which was necessary for the government of a civilized community. People in the higher walks of civilization could not be governed without expense. A Red Jacket, or a Black Hawk, or an Osceola, could govern without much expenditure in money. Only a few bowie-knives and tomahawks were necessary for their purposes of government.

The gentleman from Porter had stated that Grand Juries were first established to protect the citizen, or rather the subject. Here he agreed with him, and here he took grounds different from those who opposed the resolution as he did. Was it to be considered that Grand Juries were originally the creatures of the crown? It had been justly said that more than a thousand years ago, Grand Juries were found embedded in the Constitution of Great Britain. The gentleman from Tippecanoe (Mr. Pettit) was right in this statement; but when that gentleman affirmed that the Grand Jury system was the creature of the crown, he took issue with him. He affirmed, on the contrary, that it never was the creature of the crown, and never was in favor with the crown. He would not say this unless he thought he was right. He would not purposely throw out any crude opinions in such a place as this. His timidity would not allow him to do so. It was one question to affirm that the system was the creature of the crown, but to say whether or not it was able always to withstand the corruptions of the crown was quite a different ques-

tion. The criminal jurisprudence of Great Britain was under the care of the attorney general and the master of the crown-office. They were creatures of the crown, but the crown was not the founder of Grand Juries. It was at a time when these officers of the court were anxious about the crown, and cared nothing about what the subjects might do to one another; but were especially careful about what the subject might do to the crown—then it was, that the sturdy yeomanry first made their presentments in a manner the Grand Juries now do; and this they continued to do, until the system shot its roots so deep into the British Constitution, that the crown could not eradicate it. The history of the system showed clearly that it never was the creature of the crown, and that the crown never was supported by it. He made this statement with deliberation and care. He was not materially differing from others who opposed the resolution; but he objected to their silence in the face of such charges upon the Grand Jury system. He objected to their silence, because it might be construed into an admission of what was not correct; for, so far from the Grand Juries having been made the creature and the prop of the crown, they grew up in spite of the crown, and fastened themselves into the constitution so firmly that the crown could not eradicate them; and in almost every instance in which the crown wished to oppress the subject, it found itself obliged to step over the Grand Jury. He would not think of charging corruption upon the Grand Jury, any sooner than upon the British subjects in general. And how could it be supposed, in the face of history, that they were ever made the willing instruments of tyranny, in the language of the gentleman from Hendricks (Mr. Nave). He must be permitted to deny the charge, with great respect, however, to the opinions of that gentleman. What was the complaint of the barons of England when they wrung the *Magna Charta* from the unwilling hands of King John? It was, that the crown had violated every principle of right toward the subject—affecting the subject in his life, liberty, and property, without the consent of his peers. That charter might be translated in almost the very words of the twelfth section of the first article of our State Constitution, namely: "That no person shall be put to answer any criminal charge—but by presentment, indictment, or impeachment," almost the same thing as to say, that no person shall be affected either in his life, liberty, or property without the consent of his peers. This principle embraced the Grand Jury system. Any man was affected either in his life, liberty, property, or reputation, when he was charged with crime.

Then, let gentlemen take their stand upon the true history of Grand Juries; let them not forget their usefulness because, perhaps, it sometimes might appear that the system had

been perverted. Let its integrity be maintained, and let it not be blamed because it could not always withstand the powers of a corrupt crown; but give the system credit for what good it had done. He took the Charter of King John as analagous to the subject under consideration. The Constitution before this charter was obtained gave the right to the crown, or rather the right was taken by the crown, to interfere with the subject in his life, liberty, and property, without the consent of his peers; and the attempt to wrest this right from the crown was the occasion of the quarrel between it and the sturdy Barons, who at last drew their swords at Runnymede to maintain it; and they did maintain it. They obtained the charter—the same in substance which has been incorporated into our government, and which could never change in its essential features of right, until man's nature should change.

He confessed that when the gentleman from Hendricks asserted that the Grand Jury had been the willing instrument of tyranny and bloodshed, he felt a thrill pass over him—not of indignation—but of surprise, that the gentleman should have been so unaccountably mistaken. He did not say that the Grand Juries were never wrong; but he affirmed, confidently, that there could not be found a single instance in their history, in which they had been made the willing instrument of power, to do wrong. The same gentleman had affirmed, that Grand Juries were only the shadow of a shade. He did not know that he understood exactly the import of this phrase; but if he understood the position of that gentleman, it was, to take from sixteen men (the ordinary number of a Grand Jury) their power to accuse under criminal law, and to give it to one man. What amount of power then, could he claim for his substitute? If the Grand Jury was but the shadow of a shade, ought not the gentleman's substitute to be estimated as but the sixteenth part of the shadow of the sixteenth part of a shade? And this was all the power which the gentleman proposed, to resist the encroachments of the crown, or of the State, against the private rights and the liberty of the citizen.

But, to be brief. The gentleman from Hendricks made a point in his remarks in reference to the antiquated age of the gentleman from Wayne (Mr. Rariden); though he (Mr. B.) trusted that many green and vigorous years were yet to pass over his head. The same gentleman affirmed that not one case out of ten of the indictments by a Grand Jury was ever prosecuted to conviction; but how he intended to apply that against Grand Juries, he was not able see. The gentleman from Tippecanoe, also, took the same ground. Well, if these gentlemen could find out any means of ascertaining whether a man were guilty or innocent, without a trial, he would give up the question, but they all knew there were none. The Omnia-

cient eye might see and decide. But when we were upon the trial of an individual, before beings like ourselves, who was to be affected in his life, liberty, or property, we must always go by the slow process of induction, and allow his peers to stamp their decision upon his case with the seal of truth; and the moment any other method of trial should be attempted, that moment the rights of man would be impaired. He was not in favor of any system by which a man could thus be put in jeopardy, and convicted at once; because this would not be done by means of human testimony; and it was only when the impossibility could be achieved that there could be no indictment without conviction following.

Sir, in the court of Star Chamber, when the Crown officer, not the Grand Jury, filed the information, a conviction always followed the charge; not because the conviction was right, but because the charge was wrong.

The same gentleman had said that punishment was uncertain under the Grand Jury system, but he did not therefore, see that punishment should become more certain than at present. He supposed the difficulty must be that the Grand Jury did not present cases when they ought, or that they presented them when they ought not; all that might be the case. He did not stand here to say that Grand Juries were perfect; but to show them to be so essential to civil liberty, that they should not be abolished or impaired without returning again to the troubles out of which they originally grew up.

But, the gentleman from Hendricks had affirmed that Grand Juries were the instruments of bloodshed and tyranny; and that may have been true at sometime in their history, but they were never used in this way; as the *willing* instruments of power. And the gentleman from Tippecanoe made allusion to what was called the bloody assizes, under Jeffreys. They blamed them because they could not resist the power of a corrupt crown; and the history of the times shows clearly, that the Grand and Petit Juries were over-ridden by the crown. Then to say that they were willing instruments of power, for the purposes of bloodshed and tyranny was doing injustice to that ancient institution. If the gentleman had carefully traced the history of the bloody assizes, they would have found out the moral of the law. That same judge lost his head, and that same king lost his crown, when the people called a convention, resolved their government into its primary principles, and placed the crown upon the head of another. From these troubles, and out of this error of the crown, came the revolution of 1688, to which the English people still proudly point, as the main foundation of their civil liberty; and the people of England and this country were still rejoicing in the results of the efforts of the sturdy yeomanry who composed the Grand Juries of those times.

He would now pass on to the consideration of ultimate results. He doubted not that Grand Juries might be taken away from the government of the State of Indiana, and that the people might do very well for a time; but that they could be taken away without affecting the rights of the people, in some degree, he could not believe. Then, when gentlemen refer to the bloody assizes, let them not forget the results which those troubles produced.

In the opening of his remarks, the gentleman from Tippecanoe said, very truly, that long established wrongs were commonly approached by men with a feeling of timidity. Every man had experience of this feeling. He felt it himself, although he was not very much disposed to hold on to the garments of the past. But it was manifest that every change of the Constitution brought with it more or less of evil, temporarily, at least; therefore, he would never make a change in that instrument without some preponderance in favor of the change. He considered this principle, upon the whole, to be a very safe one.

He was not here to defend Grand Juries on account of their antiquity. He respected them not for their age only. It was not because this institution was ancient, but because it was valuable, that he appeared in its support, and would continue to resist every attempt to break it down or to sever it from its old and honorable associations.

It had been said that Grand Juries were created and used as a prop to the crown; he denied that also. Grand Juries had no connection with the crown at any period of their history, except as they might have been brought unwillingly into its service. They were brought into this service before the revolution of 1688, when the power of the crown triumphed over the liberties of the subject; and also under the reign of Charles II., when he undertook to govern without a Parliament. He undertook to govern without Parliament; to step over the rights of the subject; he undertook to violate, and he did violate, the great charter which resulted from the conflict with King John. That succeeded in a re-assertion and a re-settlement upon a firm basis, of the bill of rights. When English liberty was trodden down by the crown, it was when Grand Juries were over-ridden, and when the subject was trampled upon in his private rights, without the consent of his peers.

The gentleman says, (continued Mr. B.,) that this Grand Jury system is an institution which never existed in any country in the world except in Great Britain and the United States. Sir, it would be impossible for him to bestow upon the institution a higher eulogy than is conveyed in that very assertion. How he should be able to draw an argument in favor of the resolution from such an assertion surprises me to know. I repeat, that that very fact is enough for us to know, in order to form a very

strong inducement for us to retain this institution. Where, on the face of the earth, will the gentleman find liberty enjoyed with such amplitude as it is here? and where, next to our own country, except under that government where this system has been represented as existing in connection with our own? Where is there anything like an approach to free government except in England and in the United States? And they, and they only, are the nations in which the Grand Jury system is maintained. The gentleman who quoted the remark of Thomas Jefferson on this subject, quoted a high authority. He said well and truly when he said that no nation could ever be enslaved where the Grand and petit Jury system existed. Sir, if you look among the nations of Europe, you will find that it is the constant struggle of the people there to have this or a similar system adopted. If I remember rightly, Louis Phillipe promised to the people of France the adoption of what was called the "jury of accusation," and the promise was hailed with acclamations of joy by every Frenchman. I will not, however, dwell upon that, but will merely remark further, that some two or three years ago the King of Prussia promised to give free government to his people, and, among other institutions, the jury system. He did not keep his promise, it is true; but we may learn enough from these examples to discover that, while other nations are struggling to the utmost to obtain free institutions, we are endeavoring to impair those that we possess, and which are the only substantial safeguards of human liberty. I am not, however, very anxious to cite foreign efforts for liberty, or to contrast the institutions of other countries with those of our own. Neither would I uphold the Grand Jury system because it is of venerable age. If it is not a good system at this time and in this place, I do not want it.

Another objection which was urged against Grand Juries by the gentleman from Tippecanoe, was, that in nineteen out of twenty cases of indictment for felony, where the indictment originated with the Grand Jury, there was no conviction. Now grant that that is true, what does it prove? I am aware that many indictments fail to result in conviction, though I am far from admitting the accuracy of the gentleman's computation. But what if felons do escape? Would it not be so under any other system? Must it not always be so, if we have any regard for human rights, so long as the mind of man is finite, and can only arrive at truth by the slow process of induction?

The gentleman (Mr. Pettit) spoke of the matter of expense, and observed that on that head the question was scarcely worth debate. There we are perfectly agreed; and I would only observe, that if the functions of our Government were carried into execution with bowie knives and tomahawks, our expenses

might perhaps be curtailed; but that so long as we have a civilized Government, we must expect that it cannot be maintained without expense.

Again: the gentleman read from English newspapers to show the estimation in which this system was held by a certain portion of the press of that country; and he took occasion to say that the *London Times* had done more for the propagation of human liberty than all the press throughout the world besides. I am not going to stand here as the advocate of the press on this occasion, because I think the question involved in that argument has nothing to do with the question under consideration; but I must say that the press of America ought to be highly obliged to the gentleman for the compliment which is implied in his assertion in regard to the *London Times*, a paper which has changed its politics [with every change of administration, and has steered its course towards every point of the political compass. Certainly the American press ought to feel under the deepest obligation to the gentleman for this very flattering compliment.

Well, sir, something was also said about judges packing juries. With what design such a remark was made I really am totally at a loss to conceive, or how it could affect the value of the Grand Jury system. Does not every man know that of all functionaries connected with the administration of justice, the judges are the most powerless? The judge makes not the law, that is the business of the Legislature. He merely interprets it. He stands between the legislative and the executive departments, and his decisions in themselves are as harmless as the zephyr. He cannot execute his own decisions, but they must go to the executive before they can be executed. Why, sir, a judge has no more power to pack a jury than has any other man, and, aside from the case of the notorious Jeffreys, there is, perhaps, not another can be found in the whole history of jurisprudence of a judge attempting to exercise an undue influence over the minds of a jury. The functions of the judicial department are entirely harmless. When the decision of the judge is pronounced he can do no more; and even that decision is in many instances not his own, but already fixed by an established rule of law.

Well now what is proposed as a substitute for this system which it is proposed to abolish? The gentleman from Tippecanoe, as well as I can understand his plan, proposes that there shall be an examination before a justice of the peace; that the evidence is to be written down, and that the prosecuting attorney is to say upon an examination of the evidence whether he thinks it is likely that a conviction will follow. I do not wish to speak with the slightest disrespect of our justices of the peace. They are usually intelligent men—men of about the same grade, as it regards information and moral

worth, as your grand jurors. But I hold that they are not competent to preside in a matter of this importance, not capable of withstanding the pressure from without, and of holding the law steady to the protection of the rights of the citizen. I do not blame them. The fault is not theirs, but that of the organization of their courts. They have not sufficient power. Besides they are not judges of evidence. Many of them are not acquainted with a single rule in regard to it, and could not determine what would be evidence for and what against a defendant. Let me illustrate this for one moment. Suppose that a heinous offence has been committed—say a murder—and some party, who happens to be suspected, is taken before a justice of the peace in the neighborhood. Blood is perhaps found upon his garments, or some other circumstance, which at the moment is not satisfactorily explained, tends to create an impression of his guilt. He is taken before a magistrate who is surrounded by an outraged populace demanding their victim. How is it possible that the justice should not in some measure share their feelings, and knowing nothing of the rules of evidence he lets in everything against the poor defendant, guilty or not guilty, and he is handed over to a petit jury, who are to determine the question of life and death, without any other preliminary examination than that had before a justice unacquainted with the rules of evidence, and influenced by the feeling which pervades his neighborhood. And thus it would always be; and it is not to be wondered at. The fault is not in the man, for none of us are perfect, but it is in the system. But again it is said, he is to write down the evidence. How, I would like to know, is he to do that when he does not know what evidence is? But suppose he happens to get down the evidence correctly, a case which would not happen once in a thousand times, he is to have the opinion of the prosecuting attorney to say whether that evidence will warrant a conviction. Why, sir, the gentleman in this proposition strikes at one of the fundamental principles on which the rights of the citizen are based. He wants a professional man who is versed in the rules of law to exercise a power which alone belongs to a jury; that is, to determine what are the *facts* in the case. Sir, it is a violation of all fundamental right; it is confounding the trial of a fact with the exposition of the law.

Why, sir, any man, if you give him *assumed* facts in an indictment, will tell you whether the party is guilty or not. But when a little evidence comes from A, and a little hearsay from B, and a little suspicion from C, and perhaps a little malice from D, and some vague reports that were heard by E and F, why sir, with such an amalgamation of evidence and suspicions, I defy any professional man on earth to safely say whether a man is

guilty or not. His learning in such case will stand him in no hand. He is no more capable of determining in such case than the man who has never studied the profession. But, sir, were he ever so capable, it matters nothing. He is not the judge of the facts; the law has wisely provided that a man shall be tried by his peers, who, alone, are to determine as to the facts alleged; and, when you delegate this power to a prosecuting attorney, you not only put the liberty of the individual in jeopardy, but you usurp those rights which alone belong to that body of men for whose benefit alike they have been secured. Sir, give me unprofessional men to decide *facts*, and learned men to explain and apply *rules*, and then you will have a beautiful system—a system which will work admirably, and attain the ends of justice. These are the objections which I have to that part of the proposition.

The gentleman has said that Rome punished her criminals without the intervention of a Grand Jury. Sir, to my understanding the allusion to that country is a very unfortunate allusion. It is that same Rome which stabbed her Cæsar, which crushed her Cato, which pierced the tongue of her Cicero, which enslaved millions of her people, and trod with an iron heel upon the neck of woman! That is the Rome whose institutions he cites as fit for the Anglo-Saxon race to copy, in order to preserve their liberties. There can be no question that the history of Rome is highly instructive—but instructive in what? Why, sir, in her errors, for she has not a single institution which we can safely copy. She may boast of her civil law, but what is it when contrasted with our system of common law? Admitting it to be a wise code, it is yet extremely defective, and, for that reason, the country over which that civil law is spread has been continually struggling to establish the common law system of juries. Sir, in my humble judgment, the allusion to Rome was exceedingly unfortunate, and can add nothing by way of recommending the abolition of Grand Juries.

Again: the gentleman said that the Saviour was crucified without an investigation before a Grand Jury. So he was, sir; that is abundantly true; but I am at a loss to know what he would prove by the fact, and still more how he would apply the fact in sustaining the proposition he has introduced into this body. Sir, this mixing up of temporal and spiritual things is not, in my judgment, a very proper course; but if it be allowed to combine them together, or to illustrate the one by the other, I have no hesitation whatever in saying, that had the Saviour lived in any country in which the Grand Jury system prevailed, he never would have been crucified at all, because he had committed no crime. I speak, of course, of the order of human events. This, however, is a question which ought to be approached with reverence, and it would not

have been referred to at all by me, had it not been for the allusion of the gentleman. Without meaning anything personal, I must say, that he appears to stop at nothing. He is a bold reasoner. His allusion to the crucifixion of our Saviour was certainly a daring method of sustaining his proposition—too daring, I think, to serve his purpose; for where is the man who will contend that had the Grand Jury system prevailed in Judea, that the crucifixion would ever have taken place; I mean by the authority of man! Sir, if the gentleman delights in crucifixions, let him use every effort he can exercise to abolish Grand Juries. The abolition of Grand Juries is the first step in the march towards the establishment of such a system of government as that under which the crucifixion took place, and I trust that this body will never take that step.

Mr. President, I have thus very hastily, and without much preparation, endeavored to answer some of the objections which have been urged against the Grand Jury system, and without detaining the Convention longer in replying to other objections which really do not appear to me to have any force, I will now say a few words explanatory of my notions of a Grand Jury. Let us inquire, first, how a Grand Jury is constituted. And here let me say to those gentlemen who have alleged that they have been the willing instruments of blood shed, that I should like them to cite an instance of the kind since the year 1688. I undertake to say that the errors of grand and petit juries never was a cause of complaint since that time. But even supposing that, in past times, Grand Juries have been what they ought not to have been, they are to-day precisely what I think they ought to be. But, as I incidentally remarked, I do not pretend that they are perfect bodies. Your judges, your governors, your legislatures, are by no means perfect. The highest functionary in this great Republic is not perfect. The American people observe the doings of their President with most watchful eyes—and why? Because, even these high functionaries have sometimes done acts which many have supposed to be worthy of reprobation. But shall we, for that reason, abolish the office of President of the United States? No man will so contend. Our presidents have been blamed infinitely more for their conduct, than ever was a grand jury in the world, and yet, who contends that therefore we should have no president? Nobody; nobody.

I do not wish to be understood as saying that Grand Juries have never erred; that is more than could be expected of any human being; but I do say that they are the most perfect functionaries known under either the British or American Constitutions, because they have less temptation to go astray, and fewer necessities of error than any other bodies.

Well, sir, what is a Grand Jury? It is a

body of eighteen or twenty-three men summoned from the body of the citizens of a county. They are not summoned from one portion of a county, but come from remote quarters of it so that there can be no collusion in regard to anything that may have transpired in any given part of a county. They receive the charge of the court, which is treasured up in their minds. It was well said by one of the gentlemen who has addressed us on this question, that this is one of the modes, and an excellent one too, by which a knowledge of the laws is disseminated. They come in contact with your courts and hear the law expounded from day to day, so that, in a little time, you hardly have a man in your county who has not served as a juror, and learned something of the law. You do not call and recall the same men to serve, but you take your citizens according to a system of rotation, by which means you instruct them generally as to your laws, and the method of carrying them into execution; and thus you teach them, not only to value their government, and duly to appreciate their own rights, but also how to examine questions of truth and falsehood. Now compare these men with your justices of the peace, and see whether they are not, in their collective capacity, infinitely more able to understand and appreciate evidence, and to hold steady the rules of law. It is unquestionably so. They sit away from the excitements of passion or prejudice, and have an opportunity of calmly and dispassionately considering the question of guilt or innocence.

Mr. President, I have heard of poisonous reptiles, when goaded to madness, turning round and biting their own bodies, but I never yet have heard of a people enjoying civil liberty seeking to turn round and destroy that liberty. An enlightened people will never do so, and placing, as I believe our people do, this Grand Jury system on the same platform as they place the great charter of their rights, I am inclined to think that they will never willingly consent to give it up.

Now let me consider, for a moment, the objection which is urged on the score of secrecy. This is supposed to be a great objection. Mr. President, how strangely men's minds will differ in viewing the same subject. To my mind this secrecy is the very beauty of the system, and I undertake further to say, that, from this very secrecy are derived some of the principal benefits of the system. When gentlemen declaim against this institution on the score of its secrecy, they evidently confound the question of the trial of guilt or innocence, with a mere inquiry as to whether there are good grounds to sustain an accusation. Sir, nothing could be more shocking to all our notions of freedom, than the idea of a body of men sitting in secret session and hearing testimony with a view to conviction. But gentlemen are clearly confounding things which are totally different, and

putting upon precisely the same ground the question of conviction and the mere question of accusation. Now, in regard to this matter of secrecy, let me ask, is the charge more a secret when it is laid before a Grand Jury, than it is when locked up in the bosom of the complainant, to be unfolded only to a justice of the peace? And is the judgment of twelve or eighteen men not more to be relied upon than the mere statement or affidavit of the injured party? Unquestionably it is. From motives of prudence, then, this secrecy is necessary. In the language of the gentleman from Wayne, let me ask, "who is it that fears a Grand Jury—the innocent or the guilty?" Certainly it is the guilty. The innocent go before a Grand Jury as they would go to a place of security. Instead of being a terror to the innocent, as some gentlemen would seem to argue from their holding their sessions in secret, they constitute to him a rock of safety. The honest man on his farm, or in his work-shop, reposes there with perfect security, notwithstanding all you can say to him about this "secret inquisition," because he knows that that inquisition is composed of his fellow-citizens, who are honest men, like himself, and who can have no object in perjuring themselves for the sake of working mischief to their neighbors.

No, sir, it is not the honest man who fears a Grand Jury because it holds its sessions in secrecy, but it is the criminal—the vicious. Sir, I undertake to say that no lawyer will allege that in his experience has he ever found an indictment or presentation without evidence that a crime has been committed. It may not always happen that the offense is brought home to the party; but it is the universal experience of all, that an indictment is never found without evidence of the commission of an offense. This secrecy, then, is observed as a matter of prudence, just in the same way as we would keep any other secret as a matter of prudence. It is not because there is anything wicked going on. Every bosom is more or less the repository of secrets. Every lawyer, every minister, every physician, every tradesman—every man has secrets which it would be imprudent to expose; not because there is anything wicked or dishonorable in these secrets. And it will always be found that those things which we cherish the most, are the things which we talk about the least. It is in the nature of man to do so, and this feature distinguishes the best of men as well as the worst. There cannot, therefore, be any real force in the argument which is based on the ground of secrecy.

This brings me to notice the objection which was urged on the ground that indictments do not at all result in convictions. Let me ask, how many charges under the proposed system would result in indictments? We know that not more than one-half of those cases, where parties are held under recognizances, to appear

before a court, ever result in an indictment. Now, so far from the small number of convictions, in proportion to the number of indictments, being any objection to the system, is in its favor. And this would be the case still more, if these examinations were all to be made by justices of the peace, a greater proportion would thus result in acquittal. I cannot forbear to mention an instance or two; and, although, one or two instances would not go to establish a general rule, I am well satisfied that instances are sufficiently numerous to show what would be the general working of the system. Within my own experience, and that not a very long time since, I knew a medical gentleman, distinguished in his profession, who was arrested on a charge of disinterring a dead body. The circumstances of the case, were briefly these. He had two students who were studying medicine with him, and by some means or other, they procured a body from which they were anxious to obtain the skeleton. They had deposited the body, or a portion of it in the canal, for the purpose of maceration. It was discovered; and when found, was claimed by these students as their own property. He was, however, charged with the offence, before a justice of the peace, and, although, he was a distinguished man in his profession, had many warm friends, the abhorrence in which the affair was held, was such, that scarcely a friend would stand by him at the time. Here were part of the remains of a human body, it was claimed by his students, and from that the conclusion was immediately drawn, that a grave in the neighborhood had been violated. Every grave-yard was searched, but no trace of violation was discovered, as connected with the defendant. He was arrested, and brought before a justice of the peace, and held to bail in the sum of \$5000—an amount which would hardly have been required in a case of manslaughter. Well, what was the evidence? simply that the remains were found in the canal, and were claimed by these two young students, which they wished to prepare to aid them in the study of their profession. Now, I did not blame the intention of the justice of the peace in such case, because participating in the popular feeling his sympathies overruled his judgment. In five or six weeks the Grand Jury met, and the charge being preferred, it was found that there was not the remotest shadow of evidence to sustain it. The charge itself, with the mode in which it was prosecuted was, to say the least of it, an outrage upon the man's sensibilities, and must leave an impression of insecurity in the breast of every one. But, gentlemen will ask what remedies have you before a Grand Jury? Why, sir, here is a remedy in this very case—the best of remedies; for where a justice of the peace hearing both sides of the case, had committed a

man to take his trial, the Grand Jury hearing only one side, and that side too by no means likely to favor the accused, decided that there was no ground of accusation at all. This was his remedy. His peers, after a careful examination of all the evidence that could be brought against him, and without knowing any of the facts that could be urged in his favor, declared the charge to be unfounded.

Thus, while one man could not withstand the influence of public opinion immediately around him, and was carried away in his judgment by the torrent of human sympathy, a jury taking a calm and dispassionate view of all the culpatory evidence, decided that there was not the shadow of a ground of accusation. What, then, would a man think—how would he feel towards a Government whose institutions would secure his liberties in no better mode than that? And yet, if you abolish the Grand Jury system, such instances of error would be of every day occurrence.

Let me mention another case, which is now pending in the distant part of my circuit. It was a case in which a husband and his wife's brother were accused of murder. After the arrest of the husband and brother, the wife was also arrested, although, so far as the evidence went, she was as little concerned in the crime as any person upon this floor. What was the consequence? Notwithstanding she was in a state of pregnancy, she was committed to prison, in a very inclement season of the year. Here, now, came in the benefit of the writ of *Habeas Corpus*, another great principle of human liberty. What was the evidence on which this woman was committed to prison? Simply some words which the deceased had uttered the night before his death, which every man who knows anything of the rules of evidence would say at once was no evidence whatever.

It had not the faintest semblance of legal evidence. Still it was a hard struggle to obtain the woman's release before the associate judges. Gentlemen will probably ask, what has the Grand Jury system to do with such a case as this? Just this much, that they would have determined at once, that there was not sufficient evidence to put the defendant on trial, and when they had decided that, then the imprisoned party could go forth and say, "the charge has been examined by my peers, and by them I never was accused." That is the answer to every sneer that may be cast upon the wronged and unfortunate. Now strike away that security, and adopt the system which has been proposed, and I undertake to say that our liberties will become at once insecure, and our enjoyment of them in the highest degree uncertain. These are examples of the benefit of the workings of the present system, and there are enough of them, of daily occurrence, to show the danger of abolishing any of those institutions by which our rights are secured. It has been my duty

to discharge many persons on writs of *habeas corpus*, who had been committed to answer charges, grounded on no better evidence than the prejudice of a neighborhood. And if you take away this first pillar of human liberty, you are only at the commencement of a system of aggression, which will eventually sap the entire foundation of the liberty of the citizen.

But, Mr. President, I feel that I have occupied the attention of the Convention longer than I intended, and I will conclude these desultory remarks, by appealing again to the reasoning ear of this body. I do not wish that they should hastily strike down an institution from which has flowed so many benefits. If it had nothing but age to recommend it, although from that alone it would be entitled to our respect, yet I would not contend so earnestly for it. Nay, I would even say let it go. But when gentlemen propose to remove Grand Juries from our system of criminal jurisprudence, I think it behooves them to let us see very clearly what they purpose to substitute in their place. I ask it from them; it is due to the Convention, due to the State, due to the liberty of man.

Mr. President, when I commenced these remarks I observed that I did not anticipate that anything I might say would materially alter the opinion of this Convention on this subject, yet I could not be content to let the question pass without giving my views and adding my little stock of knowledge on the subject to the common fund. I hope the Convention will consider what I have said, and that they will save me from errors if I am in error. All I ask is that this body will ponder deeply the proposition before they give their votes, and then I am sure they will be slow to remove an institution whose advantages have exhibited themselves so long and beneficially, and whose worth has stood the test of so many ages. When you convince me that kings can rule without Parliaments—that Presidents can govern without Congresses—and that Governors ought to dictate laws without the sanction of Legislatures, then I am willing to take courts without juries. I place all these examples upon the same footing. Take away juries and you take from the people that which, of all others, is most especially their privilege—the right to try facts. In the explanation of the laws, or the application of rules, I want professional men; but when I come to try facts, I want the varied and broad experience of the people. The right to accuse, as well as the right to try, depends upon *facts*, which it is clearly the province of a jury to determine, in both cases. Gentlemen argue that they do not purpose to do away with the petit jury system, and that a man will still be tried by his peers; but, for my part, such is my veneration for all the institutions of our country which appertain to the liberty of the citizen, that I would as soon think of abandoning the petit jury system as the Grand Jury system.

I would as soon part with the one as part with the other. What does this resolution propose? It proposes to abolish Grand Juries altogether—not to modify or alter the system, if necessity for alteration can be shown, but to do away with them utterly and forever. Were the proposition a proposition to modify, I might consent to it, but to abolishing them entirely I am utterly opposed, and shall remain of that opinion until my nature is entirely changed. I repeat, in conclusion, that this institution stands upon the same footing with others, by which our liberties are guarded, and that this will be found to be the first step towards dispensing with petit juries and the writ of "Habeas Corpus." As I have said before, so say I now. When you can convince me that Kings can rule without Parliaments, and that the twenty millions of people in the United States can be governed by one man, then I may believe that courts may dispense with juries. But until that is done, I cannot but believe that the law will be imperfectly administered by any court which has not its co-ordinate branches, and that it cannot meet the end and design of its Constitution. I assert again, that if this proposition is carried into effect, it will be a violation of the great charter of our liberties—the bill of rights, of the Habeas Corpus act, and, in short, of that divine right bestowed upon man by his Maker—the right to govern himself.

Mr. NILES rose and said: I feel sir, the weight of the responsibility that I incur in my present condition of health, in attempting to address this Convention, after two hours sitting in this Hall, on a subject of such grave importance as the one now under debate.

Mr. PETTIT suggested, that if the gentleman desired it, he had no doubt the Convention would readily postpone the subject until to-morrow morning.

Mr. NILES. I shall doubtless be able to proceed with the few remarks I have to make. I have been highly gratified, sir, at the disposition which has been manifested by members of this Convention to open the door to debate, and to permit a fair and thorough discussion of this subject.

Gentlemen who have preceded me have appropriately referred to the origin and history of the Grand Jury system. It is true, sir, that it has come down to us honored with the countenance of a thousand years, and I am sure there is not a member of this body who would inconsiderately strike at its foundations. We venerate the aged man. It is a sentiment common to every well regulated human heart. We should grow in wisdom as we grow in years. I would not undervalue the experience and lessons of antiquity. But when gentleman compare the early portions of the historic period, with the mature years and ripened mind of my friend from Wayne; it occurs to me that the truth is inverted in the comparison. We, sir,

may not have arrived at the maturity of our race, but we have undoubtedly made some farther progress towards its advancing manhood, than had the people of mediæval antiquity, among whom the Grand Jury system was first established, and from whom it has descended, unchanged to us. And while I would not discard the history of the past or the experience of youth, I still hold that that history and experience are mainly useful, as they expose the errors and evils of the past, and as warnings for the future. This is no less true of states and nations than of individual men. We may well cherish the memory of our early years. But when, in the progress of our lives, we look back, as we may imagine that states are permitted to do, when Conventions of the people are called together, as we are now convened, to remodel their organic law, what should be the purpose of the retrospect? Not sir, that we may follow blindly in the same path, but that, by the memory of past follies and misfortunes we may regulate and improve our future course. And, sir, instead of matter of exultation and self complacency, who does not find in the retrospect occasion rather for repentance and reformation. He who reviews his life with other purposes, I apprehend, reads its history to small profit.

Earnestly desiring the benefit of whatever light may be derived from the history of the past. I come to the discussion of this subject oppressed with a sense of its importance, and of the responsibility that will rest upon me, for my individual vote, if given as I anticipate that it will be. I am not one of those, if there be any such, who would recklessly destroy our civil fabric or mar its fair proportions. I would not, to build a more comfortable edifice, tear down the humble dwelling in which I find shelter, and which is still my home, until a better had been provided. And I shall endeavor to act upon the same principle here.

I am fully convinced that the present Grand Jury system is defective, and that it must, at some time and in some way, be superceded. The question with me, therefore, is not mainly whether it is unsuited to this country and this age, for in that particular I concur fully with the spirit of the resolution under debate. But it is chiefly a question as to *when* and *how* it shall be dispensed with,—as to whether any better system can here, and now, or probably at no distant day, be matured and engrafted upon the institutions of the country. Before concluding my remarks, I may take the liberty of making a few suggestions as to a substitute for Grand Juries, but which may be little worthy the consideration of the Convention.

A word now as to the practical workings of the Grand Jury system, its benefits and its defects. Gentlemen contend that it has been an extremely useful part of our political institutions. I am not disposed to join issue with them on that point. It has doubtless answered

a valuable purpose both in this country and in Great Britain, in former ages and to the present day. It has doubtless aided in the administration of justice, and, in the language of the gentleman from Wayne, been a terror to evil doers. It may have afforded some protection to the liberty and private rights of the citizen or subject against the power of the crown or the fury of popular excitement. But, sir, I do not agree with gentlemen that it has been the great bulwark of liberty, and the great safeguard of private rights. On the contrary, all history proves that it has often been the pliant tool of tyranny and oppression. And not, sir, because the men who have constituted Grand Juries have been less honest and worthy than their neighbors, but, as I contend, because of the inherent defects of the system under which they are organized.

Throughout its entire history in England as in its very constitution, it has been the instrument of the crown. The pannel is selected by the officers of the crown, without the knowledge or consent of parties to be accused, and without any essential right of challenge. They are sworn to keep the secrets of the crown, and to inquire into such matters as shall come before them on behalf of the crown, and none but the counsel for the crown are admitted to their conclave.

It is true that whenever hatred of tyranny should become intense, even such a body would be likely to show resistance. But when gentlemen argue that a jury drawn indiscriminately from an excited populace, would show the same resistance to the excitement under which they themselves were laboring, I cannot understand their logic. The way to the scaffold has lain through the verdicts of twelve men twice rendered. But still I submit to all thinking men who are acquainted with the bloody history of British rule, how weak a barrier have not both of those verdicts often proved. Let me not here be misunderstood. Let me not be understood as striking at or undervaluing the trial by jury—a right which I hold as sacred and to which I cling as tenaciously as does my friend from Cass. But the palladium of public liberty and private rights lies not so much in mere law—in statute books and the action of legislatures. It lies further back—it has a deeper foundation. And when the great safeguard which rests in the intelligence and integrity of government and people is lost, little protection can come from any other quarter. It is more the spirit of an age than any system of the administration of justice, which has led to crime and bloodshed in the name and with the sanction of law. My friend from Cass, (Mr. Biddle,) in his eloquent eulogium upon the Grand Jury system, has remarked, of the condemnation and crucifixion of our Lord, that that condemnation could never have been pronounced in a country where grand and traverse juries

were known. But in the language of another, "when goodness and truth descended from heaven to earth, what was the cry of the populace? Crucify him! crucify him!" And had a jury been necessary to his condemnation, a jury from that populace would have ratified the cry.

Mr. BIDDLE. Will the gentleman allow me to explain? I spoke of its application to man and men's affairs. The gentleman must not understand me as saying what the object of divine justice was. If it was necessary in the mind of Almighty God, that the Savior should be crucified to reconcile justice and mercy, it *must* have been.

Mr. NILES. I should be sorry to misconstrue the gentleman's remarks. I, of course, in speaking of this sacred subject, speak after the manner of men and would speak with all reverence and so understand the gentleman. I do not understand that men's hearts were perverted to that end. But, in that great event, I see a wonderful instance of the blended action of God's providence and human freedom. Men were permitted to act out the evil that was in them. There, was illustrated an universal principle—the same which reigned at the bloody assizes and which caused the streets of Paris to flow down with blood, during the first French revolution, not with the consent of tyrants only, but by the voice of the people themselves.

I may here remark that any argument in favor of the Grand Jury system, drawn solely from its antiquity, if it proves anything, proves too much. It is an argument which would sustain a body of hereditary legislators in Great Britain, with its bench of bishops. It is an argument which has proved a main support of old abuses. The question is not how long has it existed, but is it best adapted to the condition of society among us, here and now? To decide that it is not, I admit, involves no little responsibility.

A word now, sir, as to some of the evils of the present system. It is expensive and burdensome to the county treasuries. It is onerous upon the people who are compelled to serve upon Grand Juries. For eighteen or twenty men in each county, to be called together twice a year and kept in session, as often happens, a week or ten days, is no small tax upon the industry of the country. Still, sir, I agree with gentlemen that a free government requires more checks and balances than a pure despotism; that in the advancing stages of civilization the machinery of the body politic becomes more complex; that the simple laws and usages of savage life will not meet the wants of civilized man, and that we should cheerfully bear whatever burthens are necessary to the support of good government. But if another system can be devised equally safe and useful to all the interests of society, but

far less burthensome and expensive, the saving of expense will be something in its favor.

Another to meserious objection is the secrecy which constitutes a leading feature of the present Grand Jury system. In that particular, to my mind, it smacks too much of the Inquisition and the Star Chamber. It reminds one inevitably of another and a darker age. This objection to me is so insurmountable, that by no vote of mine can I be instrumental in fastening it permanently upon the country. I was gratified to hear the gentleman from Tippecanoe (Mr. Pettit) speak with his accustomed boldness of the secret sessions of the Senate of the United States. With due deference to that illustrious body, I must say that when, in this middle of the nineteenth century, and in this country of all others on earth, they go into secret session, upon any subject, important or unimportant, I can feel for such an act, little more respect than I should feel for sixty hooded monks of the middle ages, sitting among us as the Holy Inquisition. I hold that a great and free people should do nothing which they are ashamed or afraid to do openly and in the face of all the world. Sir, such things are all in conflict with the spirit of this age. I desire that whatever affects the rights of the citizen or the welfare of the body politic should be open as the light of day.

But it has been said that secrecy is necessary to prevent the escape of parties accused. It is an undoubted fact that in nine cases out of ten of the graver offenses in which indictments are found and convictions result, the accused party is already in jail or on recognizance, when the Grand Jury meet. But if there is danger of escape, he is subject to be arrested at any moment, on the affidavit of any prosecuting witness before any magistrate. And it speaks much in favor of the law-abiding character of the American people, that cases of crime are rare, when there is no one ready to aid in bringing the offender to justice.

It has been argued elsewhere, if not here, that if the seal of secrecy is removed from proceedings before Grand Juries, causes will be prejudged in the public mind, so that an impartial traverse jury cannot be had. It is a sufficient answer to such an argument, that in a very large majority of cases, at present, public examinations do take place, before committing magistrates, without any essential effect upon the final trial. We cannot if we would, keep from the public ear, the circumstances attending the commission of crimes. But, some gentlemen say, reform the system in this respect. Sir, do away with its secrecy, and you strike a fatal blow at its most distinctive feature, at the principle which underlies it all, and which is involved in its very name.

But, there is to my mind, another objection almost equally insurmountable. It is the strictly

ex parte character of the proceeding before Grand Juries. They are all on behalf of the crown, or State, and none but the counsel for the crown or law-officer of the State, are admitted to the conclave, while the jurors themselves are bound to keep them secret to the end of their lives. The party accused, is not only denied the privilege of being present, in person, or by counsel, but is kept profoundly ignorant of that which may seriously involve his liberty, or life. I hold, sir, that this is all wrong and inconsistent with the highest rights of the citizen, or the most judicious administration of the laws. I hold, sir, that there is no being who wears the human form, or possesses the attributes of our common humanity, who should be treated in such a way. However steeped in infamy, and stained with crime, I would permit him in all stages of a prosecution, to be confronted with his accusers, and to meet the witnesses against him face to face, with the privilege of cross-examination. Then he may elicit facts in his exculpation, and if witnesses, upon his final trial, make statements in conflict with their evidence upon the first examination, he has the power to prove it. Such a privilege should never be withheld. The State can afford to be manly and generous, and to give to the poor culprit, every opportunity to show that he ought not to be condemned.

The gentlemen from Cass, has well argued that no man should be accused without the consent of his peers. I meet the gentleman, on his own ground, and, even go much further. I contend, not only, that he should not be put upon trial, in a criminal proceeding, without the consent of his peers, but that the accusation should not be preferred upon a mere one-sided *ex parte* examination, in secret session, and where he and his counsel are forbidden to intrude. How such a plan can be less merciful or just, than the common system, I am wholly unable to imagine.

As has been forcibly remarked by the gentleman from Tippecanoe, Grand Juries, as at present organized, are often the vehicle for personal animosities. Petty malice would shrink from the face of day, while the honest purpose to bring an offender to justice, would ask no concealment.

The gentleman from Cass, has referred with propriety and effect, to a case coming under his own observation, in which a man was recognized by a justice of the peace, through the influence of popular prejudice, the complaint being dismissed by the Grand Jury. I am far from denying to the Grand Jury all merit. It is true, that individual cases do not settle principles, or establish rules, but, they may help to illustrate their truth and propriety. In contrast with the instance spoken of by the gentleman from Cass, I may be permitted to mention two cases within my own knowledge. of a

strikingly opposite character, from that related by him.

At the last Spring term, of the Marshall Circuit Court, I was employed by an aged man, just as the cause was called for trial, to defend him against an indictment for a common assault and battery. On reading the indictment, I noticed that the surnames of the defendant, and prosecuting witness were the same. I asked my client if they were relatives. He replied that the prosecuting witness was his son. I inquired with astonishment, why it was not reconciled, and why they permitted such a case to come into court. He said, that his son did not wish to prosecute it, but that he was compelled to do so. On inquiry of his son—a man some forty years of age—these statements were confirmed. I also, learned that a previous bill of indictment, had been found for the same offence, but was quashed for some informality in the empannelling of the Grand Jury. I stated the facts to the Court, and called upon them to order a *nolle prosequi* to be entered in the case, which, as I thought, was very properly done.

I can refer the gentleman to a still more notable case. It is preserved among the records of one of the northern counties of this State, that one of the best citizens of that region—a man some fifty years of age, whose character for integrity, and moral worth among his neighbors, is, and always has been, as far above reproach, as that of any man who walks this footstool, was indicted for perjury. In order that the case might be disposed of without delay, he consented to come into court, and sit quietly by, without uttering a word in his defence, either, in person, or by counsel. A jury was impanelled, they heard the evidence only for the prosecution, and they acquitted the accused, as they could not fail to do, without a dissenting voice, and without a moment's hesitation. The defendant had been long known in an older portion of this State, and I assure you, sir, that there are not two men living who entertain a shadow of doubt as to his innocence. I will add, that I believe the prosecuting witness was an honest man, but acting under the influence of temporary excitement and prejudice, from which, even good men are not always free,

In saying this, sir, I would not disparage the Grand Jurors themselves. I claim that there is no more enlightend portion of the West than that part of Indiana, in which it is my fortune to reside. I respect the Grand Juries of that region of country. They have been intelligent, high-minded men, intending honestly to discharge their duties, though I have often thought that they must feel humiliated at the nature of those duties, or rather at the manner in which they are compelled to perform them. I hold the fault to be in the system more than in the men. But how, it may be asked, could this man have been indicted? I cannot an-

swer. They acted in the dark. Suppose, sir, that those proceedings had been open and public—that the defendant had been permitted to be present with his counsel, and to cross examine and explain—think you that that indictment would have been found?

I admit again, that such single instances establish no rule; they are of but little comparative weight or importance. But if gentlemen can array individual cases showing the virtues of the Grand Jury system, we can array quite as many illustrating its defects. What practicing lawyer in this body, or what other gentleman accustomed to be about court-houses, but has seen evidence that the secret sittings of Grand Juries are often made the medium through which malicious or prejudiced individuals seek to wreak personal spite and spleen upon their neighbors? And who, if the present system is retained in its distinctive features, shall not witness it again?

Then, sir, if the system be defective, the question arises, what better can be devised? If no better system can be suggested—no one which we may safely adopt—then I would not be ready at this time absolutely to abolish the present one. I would rather leave it to the wisdom of the Legislature. But I would, by all means, so modify the Constitution as to give them power to act upon the subject. A slight verbal alteration would accomplish that object.

Here I may notice, sir, that it has been said that the cause of complaint against Grand Juries among the people is, that the laws are above the standard of public morals. There may be something of truth in the remark; but do not gentlemen give undue importance to the mere administration of the laws, in estimating its effects upon society? Men are not reformed by being incarcerated in jails, or sent to penitentiaries, or hanged by the neck. The reformation and regeneration of society must commence further back—far back as upon the mother's knee and around the domestic hearth. I would rather, sir, aye, a thousand times rather trust to the influence of *protected homes*, to sound, thorough, well-sustained free schools—to the teachings of the ministers of the gospel—the peaceful observance of the Sabbath—and to the quiet but all pervading influence of the christian religion, than even to the code of Draco, executed to its minutest letter. The one remedy is at best but palliative, superficial and repressive, while the other is curative and radical. The one is like plasters patched upon the surface, while the other reaches to the constitution of the patient and works a final cure.

Let me not be misunderstood. I do not undervalue these repressive remedies. I am no radical in any odious sense of that term. I would not discard the administration of criminal justice. While it must be admitted to be an evil, it is a necessary evil, of the benefits of which I would by no means deprive the State;

though I hold that it is useful mainly in proportion as it is open, and mild, and merciful.

The gentleman from Tippecanoe has suggested that the power of preferring indictments might be left with individual justices of the peace. Now, sir, it occurs to me that that is a power not to be entrusted entirely to any one man. Besides, there are some twenty or more justices of the peace in a county; and were any and every one of them to have the power to order a man to trial in the circuit court for any offense, I should fear that the number of groundless prosecutions would be increased: I thank the gentleman for his able effort in exposing the evils of the present system; but I cannot favor his substitute. I have not held any consultation with the gentleman on the subject. I am not disposed to find fault with any one's scheme. I only say, that before I would consent to abolish the present system by Constitutional provision, so that it could not be restored by the Legislature, I must see something clearly better to be substituted for it. That is with me a *sine qua non*.

The gentleman has said, that if the present system is a bad one, we must lop it off—*amputate it*. Now, sir, I agree with the gentleman that the present system, in its leading characteristics, is a bad one; but instead of lopping it off at once, I would be inclined to wait for the right time, and till the public mind is ripe for a change. *Festina lente*—"make haste slowly"—is a maxim no less valuable in politics than in the economy of life. How would a skillful surgeon treat a patient suffering from a malignant tumor? He would be careful not to amputate prematurely. He would feel his patient's pulse, examine all the symptoms, and wait for the favorable time. By the one course, the patient might be thrown into a fever; by the other, the wound might be healed by the first intention.

I cannot say that I am prepared to engraft any plan permanently upon the Constitution. My present idea is, that it would be best to leave the whole matter of a substitute to succeeding Legislatures, who may embody the wisdom and experience of coming years. By providing, as now, that "no person shall be put to answer any criminal charge but by impeachment, or by presentment or indictment," with the addition of these words, to be preferred by a Grand Jury, or in such other manner as the Legislature may prescribe, we would do all that seems to me necessarily to devolve upon this body. Give them the power, and it is my present opinion that the people will require the Legislature to provide a substitute for the present system. I consider that in its ultimate practical effect, it would be nearly equivalent to adopting the gentleman's resolution in terms.

A natural inquiry, in determining the main question, is, what substitute do you propose. Now, sir, without claiming any merit or origin-

ality, and with great diffidence on my part, and profound respect for the opinions of all other gentlemen, I will ask the indulgence of the Convention while I submit a few suggestions on this point.

The office of justice of the peace is at present considered an unimportant one, and the most judicious selections of persons to fill it are not always made. But I take it for granted, that somewhat in proportion as you dignify and give importance to the office, better men will be elected. Now, sir, it seems to me that a kind of court of inquiry, as perhaps it might be called, could be formed from among the justices of the peace in the different counties, somewhat after this manner. Let four or five of these magistrates be selected, in such a way as the Legislature shall prescribe, to constitute the court. They might be selected by lot, or what would perhaps be better, the four or five oldest justices of the peace—that is, those longest in commission—in the county, might *ex-officio* be the men to compose it: provided, however, that no two should be from the same township. This court might meet semi-annually or quarterly, or at such intervals as should be deemed best, at the court-house in the county. It should be their principal duty, on behalf of the State, to inquire into all such violations of the penal laws as should, in the language of the oath now administered to Grand Jurors, be brought before them or otherwise come to their knowledge, and upon sufficient evidence, to order bills of indictment to be preferred by the prosecuting attorney, against the parties accused and for the offenses charged. The parties accused would then be committed or held to bail as justice should require. And the causes would stand for trial at the next term of the circuit court. These proceedings would, of course, be all open and public. The party accused should have the right to be present in person, and by counsel, to hear all that was proven against him, and to cross-examine the witnesses for the prosecution. The accused could generally be present, if he desired it, and if not present, he could learn before he was brought to trial who were the witnesses, and the nature of the evidence against him. He could then prepare understandingly for his defense. This court might hear only the evidence for the prosecution, with the right of cross-examination on the part of the defendant, or they might be authorized to hear both sides fully, as should be found most expedient. In the one case the evidence should be such as to create a strong probability, and in the other, as to exclude reasonable doubt of guilt. Our criminal code is very simple, and such a body of men would certainly be as competent as the majority of Grand Jurors, to determine what constitutes a violation of any of its provisions. It is saying little for the intelligence of our people, to suppose that five such men would be

dependent on the brief charge of a judge for their knowledge of what amounts to a crime. But if that were thought very important, they could meet on the first day of the circuit court, and receive a charge and be under the supervision of the court. It would be difficult now to go fully into detail. As the proceedings before this court would not be in the nature of a trial, a complaint though once dismissed, might, as before a Grand Jury, be considered again, unless barred by the statute of limitations. Proceedings of this character are nothing final.

Now, sir, who are these justices of the peace, that we should be afraid of them? They are our fellow-citizens, elected by the people, and none the less plain, sensible, honest men than if they held no commissions. They are all, at present, conservators of the peace, and would be none the less so under the plan proposed.

Now I do not undertake to say that the system I have briefly sketched is what we need. But it does seem to me that something could be formed from it that would be better, at all events, than the present secret, inquisitorial and expensive system of Grand Juries.

Again, sir, this court might have the power to try and summarily dispose of, without the intervention of a jury, all petty offenses, such as retailing without license, smaller cases of assault and battery, gambling, and the like, in which the fine actually imposed by the judgment of the court, should not exceed some moderate amount to be designated. This tribunal would approach nearer to the character of a jury than to that of a mere court, and in this way much time and expense in the higher courts could be saved.

But gentlemen seem to fear that justices of the peace would act oppressively. Now I apprehend that there would be no great danger of the hard cases of which they speak. At all events, should they occur, the public would know it and they would know whom to hold responsible.

Mr. FOSTER proposed, that as it was after the usual hour of adjournment, if the gentleman from Laporte would give way, and consent to continue his remarks in the afternoon, he would move an adjournment.

Mr. NILES said, he preferred to finish what he had to say then, and if the Convention would indulge him a few moments longer he would conclude. He might be in danger of inflicting a long speech after dinner.

Several MEMBERS. We shall be glad to hear you.

Mr. NILES. No, sir. I prefer to go on now. Now, sir, the question is not what has been, what has come down to us from a remote antiquity, but what is best for us here and now. That is the question. I will ask every gentleman on this floor, suppose that now, for the first time, two methods of putting men accused

of crime upon trial, were suggested; the one being the present Grand Jury system, and the other similar to the one I have proposed, who, I ask, would hesitate in his choice? Suppose it were a new question, would any man, instead of the open accusation, preferred upon the direct responsibility of officers of the law, accept the burthensome, Star Chamber system of Grand Juries as now organized? And indeed if its feature of secrecy alone were removed, who would think of retaining so unwieldy a system as the present? I am by no means prepared to say that it is best to ingraft such a plan upon the Constitution, but I am far from believing, should the people have the power, and should it be their pleasure to adopt it, that it would not meet the wants in the case.

But, sir, gentlemen seem to fear that we are striking at the trial by jury. Sir, I do not call that *ex parte* and secret proceeding before a Grand Jury, a trial. I call that the trial by jury, when the party accused has the right to a change of venue from one county to another, and if need be, from one circuit to another—when he has the right of challenge indefinitely, till twelve men are found, who are impartial and unprejudiced—when the whole case is fully heard and the jury is called upon, by the defendants counsel, to allow something to the infirmities of our nature, and to deal gently with the erring, as they hope for forgiveness themselves; when the Judge charges in the spirit of Christianity and of the common law, that it is better that ninety and nine guilty men should escape, than that one innocent man should suffer, and that if there is one reasonable doubt as to the defendants guilt they are bound to acquit him—when if injustice is done he is entitled to a new trial, and when after all, if there be error, he has the right of appeal. That, sir, is what I mean by the trial by jury, a privilege finally wrested from king John at Runnymede, and one of our noblest birthrights. And, sir, with such a guard as that thrown around the personal rights of the citizen, I ask you if he is injured by being openly put upon his trial, by a tribunal such as I have indicated, when it is found that public justice requires that he should be tried? But, sir, let the public mind and public morals fester and grow corrupt and what is even the trial by jury worth—the trial by jury so identified with our civilization. But, I stand by the trial by jury; no man shall go further than I will in just encomiums upon it. My right arm should sooner fall palsied by my side, than I would assail or sap its foundations. When I assail a system far more in accordance with the spirit of a former and a darker age, let it not be understood that I make war upon the sacred right of trial by jury.

Then, sir, in conclusion, I have only to say that I feel the responsibility of the position I have assumed in reference to this subject—it is a responsibility which any man would gladly avoid. It may be, as remarked by the gentle-

man from Wayne, too heavy to be carried and too light to carry me. That matters not. It is my desire simply to do my duty. If the present system is evil in its essential features, as it seems to me that it is, I desire to see some better system substituted in its stead. But I repeat again that I would not be willing to see any system engrafted upon the Constitution, unless it should appear after the most thorough discussion, fully to meet the exigencies of the case. On motion by Mr. PETTIT, the Convention adjourned until two o'clock.

AFTERNOON SESSION.

The consideration of the special order was resumed.

Mr. RARIDEN remarked that he would not insist upon the right to the floor if any other gentleman wished to address the Convention at this time.

SEVERAL VOICES. Go on—go on.

Mr. RARIDEN. As it seems to be the wish of the Convention, I will proceed now, while the subject is fresh in my mind.

Mr. RARIDEN, I will not take up the time of the Convention by referring to anything irrelevant to the subject matter under discussion. I shall not even turn aside to defend myself, or to sustain my personal position, or to reply to gentlemen who have seen fit to remark upon my age, and from it to infer that my associations and predilections are so entirely with the past that I am unfit to advise in councils with reference to the future. I shall not stop to define my position, or declare the principles upon which my action is based. My action and my principles are known, and they must go for what they are worth.

But there is one misapprehension into which gentlemen have fallen, as to my remarks made day before yesterday upon the philosophy of Government, and which it is important should be corrected. I did not say that "the American people turned this *bauble* which we call a crown upside down." I did say that our forefathers inverted the whole theory of civil government, when they proclaimed the sublime truth that all power resides originally and exclusively with the people, and that government possesses no powers except such as are specifically delegated to it by the people through their delegates, whereas the old and monarchical theory was that kings rule by the grace of God, not by the grace of the people; that all power resides with the king, and the people have none except such as is granted from the crown. Therefore I said that Grand Juries, or the institution that may have stood as the prototype of our Grand Juries, although they may at first have been used as the auxiliaries of monarchs, and at times subverted their interests as opposed to the liberties of the subject—I say although Grand Juries may have been thus perverted under a monarchical form of government, that in

the inverted order of the political edifice reared in this country, they were eminently conservative of the rights and reputation of the citizen.

Well, sir, I wish to notice some of the objections that have been made to Grand Juries. The gentleman from Lafayette says that they are relics of kingly power—unfit to be retained by a free people. Another objects that its practices are inquisitorial, inasmuch as its sessions are held in secret, and *ex parte* testimony only taken. Another gentleman sums up his reasons for supporting this proposition of the gentleman from Tippecanoe (Mr. Pettit) by saying that Grand Juries are too weak to punish the guilty, and too impotent to save the innocent. And still another denounces the institution on the ground that it is the hand-maid of malice, and encourages malicious prosecutions, and inasmuch as England has taken the initiative step in their abolition, we should not be behind her.

I like the spirit thus far—I admire the temper manifested in this debate—I admire the open boldness with which opinions are avowed, but I take the position that instead of the institution being obnoxious to all the sweeping charges I have briefly recapitulated, that it is the hand-maid of virtue and order—that its foundations are laid deep in wisdom and in love to mankind, and that it is admirably calculated to preserve those rights which inherently belong to the people, as well as those they have delegated to the government for their own good.

It is not a relic of kingly power. I admitted in the beginning that in its earlier history the Grand Jury might have been made an instrument in the hands of the king's minions for the upholding of the prerogative of the crown, but this is an accident of the system, not an inherent principle of it. For in its establishment the system was certainly looked upon by the people as an amelioration of the power of the king; and that amelioration arose from an inexorable law of human nature. The king himself, acting from his own feelings, might never have trammelled his power with such inquisition, but the caste of English society ranking second from the king could not forget the caste next to them; their associations and sympathies were more with this third class, and thus the nobility of England wrung from the crown the concession of the right to all citizens to be first adjudged worthy of trial by a Grand Jury before they could be publicly tried by a petit jury. Therefore, I say, that the Grand Jury is no more a relic of kingly power than any other institution of society originating at so remote a period.

Now, sir, for a moment let us look at the philosophy of this thing, and, although I am not accustomed to refer to books in debate, I will refer to one or two upon this occasion. In the writings of the great philosopher, Montesquieu, it is asserted, and Thomas Jefferson fully com-

mends and endorses the sentiment, that the right of society to punish criminals is founded in the original compact by which men resolved themselves into a society. Men, when they formed society, agreed to give up so much of their natural rights as were inconsistent with the good of society at large. Among other things, each individual agrees to give up the right of redressing his own wrongs, and to refer his grievances to the judgment of the mass of society, or to that tribunal established by that majority, for the redress of wrongs. The tacit acknowledgement of every person when he enters society, is, that he will obey the code of morals agreed upon by the majority, right or wrong. Now, then, who is to determine whether a member of society has broken this code of morals or not? Who is to accuse him? While the Star Chamber was in existence, the king accused the subject, who was forthwith brought to trial. But in this country, the king, which we call the state, has neither the power nor the right to accuse a person of crime, and bring him to trial. So jealous were our fathers of the power of the state, and of the rights of the citizen, that the Grand Jury system is so arranged that the citizen must be adjudged worthy of trial by his neighbors and peers, selected from the population of the vicinity for that purpose, before he can be brought to public trial. For one, I confess I am astonished when I contemplate the wisdom and humanity shown by our forefathers in all their political acts. We are accustomed to look upon the unlimited power of the king with fear, for we have seen, in the earlier history of our own country, evidences of that power perverted for the oppression of the subject. We see that our fathers were taken beyond the seas to be tried by and among strangers, for imaginary and ideal offenses committed against the crown of England. Our fathers saw and felt all these evils, and hence the great care and caution we everywhere see displayed in their acts for us. They did not provide, as the gentleman from Tippecanoe (Mr. Pettit) would have had them do, that a man should be charged with a crime, publicly examined, indicted, and the sentence of the law executed, all within the space of half an hour. They did not provide that your Governor or judge, could charge a citizen with crime and put him upon his trial therefor. No, sir, they did nothing of the kind. They even held the personal liberty of the citizen sacred, unless twelve of his fellow citizens and peers, upon their oaths, adjudged him worthy of arrest and imprisonment. Nor did they stop there; they were afraid to put too much trust in the judge—he might be powerful, and disposed to create a public sentiment against the accused; they would not even trust the man who had made an affidavit against his neighbor, to sit on the jury. The great safe-guard, then, of the rights of the citizen, is the Grand Jury. Its members are not appointed by the crown or the

state, but through the elective franchise, and are component members of society, with whose interests and happiness their own is inseparably interwoven. They are supposed to be men of respectability, to whom the characters and the lives of their fellow citizens may be safely entrusted; men, in whose breasts sentiments of truth and humanity are uppermost; men of firmness and discretion, who cannot be carried away by the hope of popular favor for the fear of popular fury.

But, the gentleman from Tippecanoe (Mr. Pettit) says that the delay in justice, growing out of the system of Grand Juries, is great, and that but one in twenty of the guilty are ever punished. This may be true, and it grows out of the great caution which the spirit of the institution impresses with regard to the life, liberty, and property of citizens. The gentleman also says that the institution is inquisitorial in its nature and process, and another declaims against it because all the evidence is of an *ex parte* character. Now, so far from depreciating the secret and *ex parte* features of the system, I sincerely think they are the most humane and pacific that could have been devised. If you make the examination public, it must be conducted with all the attendant expense, forms, and delay of a regular trial. You array man against man, create partizan combinations, publish the whole matter to the world to begin a trial upon, and subject the whole public to very great inconvenience, and probably great excitement, and all for the purpose of deciding whether or not there shall be a trial. Therefore, I maintain that public convenience no less than the public good, is fully consulted by the examinations before the Grand Jury, composed of such as our laws contemplate, being conducted in secret. It is not until after the complaint is made, a Grand Jury empaneled, a full investigation of the case had, and a bill of indictment found, that the State can touch the person or property of the citizen. Then the prisoner throws himself upon the justice and mercy of the country, has his witnesses called and examined, and himself heard either personally or by counsel, before a petit jury. But if a public examination is to be had, with counsel and witnesses in the first place, why go any farther at all?—why not, as I before asked, let acquittal or conviction follow the decision of that public examination?

The gentleman from Laporte has well observed that the origin and necessity for Grand Juries lies far back in the cradle of society; and I might admit all the frailties and imperfections to exist in the Grand Jury system, charged upon it by the gentleman from Tippecanoe, (Mr. Pettit,) and still be able to demonstrate its superiority to any other proposed by that gentleman. There never has been and there never will be an institution devised by the wit of man, that will not be imperfect as its maker. Hu-

man institutions must, of necessity, partake of human weakness and frailty. Not until humanity shall have reached the omnipotence and the omniscience of the Creator of men, will its political or its moral institutions be free from imperfection and attendant inconveniences. It is not that I consider the institution of the Grand Jury as a faultless one that I support it, Mr. President, but because it is the best and the most perfect that the wisdom of centuries has given us, and I beg leave to say that the wisdom of the past is not yet eclipsed, in this regard at least, by the wisdom of the members of the Indiana Constitutional Convention.

Well, sir, another objection to this "inquisitorial" and "*ex parte*" system is that "it is the handmaid of malice." I frankly admit the possibility of the system sometimes being made subservient to the will of cunning and malicious men—to some extent—never after full trial—but then where is the substitute that is not obnoxious to the charge of like defect? Certainly it has yet to see the light of this Hall. Does a public examination repel every suspicion of this kind? Who is your examining magistrate? He may be at the head of a powerful party and every gentleman within the sound of my voice knows the temptation to err, which would be presented in the fact that the accused belonged either to his own or the opposite party. He may desire to serve the one or injure the other. As I have before said, so I now repeat, that the Grand Jury system has its defects and inconveniences. But, although the evil is first recognized in connection with the Grand Jury, the cause often lies far back of it.

Mr. President, let me call your attention to one fruitful cause of some of those evils which a superficial observer is apt to charge upon this system. *Legislation has gone ahead of popular opinion.* The criminal code embraces many prohibitions which the people do not condemn. And though this may not be true of the whole State, it is true of certain portions of the State. For instance, the Legislature passes a stringent law against the sale and traffic in ardent spirits and provides punishment for the offence of selling. Now the moral sense of a portion of community is not up to this standard. Consequently, the liquor seller, knowing that he has the sympathies of a large portion of the community with him, will traffic in an article which the community wants. The laws of trade, when quickened by popular taste and passion, are no more to be restricted by an enactment of the Legislature than is the law of gravitation to be suspended by a Governor's proclamation.

If, in any community, there is an appetite for liquor, and the grocer keeps that stimulant, he will have customers. If the Legislature forbids the sale some means will be found to evade the language of the statute. It may be that the vender will give away the liquor and charge a dime for a sight of the glass containing it. Or

it will so happen that every customer will have some ailment, real or imaginary, making it necessary that he should take a little brandy for medicinal purposes and petit juries of the same tastes are predisposed to admit such necessity. Now I am not advocating or commending these evasions of the law, but what I wish to call attention of the Convention to is the fact that it is almost impossible to convict a liquor seller even after he is indicted by the Grand Jury. This is known to all. But, gentlemen say that the law is plainly violated and, therefore, the Grand Jury is impotent to punish the violation. I answer, go back to the Legislature and see that no laws are passed in advance of the moral sentiment of the people. Or go to the petit juries and correct their appetites and moral perceptions. The Legislature, not the system of Grand Juries, is at fault in many instances, if fault exists.

Mr. President, I do not desire to take up more of the time of the Convention on this subject; but I must express an earnest desire that the fullest consideration will be given to the subject, that we may not rashly abolish what the wisdom of centuries has approved. I believe that if public examinations are substituted for this system, there will be more licentiousness, more impudence, and less fear of public opinion in society than there now is. By licentiousness I mean that spirit of bullying, through the combination of kindred spirits, in the absence of this wholesome restraint. Many reputations would, in spite of the refusal of the examining magistrate to commit for trial, be ruined by the mere fact of a public examination. All the influence that wealth and social position could muster would be brought to bear upon such examinations, for or against, and the ends of justice be too often defeated. Let us preserve the Grand Jury system until the people are convinced that a better has been discovered. The very dread of an investigation before that tribunal, in the absence of the before-named influences, makes the guilty tremble and often flee. It is in itself a powerful moral and popular restraint upon crime.

I would ask gentlemen if there is not something in the idea of such a tribunal, selected and charged as it is, calling upon the most respectable citizens in the State to appear before them to aid in the great work of maintaining public morals and private rights through the inquiries they may see fit to make in regard to the subject and interests which have been confined to their guardianship. If there is such a state of insensibility in your neighborhood as to feel no repugnance to exposures of crimes through such a tribunal, your clergymen and your Sunday school teachers, missionaries and bible societies, have not done their duty, or have been met with fatal counteracting influences; above all, your mothers and female friends, to whose efforts a Grand Jury is auxiliary, have been derelict in

their duty if your people applaud or censure. The gentleman himself may not be a worker in the great cause of virtue and of holding up vice and crime in their true aspect—if he is not he ought to be—and all of us ought to be engaged in it more than we are. This would give a virtuous public sentiment the form of penal enactment and be a protection to property and reputation. Think for a moment of the care with which a man's life and liberty is guarded in society. You cannot arrest him on your own opinion or feelings and have him taken into custody. You must yourself be responsible for the correctness of the accusation, and the charge must be of a character that involves criminal punishment and be made upon oath. Even this is not all. The liberty of the citizen is still too sacred to be lightly endangered, and if the accused can give security for his appearance to answer at the required time he can have his liberty in all cases below capital crimes. Let me say in regard to this matter, that I maintain this philosophy in regard to crimes, so that I do not believe much in hunting down or bolstering up men, because I am satisfied that the guilty can easily be brought to justice through the ordeal of public opinion. There is a divinity in truth and virtue that speaks for itself, and there is the mark of Cain upon crime that all the world can read—the man who is innocent of crime will show that innocence outwardly. Truth and virtue, infixed in the mind, shines forth in the countenance—in the whole exterior of the man. Guilt, crime, and falsehood wear like iron into the very soul, causing ruin and desolation of feeling to set enthroned. Cain of old was not the only man who bore about him the mark of evil—there are Cains of modern times, whose thoughts of mischief, either done or contemplated, so long occupying the mind, look out and warn the sagacious of virtuous mould of the presence of a devotee at the shrine of falsehood and vice. Crime, falsehood, and brutality, ever shun the paths of wisdom, truth, and benevolence—may effect to adore and practice, but the armour will not fit the statue, the garb looks not as if made for the wearer, and the brand becomes visible.

But, says the gentleman from Tippecanoe, the prosecuting attorney can influence the Grand Jury as he pleases; he can cause them to bring in or drop an indictment. The gentleman further said, that he had never had but one Grand Jury who refused to do his bidding. His charge is therefore general. Now, sir, I know nothing of the character of the men composing the Grand Juries with which he has had to deal, but such is not the course pursued by the Grand Juries of old Wayne. The men who form them there have too much respect for themselves as American citizens, as men, to bow to the will of any one of their fellow men, and give themselves to the furtherance of the designs of malice or the attacks of private hatred. And, sir, allow-

ing that an individual might be made a mark for persecution by the prosecuting attorney, let the State of Indiana, through its representatives, attempt to seek out such a victim, and to put its sacrilegious hands upon an innocent man, and let the people suspect the fact, and you will soon see the American spirit in a restive Grand Jury, and the machinations of the wicked rebuked. Inform the people of the fact that a man is about to be victimized to the prejudices or malice of some one engaged in the prosecution, and they will bear him off triumphantly in spite of all that may be brought against him by false witnesses. The *Grand Juries* are responsible only to public sentiment, and by that sentiment they will be arraigned for misdemeanor. If they permit the guilty to go free, or to arraign the innocent upon insufficient evidence; if they indict the innocent through bad motives or influence, they will render themselves odious to the community. And there is at present great liability to their subjecting themselves to the indignation of the people, while subjects of indictment are so multifarious as they are in our code. I do not pretend to say that the Grand Jury system is perfect; I do not mean to say that all the subjects that are now subjects of inquiry before the Grand Jury ought to be indictable; but where a man's life or liberty is at stake, I would intrust it in their charge more freely than in any other body I can think of. I stand upon this as the life-guard, and never will I consent that any of those I hold dear, and with whom my destiny is interwoven, shall be subjected to criminal prosecution through any other tribunal. For your horse-racing, gambling, drinking, and other common evils, the justices will answer; they can try and punish such offenses.

My private opinion is, sir, that, should you abolish this system and cease to make crime and its causes a subject of inquiry before the Grand Jury, that crime will multiply and be perpetrated with perfect impunity. Our penal laws will be a dead letter; crime and its partizans will be too strong for punishment before such tribunals. The ways of the sinner are loved best. The mass of the people do not come up to the morality of the penal code, or, at least, if there is a small portion who are in favor of order and virtue there, that portion do not like to subject themselves to the denunciations of able and dangerous men, who know how to raise up the public voice against them. They do not like to be made the victims of the wrath of cock-pit and grocery bullies, and their voices are hushed. It requires, therefore, the aid of a Grand Jury, composed of the most respectable men of the community, and sustained by the confidence of the order-loving portion of community, to overawe the more degraded and reckless portion of the community. A man under the imposing circumstances that are connected with the convening of sixteen of the most intelligent men of

the community, to sit in judgment upon crime, is less likely to commit perjury than before a smaller and less august body. Vice confronted with virtue will show itself. Old Nick cannot sustain his men to the last. If an innocent man is arraigned no power on earth can make him quail; the stronger the persecution the more determined is he in the maintenance of his innocence; but the guilty quail when brought before it. The elevated character of the Grand Jury—their manner of organization and manner of inquiry is a great preventative to crime, and a part of their power, a consciousness of their uprightness and intention to administer strict justice, has a weighty influence on the minds of the people. These Grand Juries are a part of the machinery of government, that cannot be dispensed with. The welfare of society and the protection of the citizen depends on their perpetuation and public esteem. Their virtue and intelligence give weight to their administration of justice.

A reverence for the moral and upright man is to be found in the mind of the most vicious—it is taught from the pulpit, in the Sunday school, and in the daily associations of life. Why, sir, let me put forth a sentiment here, which, whatever may be thought of the power and influence of these things by those who favor a loose code of morality, is, nevertheless, a practical truth, and that is, that one prayer meeting in a small town or village, well attended, is a greater protection to the rights and persons of the inhabitants of that town or village, than a regiment of soldiers. The moral and virtuous feelings of the heart from which spring the principles of justice and honesty, are kept alive and fostered by such meetings; and though at first of but little power, soon spread from heart to heart and operate on the whole community. Vice conceals its hideous face from the pure and searching gaze of such, and seeks its dens and hovels, to riot in. It is stealthy and cowardly, and requires the powers and vigilance of a Grand Jury to unkennel and unmask it.

Sir, there is nothing tyrannical in the inquisitorial functions exercised by this ex-parte tribunal. It is necessary to the unmasking and punishment of the guilty and the triumph of the innocent. It is far better to appear before such a body than before some justice of the peace or other functionary, who may take upon himself the rectification of public morals, and who may have the code of his party or partisans to sustain. If a man has a good character he is more likely before a jury of sixteen upright men to receive all the benefit and protection that character can afford him. And there is nothing disreputable in the inquest; it is a matter for the convenience of society alone, and as such should be conducted on the highest principles of equity and justice. These inquests are objected to because of their secrecy. Now, sir, I deny that they are secret. The

Grand Jury is a tribunal known to the courts of law and to every one; all are acquainted with its functions and the subjects of its inquiry, and for what it meets. The inquiry in regard to individual misdemeanors is alone secret, and that precaution is for the public convenience as well as for the security of individuals. For if the innocence of the accused is made clear, he goes forth to the world with a name more honorable than before—he has passed through the fire and came forth purified. Sir, I love and venerate this old institution. I do not love it for its antiquity, but for its wisdom and humanity—for the good it has done and is still capable of doing—because it protects and sustains the nobler rights of every member of society, at the same time ever maintaining those rights that society has voluntarily bestowed on the government for the good of society. Let these rights be violated—let the arm of law that protects be displaced or enervated, and society will fall into a state of anarchy, and the wicked will reign. Sir, this, as I have said before, is an old institution, and whatever has been handed down by our ancestors that has shown its capacity to administer to the maintenance of a just and wise equipoise in the progress of society, and the support of law and order, I am not disposed to lightly cast aside. I cannot consent to the proposed substitute for this system—I am getting too old. Twenty years ago I could have met even my friend from Tippecanoe in argument with tongue and fists before a justice of the peace. But the strength of my arm is now waning, and I keep no brace of bullies to do the work I hiss them on to. No longer can I with ready brain and easy conscience stand up as an advocate of the accused when I know he is guilty. My time has passed for that, and it remains for others to come forth and take part who have not such hindrances. I have not, sir, in these remarks attempted to defend this old institution against the accusations brought against it. It may have been perverted in the hands of monarchs, and in the hands of Lord Jeffries of England it did cause innocent blood to run—but in the hands of American republicans it stands a tower of strength to shield the oppressed and guard the rights of our citizens. There is no power to awe it, and gold or patronage cannot corrupt it. It must ever remain a true type of the virtue, intelligence, law-loving sentiment of the mass of the people from which it is extracted.

Mr. STEELE remarked, that his friend from Wayne (Mr. Rariden) and himself in 1833-4 used to work in the same harness. They were old associates. He thought the whole point of the debate here lay in the fact whether they should have a double or single span of jurors; the double span as it was well known putting the State to double expense.

He desired to refer the Convention at the outset to the sixth article of the amendments of

the Constitution of the U. S., proposed by Congress and approved by a majority of three fourths of the Representatives of all the States in the Union, as upon that article he intended to predicate his remarks. It was as follows: "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence."

This, he said, was the climax of the right of a trial by jury, and fully supplied all the jury necessary to insure complete justice to the State and to the party accused. Grand Juries were selected by the county board, and their course dictated by the prosecutor, and yet gentlemen spoke of the Grand Jury with all its secrets, and one man power as truly republican. The prosecutor in many instances, had only to point out the object of his vengeance and direct the course for the jury to pursue. He had it in his power to delay or defeat justice, and increase the expenditure of our courts.

Mr. S. said, that he would in this connection, suggest another reform which he would commend to the attention of gentleman. By the laws of the State there were sessions of courts of record but twice a year in each county. This produced a great inconvenience, and oftentimes a great expense to the people, because there could be a general jail delivery but once in six months. This was an evil considered with reference to several results. Sometimes the innocent lay too long in prison awaiting a trial. The evil effects of this would be readily recognised by all. If the prisoner had a family they must suffer in his absence, and whether he had or not it was against the spirit of our laws to deprive any citizen of his liberty one hour longer than the good of society at large absolutely demanded. On the other hand, criminals were kept at the expense of the county, and kept in idleness for months when they should be working for the State at Jeffersonville. For these reasons he wished to see a general jail delivery in each county once in three months. He knew this was a degression from the subject in debate, but as the Convention was discussing and proposing reforms he thought he would, while on his feet, bring forward this.

Although he was not in the habit of speaking often himself he desired that the fullest latitude might be given to debate, and that the Convention would not adjourn from day to day until all who desired to do so, had taken a part in the debate.

Mr. KELSO. I assure the Convention that I have no disposition to make a speech, but I

think it would be well enough—at least it would not be very much out of place—to ask, at this stage of the debate, what it is that gentlemen are talking about? [A laugh.]

The subject has, I confess, been calmly conducted, and argued with a commendable zeal; but, sir, it does seem to me that gentlemen have first made a man of straw and then pelted him most unnecessarily. I call the attention of the Convention to the fact, that there is not a word in the Constitution of Indiana about Grand Juries. Why, then, talk about abolishing the system? I maintain, and I believe that many will agree with me, that the proposition now before us, is a proper and legitimate subject for legislative consideration, and for legislative consideration alone. And if so, why not leave it there, and let them dispose of the matter as the people may demand at their hands? There is not the slightest danger that the Grand Jury system will live in Indiana one year after the people of Indiana have expressed their preference for some substitute, whether a system of public examinations or otherwise.

The twelfth section of the first article of our State Constitution says, that no person arrested, or confined in jail, shall be treated with unnecessary rigor, or be put to answer any criminal charge, but by presentment, indictment or impeachment.

Now, does it follow that an indictment, presentment or charge, can only be found by a Grand Jury? Were Grand Juries abolished to-day, would society be impotent to secure the indictment of a known horse-thief to-morrow? Not at all, Mr. President. Five or six justices of the peace, sitting together and taking testimony for that purpose, would be entirely competent to present a charge in due legal form. You can call it an indictment, a presentment, or an impeachment, just as you please, but the indicted person will certainly be tried, as promptly and solemnly as though upon an indictment found by a Grand Jury. And the question I desire to ask of members is, why should we, in this Convention, take it upon ourselves to debar the Legislature from attending to this matter? The House of Representatives comes up here fresh from the people every year, or every two years, if this Convention decides on biennial sessions. The members of the Legislature are, at each session, intimately acquainted with the opinions and desires of the people from the midst of whom they have just been sent up to the Capitol, because the people believed that they would represent those opinions and desires, and will not a Legislature, thus constituted, be a safer and a fitter place for the discussion and disposition of a proposition like the one now before the Convention, than this Convention?

By examining the constitutions of some seven or eight States whose constitutions are of the latest date, you will find that but three of

them say anything at all on the subject of Grand Juries. Some of the constitutions simply prescribe that a citizen under arrest shall not be put to answer any criminal charge until the charge is presented in a plain, fair, and legal manner; that would certainly amount to an indictment. And I ask what difference does it make from what source or tribunal it comes, so that it be a good and a sufficient indictment? Then, sir, it seems to me that we are taking upon ourselves too much; more, indeed, than the people of Indiana require of us to take upon our shoulders when they elected us to come up here and form the organic law of the State. We should not tie up the hands of the Legislature, but leave it to retain or abolish the institution of the Grand Jury just as the indications and necessities of the times may require. Nothing but the statute laws of Indiana require that before a person can be put to answer any criminal charge he must first be indicted by a Grand Jury; and it is notorious that these statutes are continually changing, and mostly for the worse.

We have gone on for thirty-four years under the old system, and this is the first time I ever heard of a constitutional provision for the abolition of Grand Juries, except just previous to the election. While my colleague was canvassing the county, the question was for the first time presented to him, and he was asked whether or not he would, if elected to the Convention, vote for a proposition to abolish the Grand Jury system? The question being a new one, he replied that the subject had been sprung upon him, and that it was done too suddenly to allow him to give an opinion upon it. In many places in the State the subject has not been heard of—in others perhaps it has been slightly discussed.

I understand the question now pending before the Convention, to be upon the amendment to make the resolution of the gentleman from Tippecanoe (Mr. Pettit) a matter of inquiry as to the expediency of the change proposed. It seems to me that no change is necessary, but I think that the amendment is a proper one, and that it should be referred to the committee as a subject of inquiry.

In my opinion, it is better that the whole subject should be left for the action of future Legislatures.

Mr. HOWE. It is not my intention to debate this question. I have neither the power to interest the Convention on this subject, nor would my inclination lead me to do so if I had. If this were a young men's debating society, and not a legislative Convention, I might perhaps, choose to enter into the discussion. I think however, that all we want to get at is the general heads or topics growing out of this question. I must say, in brief, if the main question is, whether the Grand Jury system

shall be abolished or not, I am opposed to its abolition, and in favor of retaining it. At the same time, I frankly admit with the gentleman from Tippecanoe, that there can be no sort of doubt as to the evils of the system as he presented them. But I have one rudder by which I shall guide myself in relation to all questions of constitutional reform, and that is, that I am opposed to all reforms, unless the grounds for them are manifest and apparent. So long as the existing system of things can be retained, I am in favor of them. If they have evils, let them be remedied, if they are susceptible of amendment.

Now, what are the evils complained of? There is but one on which much stress is laid, and that is the secret and *ex parte* character of this tribunal. That is the only ground—the only argument that can be brought forward. I feel and frankly admit that it exists. Now, if there is to be any change at all in the Grand Jury system, my proposition is that a Grand Jury shall not investigate any matter, except the punishment be of a capital character, or at least imprisonment in the penitentiary. The lesser offenses, I think, may with great propriety be submitted to a police court, or a police magistrate; I care little which. As to the proposition to abolish Grand Juries, I am opposed to it in the abstract, for two reasons: In the first place, I think that every part of our old Constitution—and especially those parts which relate to the punishment of criminals—should be retained if possible. If there are evils existing in it, amend them; and in the next place, if there were no other reasons for retaining all the provisions of that Constitution than those which have been urged for abolishing some of them, those reasons would be sufficient to induce me to retain them. In the present day, when we hear of nothing but proposed changes, I think it is the proper time for the truly conservative party to stand still. This is the proper time for every man who is anxious to retain the liberties of the country to take a conservative part. That consideration would be sufficient to induce me to go against abolishing the Grand Jury system. Now, the grounds in relation to this main proposition have been eloquently set forth by many gentlemen, and particularly by the gentleman from Cass. I could not, were I ever so willing to do so, give so eloquent and forcible a statement of the evils which would arise from abolishing this system as he has given. The same reasons that existed for retaining the system in England a hundred and sixty years ago, would be equally good reasons for retaining it now. If it was a good system as between the subject and the crown, it is now equally important as between the American citizen and the mob. There is, I am sorry to say, a growing disposition to take from the arbitrament of the law those questions which properly belong to it. If there is to be any

change in the Grand Jury system, I would propose a change something like the following:

"Public examinations should be substituted for indictments or presentments by a Grand Jury in all offenses, the punishment whereof shall not be death or imprisonment in the penitentiary; and in all cases a Grand Jury may send for and examine the witnesses for the accused, as well as for the State."

There may be gentlemen who agree with me, although I do not know that there are. However, these two reasons which I have stated would weigh sufficiently with me as to the main question, whether the Grand Jury system should be abolished. If it should be decided in the negative, then I am in favor of this amendment for the reasons I have given.

Mr. MATHER. Mr. President, occupying the position which I do on this floor, as one of the youngest and least experienced members of this Convention, it is with a great deal of diffidence on my part, that I rise to address you, and through you the members of this Convention, on a subject of so great importance. I feel this diffidence more acutely from the fact that so many able men have preceded me in the discussion which has already taken place. But, sir, I think I see a spirit manifested here by both parties and on both sides of this question, to give a patient and candid hearing to all that may be said *pro and con*. This I am glad to see; and I am exceedingly glad to see it upon this subject, believing as I do that the resolution of the gentleman from Tippecanoe should be adopted by the Convention, because I believe the more the proposition is considered the more it will be likely to strike favorably upon the minds of this body. A great deal has been said upon the subject of the origin of this institution. History has been quoted to show that it is of ancient date, and that it has been used as a supporter of the crown of Great Britain on one hand, and of the rights of the subject on the other—those who opposed the resolution taking one position, and those who are in favor of it taking the other; some insisting that the retention of it in our system of jurisprudence is necessary for the purpose of enabling the State more thoroughly to prosecute persons who may commit offenses against the law; others contending that it will operate as a security to the rights of the accused himself. Such is the variety of views which have been taken by gentlemen in regard to this question. Allow that either of these principles is correct, as it applies to the Grand Jury system, as it has existed and does now exist within the kingdom of Great Britain—can the same reasoning be applied to its existence here? Can it be said that if the Grand Jury system ever was necessary to the support of the crown of Great Britain, that the State of Indiana, with a government whose foundations exist in the very hearts of her people, need any such support? And, on the other

hand, can it with truth be said that a system which calls upon any set of men to set in secret conclave upon the rights of others, affords any protection to the citizen? It seems to me that it cannot. I hold it right enough that we should look to the experience of the past to guide us upon this as all other subjects; but it seems to me that if we approach a little nearer to this subject, and come down to the institution of Grand Juries as we find it here to-day existing among us, and examine its practical operation, as applying to our own people, we shall find that many of the reasons advanced in favor of the institution as applicable to Great Britain, do not apply to it as it exists here. Gentlemen who have preceded me upon this subject, have quoted the opinions of Mr. Jefferson and other eminent men, showing the sacredness of the right which every man has of being tried by a jury of his countrymen. I admit, Mr. President, that this is one of our dearest and most sacred rights; but it occurs to me that a marked distinction ought to be drawn between a Grand and petit jury; and some who have spoken upon this subject seem to think that the intention of the supporters of the resolution, is to do away with all right of trial by jury, and not only so, but also the right to the writ of habeas corpus. This, I apprehend, is a great mistake. What is the proposition? It is simply to do away with Grand Juries, and to adopt public examinations in their stead. We have been told that the Grand Jury system is necessary in order to enable the State to bring to punishment a person for breaches of the criminal code. If this be so, then it seems to me that it applies with more force to that class of cases which we usually style misdemeanors, than to that class of cases which are called felonies. Now I have no doubt, Mr. President, that a majority of the members of this Convention will be in favor of some change or modification of the present system of prosecuting criminal causes. But the difficulty seems to be as to what shall be the substitute. Some say "give to justices of the peace, or some other court, the right to enquire into and punish misdemeanors and minor offences." If Grand Juries are at all needed, if they are useful for any purpose, in my judgment, it is in the examination of charges of misdemeanor that their greatest utility consists. We all know that in cases of felonies there are usually plenty of men to be found ready to prosecute.

Again, gentlemen who oppose this resolution do not seem to consider that the majority of cases brought before Grand Juries have their commencement in proceedings before justices of the peace. The gentleman from Wayne remarked that it would be a great public evil to have courts of this kind always open, where examinations might be had—that it would become a public evil from the fact that the courts were always open. Why is not that now the

case? Is not that the exact situation in which we now find ourselves? Have not justices of the peace authority, on complaint of a party, to apprehend any man who has committed an offence against the laws of our State? Is it not known that that is the practice everywhere? And yet we are told that if courts were substituted in the place of Grand Juries, they would become a public evil, from the fact that they were always open to hear examinations of this kind. Can this be true? If there be argument and reason in this, I must confess that that argument and that reason have failed to convince my mind of the fact. I have had some little experience in this matter of Grand Juries. It has been my fortune, whether good or ill I will not say, to have been prosecuting attorney for two years, in the 9th judicial circuit of this State. During that time there were some eighteen convicted and sent to the penitentiary from that circuit, and, out of the whole of that number, there was not *one* case that had its commencement with a Grand Jury. Why, sir, before the Grand Jury met, the defendant was either in jail or under recognizance to appear and take his trial. What had the Grand Jury to do with the matter? Simply to call the witnesses for the State before them and examine them again, touching a matter which had already been examined elsewhere—a mere matter of form more than practical utility—and to present an indictment to the court. After which the same witnesses are again examined when the defendant is put upon his final trial. The question has frequently occurred to my mind, “in all these cases, what was gained to the public or the defendant by the interposition of the Grand Jury?” It seems to me that there was absolutely nothing. On the other hand, I do believe, with the gentleman from Tippecanoe, that nineteen out of every twenty cases of felony which originate with a Grand Jury, will fail on trial before a traverse jury. It is true that now and then there may be a case which will result in conviction, which has had its commencement in this way; but such cases are only those where the defendant has fled from his state and gone beyond the jurisdiction of the court; because, I do believe as firmly as I do in my own existence, that there is an inherent feeling of right and justice, and a disposition to see the laws executed inherent in the organization of every good citizen of our State, that will bring the man who has been guilty of any flagrant violation of the laws to immediate punishment. In other words, there will be found persons in every community who will readily go before a justice of the peace and file an affidavit and cause a man, who has been guilty of a flagrant crime, to be brought to punishment. This has always been the case, and, unless we greatly fall from our present position as a people, it will be the case in time to come. I say, therefore, that in felonies there is no necessity that the inquisitorial character of a Grand

Jury should interpose in order that crime should be punished; and if anything can be shown of its usefulness, it must be in those small offenses regarding which there would be less disposition on the part of the neighbor, to make complaint.

The whole question, it appears to me, narrows itself down to this: Is it necessary for the support and proper enforcement of the laws of our State that an inquisitorial body should be established amongst us? that a body of men should be called together whose oath and duty should impose upon them the necessity of bringing witnesses before them for the purpose of ascertaining whether it is *possible* that some offenses might not have been committed within the county since the last sitting of the court? If there be any gentlemen upon this floor who believe that this is necessary, I say to them “you do right in opposing this proposition.” But on the other hand, to those who believe with me, that there is that sense of justice, that disposition to see the laws properly executed, existing in the breasts of the citizens of our State which will insure the punishment of crime—to such I say that we have no need of Grand Juries, because to my mind the only argument that can be adduced in favor of retaining the system is the fact that by the secrecy of a Grand Jury you may be enabled to inquire into smaller offenses which perhaps might escape conviction and punishment from a want of that moral courage on the part of the person complaining which always arises from a disposition to do equal and exact justice to all.

I will not, Mr. President, detain the Convention longer upon this subject. I did not intend to have spoken upon this question this afternoon. Indeed it was my intention to have passed it over in silence. What few remarks I have made have been somewhat confused. I have spoken without arrangement and without notes. I have not attempted to follow at length the arguments of any gentleman who has preceded me. I offer these remarks from a feeling of duty, and such as they are I am willing that they should go before the Convention and the public for what they are worth. And in conclusion allow me to express the hope that every member upon this floor will take the matter into his careful consideration. I do not wish that the subject should be acted upon hastily. I am satisfied that it is a proposition of that character that the more it is considered the more friends will be found for it; and as one of the advocates of the measure I would wish a free and open discussion, and that time may be given for reflection in order that the will of the Convention may be fully matured.

Mr. HENDRICKS said—

Mr. PRESIDENT:—I had not designed saying anything upon the question now under discussion, and will not now occupy the time of the Convention, further than to call the attention of gentlemen to the proposition, upon which we

will be first called to vote. I allude, sir, to the amendment proposed by the gentleman from Dearborn (Mr. Holman.) Up to this time the discussion has been confined to the resolution offered by the gentleman from Tippecanoe, (Mr. Pettit.) That resolution proposes the abolition of the Grand Jury system. The amendment, offered by the gentleman from Dearborn, upon which I desire to speak, proposes the removal of the constitutional restrictions from the Legislature, in reference to Grand Juries—to place them within legislative control, to be abolished if that be found practicable and expedient, or to be remodeled, reduced in numbers, and limited in jurisdiction, as experience may require. If I entertained the views of the gentleman from Switzerland, (Mr. Kelso,) I would not support the amendment, or advocate any change of the Constitution upon this question. That gentlemen assumes the position that there is, in our present Constitution, no provision, restraining the Legislature from changing the Grand Jury system, or providing for the finding of indictments or presentments, by another organ of society, than a Grand Jury. The language used in the twelfth section of the first article of the Constitution, "presentment" and "indictment," is, sir, of a technical meaning; and to ascertain this technical meaning, our courts would go to the common law, and would hold, without doubt, sir, that these terms as used in this section of the Constitution, mean a charge, of a criminal nature, preferred by a Grand Jury—such a Grand Jury as was provided for by the Common Law. So long, therefore, as the words, "presentment, and indictment" are retained, in their present connection in the Constitution, we must have Grand Juries, if we would have men put "to answer any criminal charge."

I hope, Mr. President, that the amendment instead of the original resolution will be adopted. The facts and arguments which have been urged against the Grand Jury system are entitled to great weight and consideration. I acknowledge their force, sir, and am, therefore, anxious for the adoption of the amendment proposed by the gentleman from Dearborn.

But, sir, it is no difficult task to find faults and defects in the most perfect workmanship of man. All of our institutions are, perhaps, imperfect. The Grand Jury system has many defects; defects, sir, that are the necessary consequence of its present organization and mode of proceeding, its *ex parte* and inquisitorial action. These are defects from which it should be freed, or it should cease to be an institution of our country.

Gentlemen who advocate the Grand Jury system as it now is, and those who are in favor of its unconditional abolition, found their arguments upon its origin—its connection with, and position in, the judicial system of England—arguments drawn from this source, on either side,

cannot be conclusive. Very different and weighty reasons require the continuance of the system in England, which can have no force under our political institutions. With us the judiciary is almost entirely beyond the influence of the Executive—the judges, the court officers and Attorney for the State, receiving and holding their offices almost independently of the Executive. With us, the citizen cannot be reached, or his rights impaired by the Executive, through the judiciary.

But, sir, in England it is very different. The judges hold their position at the pleasure of the crown, and the attorney general is but the mouth-piece of the executive, and dependent upon court favor for his position. In such a system, the Grand Jury, composed of the gentlemen of the county, who are beyond the power or the corruption of the court, upon whose charge alone the citizen is compelled to answer the King, is a safeguard to the liberties of the people—a bulwark of liberty standing between the throne and the citizen. Were I a subject of the British crown, sir, I would fight for the Grand Jury—I would fight for it as it is—with its secret sessions—its door closed against executive influence.

Reference has been made to the assizes held by Jeffreys, and the corruptions perpetrated by that judge are used as an argument against Grand Juries. But, sir, I would ask gentlemen what would have been the condition of the people of the western part of England, had there then been no Grand Juries—no constitutional bulwark between them and the throne? Petit juries were brow-beaten and insulted, and forced by that minion of the crown, to find verdicts against their own convictions. The law and right were trampled under foot. The vengeance of the court was to be visited upon the rebels who had followed Monmouth, cost what of law and right it might. But, sir, I ask how much worse would have been the condition of the people if the king's attorney could have put them upon trial upon his information filed? With such a king as James, such a judge as Jeffreys, and such an attorney for the crown as James would select; with such power, where, I ask, would have been the liberties of the people?

But, Mr. President, these reasons in favor of continuing the system with its present powers and modes of proceeding, in England, do not have weight with us, and should not influence us to retain the system, if we can find a suitable substitute.

Complaints are made and fault is found with the Grand Jury system, because it produces so many indictments, and so few convictions. I should think that complaints of this character should be made against the law; for the matter complained of results from the nature of our institutions, and the principle, that it were better that guilty men should escape than that in-

nocent men should be punished. There was one court referred to yesterday, by the gentleman from Wayne, (Mr. Newman,) in which conviction was sure to follow the information. That court was the Star Chamber. I never heard or read of a single instance in that court, where information was not followed by conviction. There the executive power had control, not only over the officers, but over the court that tried the criminal—an illustration, sir, of the importance of Grand Juries, in a government with great executive powers.

The question before us is, how shall we have charges, in the name of the State, brought against a citizen? There must be some power in the State to do this. If, as is proposed, we abolish Grand Juries, then how are charges of crime to be preferred? Can we decide upon any other mode than Grand Juries? Who will make the attempt to point it out? Is there any gentleman here who will say he has learning, judgment, and experience enough to designate a plan which will answer for time to come, which shall require neither amendment nor alteration?

I am in favor of the proposition of the gentleman from Dearborn (Mr. Holman) because, if you place this matter in the hands of our legislators, and if they see proper to abolish the system, they can do so, and establish in its stead some proper tribunal, before which charges may be preferred by the State against the citizen, in a manner more satisfactory, perhaps, than could be devised here. The gentleman from Tippecanoe (Mr. Pettit) proposes that justices of the peace shall have power to use the name of the State in criminal prosecutions against the citizen. The gentleman from Hendricks (Mr. Nave) proposes that the prosecuting attorney shall have power to file such information in behalf of the State, proceeding as in the Star Chamber. The gentleman from Laporte (Mr. Niles) proposes, instead of Grand Juries, that four or five justices of the county shall have power to present charges, to which the citizen shall answer. These three gentlemen are learned and experienced in the law, and they all oppose Grand Juries; but they can agree among themselves upon no substitute. I refer to this matter merely to illustrate the fact, that we cannot in this Convention agree upon any substitute. I was pleased, sir, with the suggestions of the gentleman from Laporte. I think some such plan can be adopted which will secure the liberty of the citizen, and respect the rights of the State. But what substitute can be adopted that will secure the certain punishment of the guilty, and render the innocent safe in the enjoyment of their rights, can only be ascertained by experience.

This is about all I desire to say upon the question. I wished merely to call the attention of the Convention to the amendment proposed by the gentleman from Dearborn. If that

amendment had been discussed, as I think it deserves to be, I should not have said a word upon the question. I know there is great dissatisfaction amongst the people with reference to the Grand Jury system; and I am satisfied that there should be some change effected—a change as to the number which shall constitute a Grand Jury—a change in their mode of doing business—a change limiting their jurisdiction, and with respect to the secrecy and *ex parte* character of their proceedings; and this should all be settled by the best judicial experience in the State. But if this question should be settled here, for example, upon the suggestion that our attorneys for the State should present all the State charges, and the citizen be called upon to answer such presentment, it is my opinion, that when this practice should come into the courts, the people would be more dissatisfied than with the present system; and where would be the power to change again? It is my opinion, that, should we settle this question here, upon any plan, it would prove so defective, that, in less than ten years, there would be another Convention called to amend the Constitution, upon this account alone. I believe the people desire some change or modification in this matter, as I have before said; and I desire to give it wholly into the hands of their Legislature. I desire to take this course particularly, in order that when the amended Constitution shall be submitted, there may be no objections to it in the minds of the people on account of any modification in the Grand Jury system, so that when this instrument shall go from our hands, it may be, in fact, what it will be in theory, the expressed will of the people.

Mr. LOCKHART now obtained the floor, and upon his motion,

The Convention adjourned until to-morrow morning, 9'clock.

THURSDAY, Oct. 24, 1850.

The Convention met, pursuant to adjournment, and was opened with prayer by the Rev. Mr. CRESSY.

The journal was read and approved.

On motion, the consideration of the special order was postponed one hour.

Mr. PEPPER of Ohio rose and said, that he held in his hand a petition, signed by two hundred citizens of the county of Ohio, praying for the abolition of the Grand Jury system. Among the names he observed those of two associate judges and many members of the last Grand Jury that sat in that county, and also the names of the most respectable inhabitants in every portion of the county, all belonging to the different political parties. His colleague had stated truly, on yesterday, that the subject of abolishing the Grand Jury system had not been dis-

ceased until the very last day of the canvass in their county. On that day he (Mr. P.) was called upon to express his opinions in regard to it, but he remarked to the audience that he should refrain from giving any opinion in regard to it then, at the same time suggesting that it would be very proper to present a petition to the Convention when it met, embodying their views in reference to the subject. He was glad to see that his suggestion had been carried out.

The petition was ordered to lie on the table.

DAILY SESSIONS.

Mr. BORDEN, on leave, offered a resolution providing that after Monday next this Convention will not hold an afternoon session until otherwise ordered. He said he hoped that the resolution would be adopted, in order that the various committees might have an opportunity afforded them to meet and make out their reports.

Mr. SMITH of Ripley said, that he should prefer afternoon sessions. He thought that the committees would be more fully represented, and perform a larger amount of business in the morning than in the afternoon. The Convention, after sitting in the afternoon, if a lengthy discussion should arise, might hold evening sessions, and gentlemen who desired to make speeches would have a better opportunity afforded them for that purpose.

Mr. COLFAX observed, that he differed in opinion from the gentleman from Ripley. He was in favor of morning sessions, because those sessions were always the longest, and therefore they could do more business than they could if they were to meet in the afternoon. There was another reason why they should have morning sessions, and that was, it would give the Stenographer time to write out the report of their proceedings in time for the daily paper, thus having the report of their proceedings on one day in the paper of the succeeding day. If they should hold afternoon sessions the Stenographer would not be able to prepare his report in time for the paper of the succeeding day. I only speak now of my preference for morning over afternoon sessions, if but one is provided for, as appears to be understood and determined, will be the case. But I must be permitted to state that this Convention should sit two sessions per day, if they expect to finish their labors here within a reasonable time. There must necessarily be a great deal of debate on the various questions that will come under consideration, and that debate must be heard in this Hall. If we hold but one session per day, just double the number of days will be consumed for this debate, and thus delay the final adjournment of the Convention. The arguments of gentlemen that some extra time should be given to committees for a few days to prepare business for our action, might be entitled

to some weight; but, for my part, I do not know why gentlemen of this body cannot sit on committees at night, as always do gentlemen of the Legislature. But, if the Convention do decide to hold but one session per day, I hope that that session will be in the morning, and not in the afternoon.

Mr. PETTIT said, he was decidedly in favor of morning sessions. He thought that a larger amount of business would be transacted in the morning, and sessions thus held, as had already been remarked, would enable the Stenographer to prepare his report of their proceedings on one morning, so that they would be published in the papers of the succeeding morning.

Mr. DOBSON stated, that he was opposed to the resolution. He was of opinion that the Convention should hold two sessions per day—a morning and afternoon session—and that the committees should meet in the old-fashioned Indiana way, in the evening. He hoped the resolution would be rejected.

Mr. KELSO moved to lay the resolution upon the table.

The question being put on the motion of the gentleman from Switzerland, it was not agreed to.

Mr. OWEN remarked, that he had some experience as chairman of one of the committees, and he was satisfied that, unless some such resolution as the one under consideration was adopted, the committees would be greatly delayed in preparing their reports, and the business of the Convention would thus be very much retarded. He did not concur in the opinion of the gentleman from Owen, (Mr. Dobson,) that the committees should meet in the evening; he had had some experience on that point, and he felt bound to say that he had never seen any good resulting from night sessions of committees. It would be almost impossible to have the members of the committees all present in the evening, as there were generally so many engagements at that period of the day to occupy their attention; besides, after participating in the labors of the Convention during the day, gentlemen would be unfitted for the proper discharge of their duties in committees in the evening. He trusted the resolution would be adopted.

Mr. HALL said, he was desirous of having a resolution of this character adopted, in order that the different committees might have an opportunity afforded them of preparing their reports. The Convention had been in session for eighteen days, and had not yet received a report from any of the standing committees. In the Kentucky Convention, only nine days after it assembled, two of the most important reports offered during the session were received from standing committees. He trusted that no objection would be made to the adoption of the resolution.

The question being taken upon the adoption of the resolution offered by the gentleman from Allen, (Mr. Borden,) it was decided in the affirmative.

So the resolution was adopted.

Several petitions were then read and referred.

GRAND JURY SYSTEM.

The hour for taking up the special order having arrived, the Convention resumed the consideration of the resolution of the gentleman from Tippecanoe, (Mr. Pettit,) proposing to abolish the Grand Jury system, and substitute public examinations in its stead.

Mr. LOCKHART. There is, sir, perhaps no question that has been or will be submitted to the consideration of this Convention, of more importance to the people of this State, than the one now under consideration. The question for decision is—shall the Grand Jury, an institution which has prevailed for so long a series of years in the country from which we have derived so large a portion of our present laws and institutions, and which has been so long and so successfully in operation in this country—be abolished? This sir, is an important, a grave question, and one which demands the serious consideration of this deliberative body.

The gentleman from Tippecanoe, sir, has taken a bold stand in presenting as he has for the consideration of the Convention a proposition, which, if not entirely new is measurably so here. He proposes to change essentially the organic law of the State, and upon a point too which has not attracted the attention of Constitutional Conventions in other States of the confederacy. He desires, sir, to abolish the Grand Jury system and to substitute in its stead public examinations before justices of the peace. Instead of having bodies of men chosen by the constituted authorities of the State to examine into all violations of the penal statutes, he proposes public examinations before magistrates. I say, sir, this is a bold proposition. As was remarked by the gentleman from Switzerland, (Mr. Kelso,) there are in Marion county ten townships and probably twenty-five justices of the peace. Should the proposition of the gentleman from Tippecanoe prevail, the duties that now devolve upon the Grand Jury would be transferred to these twenty-five justices of the peace. You then have twenty-five petty courts in this county whose duty it would be publicly to inquire into all violations of the penal code, the evidence to be taken down by the respective magistrates and handed over to the Clerk of the Circuit Court, by him to be transferred to the prosecuting attorney and then, if in his judgment there should be evidence enough to warrant a prosecution, he is to make out a proper accusation and file it. This is the plan, as I understand it, presented by the gentleman from Tippecanoe.

The gentleman from Laporte (Mr. Niles) sug-

gests another plan. He suggests that the five oldest magistrates of the county be chosen to discharge the duties that now devolve upon grand jurors, and that they shall hold open courts at stated periods for the purpose of hearing criminal accusations, and if the evidence be sufficient, recognize or commit the defendant to answer at the circuit court, taking down the evidence the same as proposed by the gentleman from Tippecanoe, and file it in the clerk's office for the use of the prosecuting attorney; but he does not appear to be satisfied that his plan will work, and if it does not I understand him to be in favor of retaining the present Grand Jury system. Indeed, after listening to his interesting and able argument I came to the conclusion that he was in doubt himself what would be the best system—and to reduce his argument to a syllogistic form it amounted to this, that he was in favor of abolishing the Grand Jury if a better system could be devised; if not he was in favor of retaining it.

Mr. NILES. I regret to interrupt the gentleman, but I think he misapprehends my position. I am opposed, at all events, to retaining the Grand Jury system as an imperative provision of the new Constitution. Whether it will be best to engraft any substitute upon the Constitution, or to leave the whole matter for the Legislature, is a question about which I am somewhat undecided and comparatively indifferent, and should any substitute be adopted, I would leave it optional with the Legislature, after a reasonable time, to modify it, or even to return to the present system.

Mr. LOCKHART. I am satisfied with the gentleman's explanation.

The gentleman from Tippecanoe says that we do not keep up with the spirit of the age in maintaining the Grand Jury system; that it is an attribute of kingly power, and that it retards rather than advances the interests of society. I do not admit that Grand Juries were instituted as auxiliaries to the crown, but assert that they were instituted to protect the citizen against malicious prosecutions.

Allusion has been made to the court of the Star Chamber, by the gentleman from Tippecanoe, by way of illustrating the position he maintained in regard to the abolition of the Grand Jury system. Now, sir, I would ask the gentleman, whether, if his propositions prevail, we will not be brought back to that period in English history, at which the court of the Star Chamber commenced its usurpations of power; whether, if we abolish the Grand Jury system and substitute the one he has prepared, it will not bring us back to the commencement of the reign of Henry VII. Previous to that period Grand Juries were organized and used for the purpose of presenting accusations against criminals for prosecution.

The earliest history we have of that institution is that it was first introduced among the

Saxons, but at what particular period it was adopted is uncertain. Long before the court of the Star Chamber came into power, and during the reign of Henry III, Grand Juries were in existence; and if my reading is correct, they were instituted for the protection of the subject, and not to enable the king to carry out his tyrannical purposes. It is true the Grand Jury was virtually abolished by the enlarged jurisdiction assumed by the court of the Star Chamber, during the reign of Henry VII, to enable the crown to carry on its malicious prosecutions. Will not the magistrates' courts, with their public examinations, be Star Chamber courts in miniature, substituting only the prosecuting attorney for the king.

The gentleman from Tippecanoe, did not, when speaking of English jurisprudence, allude to that period in English history commencing with the reign of Henry VII and terminating with that of Charles I, a period of a hundred years, during which the court of the Star Chamber triumphed in the overthrow of the Grand Jury system. He did not refer to the time when Henry and his successors took their seat on the bench and became a component part of the court, to carry out their own behests in violation of law and the rights of the subject. This system of administering the laws of England, prevailed for more than a century, and where was the right of the citizen during that time? This was the period so lightly passed over by the gentleman from Tippecanoe. The wrongs the people of England experienced during that period, called so loudly for redress that during the reign of Charles I, the government was compelled to come back to the Grand Jury system. From that period to the present this system has been in use, both in England and America; every State in this confederacy having incorporated it in their system of jurisprudence; and now in the middle of the nineteenth century we are told that to retain it is behind the spirit of the age. I do not believe it.

While the gentleman from Tippecanoe and the gentleman from Laporte are both strenuous in favor of the abolition of the Grand Jury system, they are equally anxious, they say, to afford to the accused an impartial trial by jury. How, sir, I would inquire, if this resolution should be adopted, and the Grand Jury system abolished, are you to increase the chances for fair and impartial trials. There would exist the same objection to making public examinations before a single magistrate, as proposed by the gentleman from Tippecanoe, or three, four, or five magistrates, as proposed by the gentleman from Laporte, that there would be to public examinations before Grand Juries. The gentlemen who advocate the abolition of the Grand Jury system, admit that public examinations before Grand Juries would never answer—my opinion is that they would answer as well in the one place as the other.

Public examinations must inevitably tend to lessen the chances for a fair trial before a traverse jury. Suppose the public mind becomes inflamed in regard to some particular criminal, how can he rely upon having a fair and impartial jury when all the evidence for and against him is known? But, preserve the secrecy of the Grand Jury, let his case be examined there, keep the evidence from the public, and you increase his chances for a fair and impartial trial. How frequently is it now, that in counties where there have been certain violators of the penal law, that the public mind becomes exasperated and inflamed against the accused, so much so that a great number of applications are made for a change of venue; how much more frequent would these applications be if all examinations were public. And, sir, three-fourths of these applications are brought about by the public investigations which we must necessarily have before committing magistrates and at coroners' inquests. When any great crime has been committed, the whole community flock in to hear the trial, and the prisoner, knowing that fact—knowing that the public mind is prejudiced against him, from having heard the examination, applies for a change of venue. The court cannot fail to see that there is some ground for the apprehensions entertained by the prisoner, and, if not compelled by an imperative mandate of the law, would, from a sense of justice, feel bound to grant the prayer of the accused. The prisoner is transferred for trial, to another jurisdiction, where there are men whose minds have not been warped or prejudiced against him—where there are men entirely ignorant of the transaction, who can be placed on the panel, hear the evidence, and pronounce an impartial and just verdict. In my judgment, sir, nothing can be clearer than that, if public examinations are instituted, application on application will be made for changes of venue, because of the difficulty in getting fair and impartial juries. I would say here, sir, that I am not in favor of having all offenses punished by indictment. I have long since arrived at the conclusion that our legislation ought to be different on that subject, and that a large number of misdemeanors now punishable by indictment, might be tried before justices of the peace, reserving, of course, the right of appeal. I think that in this particular, the Grand Jury system may be modified, without infringing the rights of the citizen, but I am utterly opposed to its entire abolition, considering, as I do, that no substitute can be found. And, sir, before I would vote to abolish the Grand Jury, and place it in the power of one man to hear the evidence, take it down as he understands it, and then give the prosecuting attorney the power, from that evidence, to prepare an indictment and bring a citizen to trial—I say, sir, before I could vote for such a proposition as this, a radical change must be wrought in my mind. I would, sir, with my present impressions, as soon

think of voting for the celebrated French declaration that there was no Sabbath, and that death was an eternal sleep. I prefer rather to vest that power in the hands of eighteen Grand Jurors—men not versed in law, and fresh from the masses of the people. Keep your prosecuting attorney out of the Grand Jury room, except when invited there as the legal adviser of the jury, so that he may exert no undue influence over them. Leave them to act free from dictation or any extraneous influence, and they will invariably do right. During my brief career at the bar I have prosecuted for the State, and can bear testimony to the high and honorable bearing of the citizens who usually compose Grand Juries. Let them receive the charge of the court, examine the statute law of the State, hear the evidence of the witnesses, and leave them unfettered by the admonitions of the prosecuting attorney, and, my word for it, ninety-nine out of a hundred of their decisions will prove correct. Malicious prosecutions, to be sure, may sometimes be preferred, but abolish the Grand Jury system and there will be ninety-nine malicious prosecutions preferred by the prosecuting attorney and his petty magistrates, to one made by the Grand Jury.

The question more particularly under discussion, sir, I suppose to be the substitute proposed by the gentleman from Dearborn (Mr. Holman). He proposes, in the first place,

That the public will should not be restricted by unnecessary limitation of the legislative power.

Secondly, that the manner of preparing and the mode of prosecuting a criminal accusation, are matters purely legislative, and should be left to the legislative department of government.

Thirdly, that the committee on criminal law be instructed to omit the words, "indictment," "presentment," or "impeachment," where the same occur in sections 12 and 13 of article 1 of the old Constitution.

Now, sir, I am not in favor of the last two propositions. I desire to retain the clause relating to this subject in the new Constitution substantially the same as it is in the Constitution of the United States, and propose to amend his substitute by striking out all after his first proposition, and inserting the following:

"That the committee on matters pertaining to criminal law be instructed to report a section to be inserted in the amended Constitution, providing that no person shall be held to answer for a capital or otherwise infamous crime, unless on presentment or indictment by a Grand Jury."

I repeat again, sir, that there is no question in which the people are more deeply interested than in that of a fair and impartial administration of the criminal law of the State. It is due to our citizens and the State that such a system of jurisprudence should be adopted by this Con-

vention, as will not only guarantee the rights of citizens, but will at the same time secure to the State her full rights, and enable us, under all circumstances, without unnecessary delay, to punish those who violate our penal laws. Can we do this, sir, by abolishing the present Grand Jury system, and substituting public examinations before justices of the peace in its place? I think not. I am of opinion that no institution or system can be devised so perfectly well adapted to secure the rights of citizens and of the State as that of the Grand Jury. I predict, sir, that if the principles contained in this resolution are adopted and embodied in the new Constitution, that at the expiration of five years there will be found a large majority of the people of this State in favor of coming back to the Grand Jury. It will be found that the expense of prosecuting before magistrates will far exceed the expense of the Grand Jury system. The expense, however, is not what I look at. The question is, is this institution an important element in the perpetuity of our free institutions? If it is, it matters not what it costs. The question is not one of dollars and cents, but is it the best system for effecting the purpose designed in its organization?

Mr. FOSTER. I never rise to address an audience, and more particularly a deliberative body, without feeling a kind of timidity or trepidation which I would willingly divest myself of, and such as many gentlemen present doubtless have oftentimes experienced. I am somewhat in the situation of an old lady, who, upon one occasion, when she had the hysterics, applied to me for medical advice. She undertook to describe her disease, and said that it was a kind of enlargement in the chest; that it would get up in her throat and produce a sense of suffocation, and finally remember, doctor, it is very queer, and I do not know what you call it, but I call it the *swallows*. This, sir, is indeed a very distressing disease, and I am sorry to say it, but I greatly fear that some gentlemen on this floor have also got the swallows. [Laughter.] As there are a goodly number of practitioners of medicine here, I do not know but what it would be desirable to raise a committee for the purpose of providing some remedy that will cure this affection, and if such a committee should be raised, I suggest, among other potions, whether a draught of the gentleman from Tippecanoe's tea (referring to a glass of highly colored liquid upon the gentleman's desk, when he spoke upon the Grand Jury system) might not have a very salutary effect.

I feel it to be an imperative duty, sir, to make a few remarks upon this subject, merely premising that it is one of which I have heard but little, and examined very slightly until its presentation here last week. It is true I might have availed myself of certain lucubrations of a member of this body, published in the Sentinel last summer; but unfortunately I was then engaged

in the canvass, taking care of number one, and, therefore, the remarks I shall offer will be thrown out merely from the spur of the occasion, and for the purpose of defining my position before my constituents.

I profess, sir, to be a conservative, and not one of the progressionists of the age who appear to run with a kind of railroad velocity after every ignis fatuus or will o' the wisp of the day. I wish to adhere to the institutions and landmarks of my fathers, for I believe if they were not better men than those composing this assembly, they were at least as good, and were influenced by less sinister and selfish considerations than those which govern many of us at the present day. The sages of the Revolution, and those who immediately followed them, were patriots in the purest and strictest sense of the word.

An objection is urged against the present Grand Jury system that it is nearly a thousand years old. Now, sir, for one, I admire almost every thing that is old. I love old books, and old wine, and I was going to say old women, too. Why, sir, I respect the maiden lady who, even after having weathered Cape Forty, is still willing to embark on the treacherous ocean of matrimony, notwithstanding the shoals and quicksands, the rocks and squalls, which she is liable to encounter on her voyage. I also love the ivy-mantled town, and the moss-covered church, and I love the old relics of the Revolution. When I see a man bending with the weight of years, though he may be clothed in tattered garments and looked down upon in society; and behold his white locks bleached with the frosts of many winters, and his physical frame fast crumbling to decay, and know that he fought for his country in "the times that tried men's souls," I involuntarily approach him with respect, and treat him with a veneration only less than that which I pay to my Maker and my God.

Do you urge the antiquity of this system as an objection to it? Why, sir, I consider that one of its highest recommendations.

I am not a lawyer, Mr. President; I know nothing in relation to the common law, but have some slight acquaintance with English history, and I must say that I have not read that history in the same manner that the gentleman from Tippecanoe, and others who concur in his views, have read it. So far from the Grand Jury system being established for the benefit of monarchy, I contend that it was established for the benefit of the people. It is of Saxon origin, and it originated some time after the Heptarchy was abolished, when England was united under one Saxon monarch, and anterior to the Norman Conquest. It has existed for more than a thousand years during the various dynasties of Britain; and, like the meteor flag of England, which has braved the "battle and the breeze," during that long period, so this Grand Jury system appears to me, like some strong and

mighty fortress on some high and elevated eminence, which has not only bid defiance to all the assaults of its enemies, whether external or internal, but has bid defiance to old Time himself.

Yes, sir, I admire—I reverence it for its antiquity.

But it is said that it has only been in existence in England and the United States. Why, sir, a higher compliment than this could not be paid to the institution. These two countries, as it is well known, are the most free and enlightened upon earth.

It has been compared, also, to the Inquisition of Spain and Portugal, and to the court of the Star Chamber. What comparison, I would seriously inquire of gentlemen, is there between the Inquisition of Spain and the Grand Juries of England and America? Let me give a brief history of the course pursued by a Grand Jury. The number of gentlemen generally composing a Grand Jury is fifteen or sixteen, who come to court at a prescribed time, where a great number of people are in the habit of assembling together. They are duly sworn to the faithful discharge of their duty, and the judge of the circuit court gives them a charge; and this very charge, on particular occasions, is calculated to diffuse more light in regard to law among the jurors and the people than can be derived from any other source, excepting, of course, those who are in the profession. After the judge has delivered his charge, the jury retire to their room and deliberate upon the various subjects brought before them. Permit me to say here, sir, that this is no Star Chamber process. Although there may be sixteen or eighteen men composing the jury, yet it takes twelve of them to find a true bill and indict an individual for any kind of offense. If there were only eleven in favor of the indictment they could not bring it in. This, of course, is a benefit to the accused.

What is the course pursued by the Inquisition of Spain! An individual is arraigned before that body without any knowledge of the charge brought against him. He is made to be a witness against himself. He is tried and condemned without any opportunity being afforded him of proving his innocence. Not so with the Grand Jury system. A man that is brought before that body, charged with some violation of the law, has the fullest opportunity afforded him to bring forward testimony that may prove his innocence. If he does prove his innocence, his character will stand higher in the community than it did before the charge was brought against him. But how is it with the inquisition? A familiar dressed in black robes constitutes the judge and jury; and any individual who may come under the displeasure of the inquisition is liable to incarceration in a dungeon for life, unless it is decided that he shall be made a victim to the Auto-da-Fe. I am aston-

ished that gentlemen should compare the Inquisition with the Grand Jury, brought to this country by the pilgrim fathers, when they first set their feet on the rock of Plymouth, on the bleak shores of New England. Yes, sir, the same institution was carried to Virginia by the Cavaliers, and adopted by the Huguenots, when they fled from the tyranny and oppression of Louis XIV of France, and settled on the sunny shores of Carolina.

Mr. President, when William the Norman conquered England, and the last Saxon monarch was slain at the battle of Hastings, he and his immediate successor, William Rufus, endeavored, by the establishment of the feudal system, to destroy the Grand Jury system. For a time they succeeded in their nefarious attempt; but the system was resuscitated again, and notwithstanding the coercive measures pursued by the tyrannical and imbecile John, and by many of his line who were warriors and statesmen of great and deserved celebrity, yet it stood its ground against all the machinations of the kings of the Norman race, and also those of the Stuart line, which commenced with the first James, and terminated with his fanatical and tyrannical grandson, the second of the name. And ever since the abdication of the last named monarch, and the ascension of William of Orange to the throne of England, the Grand Jury system has been established upon a firm and stable basis.

Allusion has been made, sir, during this debate, to the trial and death of the Saviour of mankind. No analogy, in my humble opinion, can be made of his trial and the course pursued at the present day. True, he was betrayed by one of his followers; and when he was arraigned before the High Priest, the multitude, instigated by the Pharisees and others, cried crucify him! crucify him! and he was led away to death. But this was according to the foreknowledge and determinate counsel of God; and the Saviour himself declares that they did not know what they had done, when he prayed to his Heavenly Father to forgive them. It was the act of an infuriated mob which condemned the Saviour to the cross, and not the deliberate verdict of a jury of his countrymen.

I have no disposition to consume the time of the Convention further on this question. At some subsequent period, when this subject shall have been reported on by the committee who may have it in charge, I will probably trespass further upon the attention of this Convention, and endeavor to convince the most skeptical of the impolicy of abandoning the present system of Grand Juries, and substituting in their place an inquisition of justices of the peace—aye, of a single magistrate, in lieu of twelve or fifteen men equally as honest and well informed as himself.

On motion by Mr. HOVEY,

The Convention adjourned until 2 o'clock.

AFTERNOON SESSION.

The consideration of the special order was resumed.

Mr. HOVEY said—

Mr. PRESIDENT: When I look around this Convention and consider the learning, the talent, and the experience of those who are here assembled, and more particularly when I consider the very able manner in which the question under debate has been discussed, I must confess that it is with unfeigned diffidence that I have arisen to address you. Nor would I do so now, did I not feel that the duty which I owe to my constituents requires that I should not permit a vote to be taken on a question of such vital importance, without presenting to the Convention what I believe to be the views of those whom I have the honor to represent. Were I to remain silent on a question of the magnitude of that before the Convention, I should feel that I was recreant to the interests of those who sent me here, and would be deserving the appellation of an "unfaithful servant."

If a sentinel were stationed on the walls of a besieged city, it would be his duty to oppose any invading force. If that force be feeble, he should offer battle hand to hand, and if too strong for his individual efforts, he should at least do all in his power to repel the invasion.

Somewhat in the attitude of that sentinel do I stand on this floor—the State of Indiana the besieged city—the old Constitution the wall that surrounds her—and I, as one of the Constitutional delegates, a sentinel to guard and protect that wall. Wherever I find it deficient or weakened, it is my duty to strengthen or rebuild it, but I have no right to try experiments upon it—I have no right to spring a mine beneath, nor test its strength by any powerful engine of assault. Taking this to be my duty, I shall offer my feeble opposition to repel the assaults which have been made, with gigantic force, against one of our most venerable and noble institutions. The Grand Jury system is without a parallel in the history of nations or of man. Kingdoms have been overthrown, empires have mouldered into dust, but the Grand Jury, amid all the changes of a thousand years, has stood as firm and immovable as the pyramids of Egypt. Viewing it, sir, in this light, I am opposed to laying rude hands upon it, and making hasty alterations. The main arguments made by those who wish to abolish this system is, that it has faults—that Grand Juries have sometimes been corrupt—that they have indicted those whom they should not have indicted, and left unrepresented those whom it was their duty to present. But if that argument is to prevail, and the system, on that account, to be abolished, to what will it lead? Does not every gentleman here perceive that it will lead to a fallacious conclusion? Look at your petit juries, and consider the frequent re-

sults of their deliberations. Have they not frequently, by their verdicts, robbed men of their property? Have they not stamped upon the innocent the character of infamy? Have they not consigned to the gloomy walls of a prison, for life, those who were as guiltless as the babe unborn. Aye, and have they not caused the scaffold to reek with the blood of the innocent. Look at the judges in the highest courts. There the ermine has been stained—bribes have been received, and they have allowed themselves to be made the willing tools of power. But, sir, let us bring the comparison nearer home, and come down to the proceedings had in this Hall and the adjoining chamber a few years ago, and what will we discover? That the chosen representatives of the people—those who ought to have guarded their interests with the most sacred care—involved the State in an unnecessary debt, (and that, too, without the actual consent of the people,) which she will not be able to pay for the next half century to come.

What, then, is the conclusion? Why, that petit juries, judges, parliaments, and legislative assemblies have abused their powers, and have faults; but I ask if that be a satisfactory reason why they should all be abolished? Yet that is the tendency of the argument which has been urged with so much eloquence by the gentlemen who seem anxious for the abolition of the Grand Jury system. There is not a gentleman on this floor bold enough to say that he is willing to abolish the petit jury because it has sometimes committed the errors I have named. There is no human institution that is perfect; and, as has been well observed by the gentleman from Wayne, (Mr. Rariden,) there never will be one as long as the mind of man is finite.

Sir, I would remind gentlemen in this Convention, that it is an easy thing to tear down, but a much more difficult one to build up. The architect who designed and superintended the erection of this Hall, may have labored for years in studying those principles which enabled him to produce such a structure; and yet a madman or a fool in a few short hours, might level it with the ground. Rome, with her splendid villas, her magnificent palaces, and gorgeous temples—Rome, the great, the powerful, the triumphant, built with the spoils of a thousand nations, and cemented with their blood, was left in one night by Alaric, with his Goths and Vandals, a mass of blackened ruins. 'Tis easy to tear down, but it is hard to build up.

I will not attempt to go over all the arguments which have been urged, for with all due deference to the gentlemen who have advanced them, I think many of them can have but little weight. Neither will I with others attempt to trace the Grand Jury system to its origin, or inquire, whether it has existed one or two thousand years. I care not what its history and ac-

tion have been in England, in times past. These are not questions for us to consider, but we should inquire what has been its action and history *here*. I care not whether it has subserved its designs in other countries, if it has answered the purpose with us. We know that it was early ingrafted into our republican institutions, and that it has "grown with their growth, and strengthened with their strength," and if demolished, the whole superstructure must feel the shock.

What is a Grand Jury? Of what is it composed? Is it composed of lawyers and doctors, of clergymen, and justices of the peace? No; it is composed of the very bone and sinew of the county, of the farmer, the mechanic, the merchant. Should it ever be my lot to be tried for an offence, I will pray God to deliver me from being tried by a jury of lawyers, or justices of the peace. I want no man on a jury who has a smattering of the law, but those who have not been much in contact with that icy element, which freezes all the better feelings of the human heart, and deadens the ear of mercy.

It has been said, that the Grand Jury is a subservient tool of monarchy. Now, I contend that it is one of the most democratic features in the judiciary department. What is a pure democracy? It is a government where the people "*en masse*," make, judge, and execute the laws. Now, I leave it to gentlemen, whether the Grand Jury, which is composed of the people, and every term comes fresh from the people, is not more democratic than a judge or justice, who is elected for two or three years? Suppose you place the power of examination in the hands of one justice of the peace, as the gentleman from Hendricks, (Mr. Nave) proposes. Would he not be considered as having exclusive privileges? And, would he not become more odious than the common informers of Great Britain? If, on the contrary, the indictment is found by a Grand Jury, the indicted will be silent, because he would reflect that they were his fellow-citizens, without prejudice against him, and that they would not be likely to present him without some good cause.

There is another point of view, in which I wish to contrast the Grand Jurymen, with the examining justice. The justice of the peace is sworn once for all, to faithfully perform his duties, and that oath is to last him during the continuance of his term. But, the Grand Jurymen is sworn for the single occasion, and his oath will make him ponder on his every act. He is to present no one from malice or ill will, nor leave any one unpresented, through fear, favor, affection, reward, or the hope thereof, but he is to present all things truly, as they shall come to his knowledge. Now, I ask which of the two is most likely to remember his oath, when the conduct of a person accused of crime is brought before them?

Plain cases of crime have been put by gentlemen, who favor the resolution, and in such they triumphantly ask, what is the use of Grand Juries? If the cases were all plain that were to be brought before such juries, I would unhesitatingly admit they would be of but little use. But cases are not all plain, and in a difficult one what figure would a justice of the peace cut, with at least the liberty of the prisoner in his hands. Sir, would he be as likely to act impartially as a Grand Jury? No gentleman here, at all conversant with law, or the practice of courts, can think so.

I have been very much pleased with many of the arguments which have been elicited, during this debate. The gentleman from Wayne (Mr. Rariden) has thrown before the Convention many valuable thoughts, and the gentleman from Tippecanoe, (Mr. Pettit,) with his gigantic intellect, has brought forward many reasons, which he doubtless thinks are sufficient to sustain his resolution. But, whatever effect they have had upon the minds of others, they have certainly failed to convince me.

One of the objections of the gentleman last named, is, that the proceedings are secret. Now, what does that amount to? Is not any member in this Convention aware, that by that very reason criminals will be brought to justice much more surely? And why so? Simply, because if a person should go before a justice of the peace to file an affidavit, there would be those generally standing round, who would spread the news, and the culprit being thus warned, would have an opportunity to escape. On the other hand, when an offence is inquired into before a Grand Jury, and an indictment is found, a writ issues, and the criminal is in the hands of the sheriff before he is aware that any charge has been preferred against him.

The Grand Jury system has another advantage; it prevents heart-burnings and neighborhood quarrels. A man might wish to inform against his neighbor for some gross offence, if it could be done so as not to produce ill feeling between the offender and himself. To present him before a justice of the peace would be almost sure to cause that result, yet he could go before the Grand Jury and cause the offender to be brought to justice both secretly and safely. Gentlemen may declaim against this as a malicious and cowardly act, but I would remind them that those who usually commit crimes are not men of the mildest temperaments, and that there is little bravery, or at least little wisdom, in an informer baring his breast to the midnight assassin, or run the risk of having his property consumed by fire by an enraged incendiary. But such a course is denounced as cowardly! I am far from believing that every man who goes before a Grand Jury is actuated by malice. A father might find it necessary for the welfare of his sons to report some abominable hell-hole of iniquity which might be destroying their

morals and characters—some gambling den, some “doggery,” bidding all defiance to the law. Yea, he might even be induced to indict his own child to check his mad career. Away, then, as to this argument of malice. That that feeling in some cases may exist, I will not attempt to deny, but is certainly not the most common with witnesses before the Grand Jury.

But, sir, where will you find the most malice, the most perjury? In the small cases brought before justices of the peace, and most commonly under recognizances to keep the peace.

But there is another consideration why this secrecy is valuable. Unfortunately in this country, as in every other, we have the high and the low, the rich and the poor, the powerful and the weak. Now, sir, take a man possessing all the elements of popular favor—rich and influential—who has committed a crime, and let me ask in all seriousness, if an ordinary justice would be as likely to deal fearlessly with him as a Grand Jury of the country? Reason answers, no. Again: would that poor man be likely to inform openly against the influential character I have described? He might do it, sir, but if he should I contend that he would be an exception. And now, sir, I will say one word more in regard to the policy of the secrecy of Grand Juries. It is to prevent innocent men from being unnecessarily exposed. How many persons are charged with crime before that body of which the world neither hears nor dreams, because the testimony is insufficient. But if we had no secret examining court, the innocent would be frequently held up to the public gaze as though they were really guilty.

It has been contended that justices of the peace can and will perform all the duties of the Grand Jury. I have taken the trouble to look into the jurisdiction now possessed by those officers, and will read to the Convention the heads of the same:

“Assault, ferrying without license, vending obscene books, Sabbath breaking, tavern keepers, &c., selling liquors on Sunday, profane swearing, playing long bullets, &c.”

Jurisdiction is given over the following by the acts of 1848:

“Unlawful assembly, affray, assault and battery, assault and battery in parting combatants, selling unwholesome provisions, public indecency, extortion by ferrymen and bridge keepers, vending foreign merchandise without license, vending spirituous liquors without license, exhibition of shows without license, selling or giving spirituous liquors to a minor under 18 years of age or to an intoxicated person, tavern keeper taking larger price than charged in schedule of rates, &c., gaming, gaming in a grocery, carrying concealed weapons, disturbing religious society or other lawful meetings.”

Over all these offences justices of the peace have jurisdiction, and I now appeal to gentlemen from the different counties in this State,

whether the justices attend to their duties under this law in the manner they should? I want those who favor the idea of placing such unbounded power in the hands of the justices of the peace to answer. I know they do not. If, then, they now fail to perform the duties enjoined upon them by law, how much greater would be their dereliction if clothed with all the power which the friends of this resolution wish to cast over them.

As an argument against Grand Juries, the gentleman from Tippecanoe (Mr. Pettit) had asserted that no writer of any eminence had ever eulogized the Grand Jury system. I thought at the time that that was a very broad assertion, and doubted whether the gentleman was not in error. I have since found that he was. Judge Story, in his 3d vol. of Commentaries on Constitutional Law, page 658, uses the following language:

"From this summary statement it is obvious that the Grand Juries perform most important public functions; and are a great security to the citizens against vindictive prosecutions, either by the government or by political partizans, or by private enemies."

What greater eulogy does the gentleman want than this? Were it necessary, and did time permit, I have no doubt a wheelbarrow load of books might be produced containing paragraphs fully as laudatory as this.

But gentlemen are anxious to have things so arranged that punishment shall follow the commission of the crime as quickly as the peal of thunder succeeds the flashes of the lightning. I would ask whether that would be a wholesome state of the law? What is the feeling that pervades the popular mind when a man is first accused of some high crime? Do the people feel for and sympathize with him? No—the cry generally is, "crucify him! crucify him!" That is the first impulse, and that impulse seizes justices of the peace as well as others. How will it result? Ten times in eleven in conviction—and that conviction can not fail to have bad effects upon the final trial. The Grand Jury, on the contrary, gives the public mind time to become cool, and the prisoner then has a fairer chance for his liberty or life.

It has been denied by the gentleman from Laporte (Mr. Niles) that Magna Charta granted to the people of England the right of being presented by the Grand Jury before final trial. I think the gentleman is mistaken. Lord Coke says that the words in the Great Charter "*per legem terra* (by the law of the land) mean by due process of law, that is, without due *presentment* or indictment and being brought in to answer thereto by due process of the common law," 2 Inst. 50 51, also 3 Story on Const. 661. This shows clearly that the people regarded that mode of trial as a right, and the fact that King John granted it only under the compulsion of arms shows that he considered it

a liberty that placed the subject still farther beyond the reach of kingly tyranny.

In the county I represent, this question was neither talked of nor canvassed. It is true that in some of the papers published in this city there were letters and articles sustaining this resolution, but so far as I could perceive, although ably written they had no effect. In the same paper also was an article recommending the abolition of the Senate, and establishing but one General Assembly. These articles were all well written, and from the style I suppose came from the same pen.

Mr. PETTIT. I can assure the gentleman that in that respect he is mistaken.

Mr. HOVEY. I beg the gentleman's pardon. I only mentioned the last article to show what radical reforms some men would advocate. I could hardly believe that in this country any writer who is at all acquainted with the history of the old confederation of the United States and the splendid failure of the "council of one thousand" in France, could seriously advocate such a reform, and yet the reasons and arguments used by the writer are fully as cogent to my mind as those used for the abolition of Grand Juries. It is an easy thing for talented men to give fine reasons for bad things.

In conclusion, sir, I will say that those who sent me here want but a few reforms, such as have been simply discussed throughout the State at large and known by experience to be necessary—they want no new fangled ideas—no experiments—no utopian plans—they want that which is known to be good to be given to them now, and leave all that is uncertain and doubtful to be tested by the future. This I consider to be sound doctrine, and I believe it is "better to bear the ills we have than fly to others which we know not of."

Mr. HOLMAN. Inasmuch as I have offered an amendment to the resolution of the gentleman from Tippecanoe, (Mr. Pettit,) I shall ask the indulgence of the Convention while I make a few remarks upon the subject now under consideration. I can say in common with other gentlemen that I feel a great degree of diffidence in approaching a subject that has already been debated with so much talent and ability, and I cannot therefore hope that I shall be able to make any remarks that will throw much additional light upon the subject. The Convention has certainly manifested a proper degree of patience in listening to this investigation. If the same patience and research shall be manifested hereafter in the discussion of important questions, which may come before the Convention, I have no doubt that the constitution we may adopt will receive the ready approval of the people. There are three features in the proposition before the Convention, and I presume that the members on this question may be divided into three parties. The proposition of the gentleman from Tippecanoe

is to abolish the entire Grand Jury system. There are a number of very able men upon this floor favorable to that proposition; the gentleman himself has brought a great amount of talent and experience to bear upon the question. There is another party who think that this question should be left entirely to the control of the Legislature—that the public will may control and direct the manner in which criminal charges shall be preferred and prosecuted, and perhaps there is another party who believe that the present Grand Jury system should be retained, but that it should be so modified as to diminish the number of offenses the investigation of which may be brought before them. There are some considerations, Mr. President, which weigh largely on my mind against the proposition of the gentleman from Tippecanoe for the total abolition of Grand Juries. I think, sir, we should approach with caution the abrogation or remodeling of a system which has been approved by the wisdom and experience of more than a thousand years. It has been said, sir, that the origin of the institution is a matter of total indifference; for my own part I do not so regard it. If the principle upon which the Grand Jury system is founded was originated for the sole purpose of sustaining tyrannical power, I should regard it as defective and illy adapted to a republican government: if, on the other hand it had its origin at a period however remote, amongst a people struggling to maintain the rude rights of a primitive freedom, it would be some evidence that it has for its foundation a radical principle of human liberty.

It was correctly remarked by the gentleman from Monroe this morning, that the Grand Jury system is of Saxon origin, that it existed in England prior to the Norman conquest, and although it continued to exist as one of the elements of the then rude and imperfect system of common law until the conquest of England by the Normans, it fell into disuse during the subsequent military despotisms as an improper barrier between the despot and his victims, and was only revived when at a more enlightened period the people of England wrested from an unwilling king some of the elements of personal liberty; and as an evidence that in England the right of the subject to be put upon his trial only through the intervention of a Grand Jury was deemed an element of liberty and a protection against the oppression of the crown it will be remembered that for the hundred years during which the Star Chamber, that fearful engine of oppression and tyranny, like the French guillotine, continued to do its work of death, the Grand Jury almost lost its existence as a part of the common law of England.

It may be remarked, Mr. President, that this principle is one of peculiar interest to the American people, from the fact that it was not only approved by, perhaps, the most enlightened nation in Europe, a people who have ever strug-

gled to retain, at least, some of the element of Constitutional Liberty, but that, after the Revolutionary struggle, which separated the American colonies from Great Britain, when the minds of the American people were incensed against every institution of Great Britain, the several States of the United States, in 1789, shortly after the adoption of the Federal Constitution, adopted as a part of the amendments to the Constitution of the United States, an article securing to the citizens the right never to be put upon his trial for a capital or otherwise infamous crime, except through the intervention of a Grand Jury. Sir, only four principles of the English common law were engrafted in the Constitution of the United States; the writ of habeas corpus—the trial by jury—protection of the citizen against unreasonable search, and the Grand Jury system, being the only purely legislative provisions contained in that instrument.

Now, sir, this is a matter which deserves reflection. The period, itself, when the Grand Jury system was adopted as a permanent feature of American law, is important. The men who adopted it were men remarkable for their virtue and patriotism, and for the deep devotion which they manifested to every principle calculated to build up and secure rational liberty. It is not probable that if this principle had been one calculated to build up the strong holds of power, it would have been incorporated into the American Constitution; not in language which would imply that it was intended for the punishment of crime, but in language which clearly implies that it was intended to protect the innocent from punishment. What is the language of the Constitution? "No person shall be held to answer for a capital or otherwise infamous crime, unless, on a presentment or indictment of a Grand Jury, &c." Sir, it may be remarked that the best evidence of the inclination of a government to secure every liberty of the people, is the anxiety which is every where manifested to protect every man in his life and liberty, and to secure his happiness. And, sir, however indifferent the people of the United States, when the thirteen States of the Union formed the Confederacy, might have been as to the punishment of the smaller offenses, yet when it came to "life or liberty" the Fathers of the American Union seem to have been determined that there should be a bulwark between the power of the government and the accused, and that that bulwark should be the intervention of the Grand Juries.

There is a great deal of difference, Mr. President, between theory and experience. The gentleman from Tippecanoe has viewed this whole question, and considered the Grand Jury system as it has stood for ages past, and then he proposes to realize and adopt a plan which may better subserve the end for which the Grand Jury system was adopted, and he argues the

question thus : that the Grand Jury system was not designed so much to protect the innocent from punishment as for the punishment of the guilty. Sir, I undertake to say that not only in England, but in America, the cause which originated and has perpetuated the Grand Jury system, was the necessity of creating some power between the power of the government and the party accused of crime. That such was the design, at least in the United States, is manifest from the language of the Constitution of the United States, and also of the Constitution of Indiana. In both of those instruments it is clearly not a power given to the government, but a right secured to the citizen and to him alone ; that is, that no man shall be called upon to answer a criminal accusation which may deprive him of his life or liberty, except twelve of his peers shall have said upon their solemn oaths, uncontrolled by the influence of power, that there was reasonable ground to believe him guilty of the crime charged against him.

Now, Mr. President, it is proposed to abandon, by a Constitutional provision, this system which has thus stood the test and been approved by the wisdom of ages, and to substitute therefor an untried theory—an experiment. Sir, I shall never be willing to abandon a long-tried system for the purpose of adopting an untested theory, unless it is manifest that the theory is correct, and we all know that the best theories will often be found utterly to fail. The elements of a government calculated to secure the happiness of man, required ages to attain perfection, and it has been well remarked that a government that has become, to a certain degree, as perfect as human nature can make it by the experience of successive ages, might be overthrown by the rude battle of a day ; that it takes a long time to perfect what it is very easy to destroy. I am opposed to theory when it comes in conflict with long established principles which have done well enough, and which are adapted to our republican institutions ; and, sir, the most enlightened minds that have ever existed ; men of the largest capacity, who have stood among their fellow-men as the giant oak among the lesser trees of the forest, have learned how impracticable it is for once permanent rules of action for the government of men in the varied relations of life, experience alone can perfect. Sir, look at the past. Even the great and philosophic mind of Locke when he made an effort to adopt a Constitution for one of the colonies of the new world, utterly failed to accomplish the object, and Plato's famous theory of a republican government, exists only as a monument of the fact that theory unperfected by experience must ever fail ; experience is the only light that can guide us in safety in the future. There are many objections to the Grand Jury, and the gentleman from Tippecanoe has well remarked that it is an expensive system, and I would add, sir, that it is said that

"the price of liberty is eternal vigilance," and that no government can be maintained and supported without some sacrifices, more especially a free government ; and I regard the sacrifice of money as nothing in comparison to securing to every citizen the rights which the Almighty designed he should enjoy. There are really evils in the Grand Jury system, and if this were a legislative body I would heartily approve of a remedy. Like all human institutions, it has its imperfections.

It is said that the great argument against it is that it does its work in secret. It may be answered to that, however, that crime itself is committed in secret, and that it is perhaps proper that the means resorted to by those who commit crime should be resorted to by the community in pointing out and punishing that crime. The right of the people to be secure in their houses and their persons from unreasonable search is one of the principles of the American Constitution, and yet the theory of the gentleman that that which is secret and which is not made open to the light of day must necessarily have something objectionable in it, is manifestly defective as inconsistent with the principles and practices of man in all the varied relations of public and private life. The home of the citizen is sacred from unreasonable search, and the Judge determines in the secrecy of his own breast the judgment which he shall pronounce.

The character of the citizen is sacred ; it should not be tarnished on an insufficient cause, and if he be unjustly accused the secrecy of the tribunal before which the accusation is brought will, at least in some instances, prevent even the whispering of a false accusation from resting upon him.

As I have already remarked, I conceive the Grand Jury system to have many defects,—radical defects, and in my humble opinion the system not only admits of reform, but that reform is imperatively demanded by the people. The lapse of time has produced many changes in the system. In its origin in England, each hundred of a county furnished one or more of the more intelligent yeomanry, who met together and formed the Grand Jury. It was presumed that a Grand Jury thus constituted was fully advised of all crimes committed within the county, from the fact that they were drawn together from different sections of it, and their business was simply to present crime. Therefore, the word "presentment" was used—a presentment being a presentation of a Grand Jury upon their own information, and an indictment being founded upon testimony derived from other sources. Such a thing as a presentment is very unusual in Indiana, or perhaps in any part of the U. S., yet the Grand Jury system is based upon the supposition that presentments are to be made of all crimes within the knowledge of the Grand Jury.

Every township is represented in a Grand

Jury, and it is presumed that inasmuch as eighteen men are gathered from the various localities of a county, they must be aware of almost every crime which may have been perpetrated within its limits. It may be remarked that the Constitution of the U. S. only secured this right in cases of capital crime and high felonies; and it may be well said that the Constitution of the State of Indiana has gone too far in requiring an indictment or presentment as the foundation of the prosecution of every crime that may be committed.

I have already remarked that I believe the Grand Jury system is capable of great improvement, and that it is the duty of the people through their legislative department to remedy the evils which now exist. Being assembled as a Convention to reform the Constitution, I would ask, what are the ends which we are sent here to accomplish? to remodel the fundamental law of the State; to organize a form of government; to determine where the power of the people shall be vested, and the manner in which that power shall be exercised; but not to legislate. There is in every free government necessarily a power through which the people directly express their will; a department that construes and gives application to that will; and a power through which that will is carried into effect. There are three departments of government for this purpose, and they are known as the legislative, the executive, and the judicial departments of governments. The judiciary department may be limited without any infringement of the rights of the people to control the public liberty. The executive department of the government may also be limited without an infringement of the necessary powers of popular government, but the very moment you attempt to restrict the public will by Constitutional limitation of the legislative power, you deprive the people, at least to a limited extent, of the right of self government. I do not care what may be the authority by which the foundations of a government may be laid, yet unless the public voice can be, and is expressed, the character of a republic no longer exists, as it is only through the legislative department that the public will can be expressed. What, sir, is the difference between a monarchy and a republic? In the one instance the will of the people is not regarded, it is not heard, it is not carried into effect; in the other instance "the voice of the people is the voice of God." I take it then, Mr. President, that every limitation of the will of the people is, to a certain extent, an abandonment of republican principles, and that whenever the body of the people meet for the purpose of framing a Constitution, unless you leave unlimited the channels through which the public will is to be expressed, to a certain extent the right of the people to self government will be limited. Suppose, Mr. President, that the people of the State of Indiana were met to-

gether as the people met in ancient Athens, or more recently in the little democracy of San Marino, to express their own will, in that manner which is the most democratic, by their immediate voice, would any man say that that will should be in anywise restrained in the exercise of the powers of sovereignty, and although it may be necessary to limit the power of the legislative department being one remove from the source of all temporal power, the people, yet every unnecessary restriction on the legislature is a restriction upon the public will. But the gentleman from Tippecanoe does not propose that this restriction shall be absolute, but that after five years have elapsed the people may again exercise the right which the Almighty has given them to enact laws for their own government. Now I say let the people govern; let there be no unnecessary limitation upon the power through which the public will is to be expressed.

The resolution of the gentleman, it appears to me, amounts to about this; that the people of Indiana are a sovereign people, but at the same time that it is not wise or politic, that they should exercise their liberty without some limitation; that it is therefore proper that they should not be authorized through the legislative department of their government, to determine the mode in which crimes shall be punished. It is proposed that for five years the matter shall be placed beyond the control of the people; that that principle which has prevailed for centuries should be suspended, and that after the expiration of five years if the people think proper to renew its operations, they may do so. I undertake to say that the principle which dictates the resolution, is an impolitic limitation of the public will. For what purpose was the Convention convened? It was to take up the Constitution of the State and revise and amend it, by changing some of its provisions; and I find that almost every amendment that has been proposed, has in some wise been found to be necessary by some improper restraint put upon the legislative power by the Constitution of 1816. Among the first resolutions which have been offered in this body, was one designed to appropriate certain fines and penalties to the use of common schools. In the Constitution of 1816 those fines and penalties were unchangeably appropriated to the use of county seminaries. Now let gentlemen consider this question for a moment. Here was a matter purely legislative—totally destitute of any fundamental principle—because the manner in which public money can be applied is a matter which can safely be left to the people, and yet in the Constitution of 1816 these fines and penalties were expressly appropriated to a particular object, and for more than thirty years has defeated the will of the people of the State. Now at the time that this provision was incorporated in the old Constitution it seemed to be well enough. There

was a large fund appropriated in lands for the endowment of common schools and a State university, but nothing for any intermediate institution of learning. It was supposed by the framers of the Constitution of 1816 that these lands were amply sufficient for these two purposes, and therefore these fines and penalties, resulting from the punishment of crime, were appropriated by constitutional enactment, to the endowment of seminaries in the several counties. Now, sir, what was the effect of this provision? In less than ten years it was ascertained that the provision was an unwise one, that the county seminaries would not accomplish the end for which they were designed, and it was also ascertained that the lands appropriated for common schools were not of sufficient value to effect the object. But the public will in this matter, by unwise Constitutional legislation, was restricted, and could not be exercised in remedying the evil until the people should call a Convention for the purpose of revising and amending the organic law. Now, sir, was there any necessity for such a provision? Was that an unsafe matter to leave with the people? And yet the framers of the Constitution did not seem to remember that they were incorporating a legislative principle in it which might ruinously effect some of the best interests of the State. I am not in favor of incorporating any provision in the Constitution unless it is a well tried and well understood principle, fundamental and organic in its character, and well approved by wisdom and experience. I am not willing to engraft upon the Constitution any provision which will be uncertain in its effect. I am not willing to try experiments which may last for years, and the effects of which may be experienced through centuries, by any unnecessary restriction of the popular power. It will be admitted, I presume, by all that the manner in which a criminal accusation should be preferred, or the manner in which it shall be prosecuted, are matters purely legislative, and that it properly comes within the control of the legislative department. But it is felt that the Grand Jury system is an evil, and that the people may not remedy it, and that it is therefore the duty of the Convention to remove it. Now I take it that the same people who have elected us have intelligence enough to elect an equally intelligent body of legislators. However wise this Convention may be, however much intelligence and talent there may be within these walls, we do not monopolize the intelligence and patriotism of this and all coming time; there is and will be still among the people of the State of Indiana, material sufficient for good legislators—men who will carry out the will of the people, by adopting such legislative provisions as experience shall from time to time suggest, and as the public will shall require.

Again, it may be said that inasmuch as the change proposed is a matter of experiment and

has never been tried—I mean the punishment of the higher crimes; crime through the intervention of any other agency than that of Grand Juries—it cannot safely be incorporated into the organic law and may safely be left with the Legislature. It was remarked by the gentleman from Laporte on yesterday, that the great security against crime, is to be found in the intelligence, and virtue, and patriotism of the people; and it was further remarked by that gentleman, that whatever may have been the dark and benighted character of that age in which the Grand Jury system originated, that at this time, the people of Indiana have attained such a degree of intelligence that a different policy in the punishment of crime can be safely adopted. Now, I have as much respect for the people of Indiana as any man upon the floor, and I certainly have perfect confidence in their patriotism to desire that the government shall be administered upon true republican principles. And, sir, our confidence in the intelligence of the people admonishes us that we can leave this matter safely in their hands. If the people shall require it, the Grand Jury system should be abolished by the Legislature, and if in the course of two or three years it should be found to have an injurious effect, then the people can return to it by legislative enactment. In the name of God I say, let them exercise their own will. I cannot imagine for the life of me, why it is that we must do this work. It certainly strikes my mind as a matter purely legislative; and the only argument that I can conceive of, in favor of the proposition of the gentleman from Tippecanoe is, that the legislative department of government may not be equally willing with ourselves to act for the benefit of the people. Now the confidence which we have in the intelligence of the people ought to admonish us that their representatives will be as anxious to carry out their will as we are, and that if experiments of this kind are to be tried, they can try them in such a manner as will be likely to produce the least public injury. I am not prepared to vote for the proposition of the gentleman from Tippecanoe, for the reason that I believe the Grand Jury system is calculated to secure the rights of the citizens, and should not be lightly abandoned. I regard it as a power calculated to preserve his property, and his person, and his character from unfounded accusation, but I oppose it mainly because it is a mere matter of legislative expediency.

The gentleman proposes that all examinations shall be public, and that the character of the citizen shall be wholly affected by the public declaration of crime made against him. The Grand Jury system affords a better and a surer plan. It says to the citizen, neither your character, nor your life, nor your liberty, shall be affected by any accusation of crime, until twelve men upon their solemn oaths, have said that you are probably guilty of the offense. Sir, I will

venture the assertion, that there are thousands of citizens within the limits of the State of Indiana, whose characters are unaffected, untainted, untouched by even the suspicion of crime, whose characters might have been blasted, if the offences laid to their charge by malice, had been prosecuted in public, instead of through the medium of this institution. If accusations are to be made before justices of the peace, the first serious one that is made against a citizen, however malicious, might blast his character and remain a blot upon it forever. It would, too, put an individual within the power of malice, whereas the Grand Jury system is slow and deliberate in its operations, and, in many instances, at least, secures the character from being injured or aspersed by malice. I hope from the very fact that there are half a dozen different plans proposed as substitutes for the Grand Jury, that we shall be admonished that it is an experiment, and had better be left to the Legislature if it is to be tried, so that the evil may be remedied without another Constitutional Convention—if any evil should be found to arise. That Grand Juries have accomplished their object to a certain extent, I think all gentlemen will admit, and it is manifest from all the facts which have been elicited. But that any one of the proposed plans will accomplish the punishment of guilt on the one hand, and, on the other, secure the innocent from punishment, both in his person and his character is by no means evident. I trust, therefore, that the matter will be left to the Legislature; that we will form a Constitution containing nothing but radical and fundamental principle well tried and approved, both by the judgment and experience of the present and the past. If we adopt a Constitution full of legislative provisions, subject to change as experience requires, we will find that in a few years the people will have to hold another Convention for the purpose of revising it. A constitution, sir, should be made to last permanently—not for a day, or half a century, or for centuries, but for all coming time. If it be one containing nothing but fundamental and well-tried principles of radical republicanism, it must exist while man exists, or at least till the arrival of that period when “the lion and the lamb shall lie down together.”

Mr. BASCOM. I do not rise, Mr. President, with the expectation of shedding any new light upon this subject, after so many speeches from older and abler men. This proposition, presented in the form of a resolution, for the abolition of the Grand Jury system, by the gentleman from Tippecanoe, (Mr. Pettit,) is a new question, and one which I came not here to discuss; nor do I think it worthy of the time which has already been spent in its discussion. It is not, in my humble opinion, an important question for the deliberations of this Convention. If we listened attentively to the speech of the gentleman from Tippecanoe, (Mr. Pettit,) and

implicitly received all of his representations, we should all believe that Grand Juries were among the most wicked and oppressive things in the world; that they were engines of cruelty and malice, and that society could no longer endure their presence. We should come to the conclusion that the system was a monster which it was the bounden and imperative duty of this Convention to destroy forthwith.

But, sir, upon the opposite side of this question, among those who oppose this resolution, I find equal extremes. Those who have advocated the retaining of the Grand Jury system would have us believe that it is one of the greatest institutions of the country; that the whole judicial system would totter, and perhaps fall, without this adjunct; that it is at the foundation of all justice, and that without it society could not get along. They would have us believe that the Grand Jury system is a great patent medicine—a sovereign panacea for all the political diseases and ailments of the State. I can no more adopt this view of the case than I can fly to the other extreme. I shall not decide in favor of anything because it comes down to us from ancient times, nor shall I catch at a proposition and go for it because it is new. I came here to advocate a few simple reforms in the Constitution—those reforms which have been discussed among the people, and upon which their minds are definitely and satisfactorily made up. I did not come to this Convention to abuse Grand Juries because the newspaper called the *London Times*, or any other foreign newspaper, abuses the system, nor to defend it because it has been in existence for so long a period of time. I confess, Mr. President; that I care but very little whether Greece or Rome, and other ancient nations, had Grand Juries or not, and I care as little as to the object of the institution of the system in England. All that I want to know upon this subject, and all that is necessary for me to know, is this: do my people—my constituents—want Grand Juries as heretofore, or do they desire a system of public examinations to be substituted in their place? When I know their wants and opinions upon this subject, then I am ready to act. I do not mean to be understood as affirming that the debate has been altogether out of place, or entirely useless. I have been much enlightened by some of the speeches upon this subject. I have heard much on the advantages and disadvantages of Grand Juries that I was not before aware of; still I think its friends have been too partial to it, and have overpraised it, while its enemies have gone to the other extreme and abused it more than it deserved. Time will show, or would if a new system were adopted in place of the old one, that as many faults would be found and as many imperfections discovered in the plan of public examinations as have been found in the Grand Jury; so that the fact that the present system has

faults and imperfections, which are admitted by its friends, constitutes no good argument for its abolition. And I would inform gentlemen that however the case may be in other parts of the State, the Grand Jury in my county does not go about the neighborhood to hunt up information about turkey shootings or a horse race; they attend to more important matters, and generally sit but one or two days.

It is my opinion that if you will give justices of the peace jurisdiction over these matters as well as Grand Juries—that is, allow a given number of justices of the peace to present a man for trial—there will not be so much clamoring for the abolition of Grand Juries.

We do not want a constant succession of courts at the county seat, but the people desire that the courts should be held as seldom as possible. And inasmuch as a court of public examination would sit as often as a court of record, the number of courts and their sessions would be increased, hence I think that if you carefully examine the state of public sentiment you will find that the people of the State are generally satisfied with the system of Grand Juries.

Many long speeches have been made here, some, perhaps, to make a large show upon the journal—to create the impression outside the Convention that these speakers are the great men, and are doing all the work here; others of these long speeches have been made very smooth and very fine, to suit the ears and take the fancy of the ladies in the gallery.

Mr. President, I care not for the experience of the past; I shall not stop to inquire what they have done in England; I want the views and experience of the men of this Convention. I want gentlemen to tell me what are the feelings and wishes of the people of Indiana upon this subject; and then I want to act upon this question accordingly. Let us meet this question with these inquiries, as we should, and not, as some would have us, go hunting all over God's creation for the purpose of finding this article in a London or an English newspaper, and another in a New Orleans or a Missouri paper, for the sake of making a long speech with a great show of authority and research. I will take the liberty of suggesting to gentlemen that, in my opinion, the people of this State do not wish to have us spending a week in discussing this Grand Jury question; for in my part of the State the subject has hardly been mentioned; it has not been mooted at all. Now, when I have discharged my duty to my people who sent me here, I am satisfied, and I shall not stop to inquire, nor do I care whether the people of foreign countries are satisfied with my conduct or not.

I have thus expressed the views and feelings which induced me to speak, and to support the Grand Jury system, or at least the views which

will prevent me from going for its immediate abolition.

Mr. WOLFE. Mr. President, I have not much to say relative to the resolution before the Convention; but were I to remain entirely silent while this debate was going on, my constituents might think that I wanted to conceal my views, or was afraid to express them. This is not the case.

I find that the lawyers have monopolized the most of the speaking in this Convention; and I believe that the farmers who are here as delegates have not as yet spoken upon the subject. As I belong to that class, and represent farmers among other interests, I beg your attention to the few and brief remarks I have to make at this time.

Mr. President, after listening to the lengthy and able debate upon the subject of Grand Juries—after hearing the representations and arguments of those who believe that the system is a bad one and should be abolished, and public examinations substituted in its place; and the arguments of those who maintain that no system can be substituted in the place of Grand Juries which would answer the ends of justice so well and so satisfactorily; I say, after listening to all these arguments, I must oppose the resolution for the abolition of the Grand Jury system introduced by the gentleman from Tippecanoe (Mr. Pettit). I must oppose the resolution, because I believe it unconstitutional; and I put forth this opinion boldly, notwithstanding the remark of a distinguished lawyer upon this floor the other day. That distinguished lawyer, in reviewing the argument of a gentleman who published an article in the newspapers to show that it was unconstitutional to abolish the Grand Jury system, said he “wondered the cows in the spring of the year did not mistake the writer for something green, and eat him up.” Notwithstanding this attempt to ridicule the position taken by those who believe it unconstitutional to pass a resolution of the kind now before us, I must interpret the United States' Constitution according to my convictions; for I have taken an oath that I would do so. I will not rely upon what others may say in regard to it. Some gentlemen profess to have received new light upon this subject within the last three months, that has shown them they were wrong in their previous belief in the wisdom and utility of the Grand Jury. Is it not a shame, sir, that so many able men have lived so long in the dark, and been in ignorance of the real character of our institutions until the present time?

But I oppose the resolution, first, because I believe it clashes with the Constitution of the United States; and secondly, I oppose the amendment offered to it, not because I believe it unconstitutional, but for reasons which I will give hereafter.

Although I have watched the course of this

debate, I have seen nothing presented as a substitute which I believe will do in the place of Grand Juries. I have been expecting that gentlemen would lay before us a system that would operate better than the old one; a system which should keep all the good to be found in the Grand Jury, and leave out all its evils, which we have heard so much complained of. But thus far, the projectors and friends of the resolution have failed to lay before us such a substitute. I have waited upon them with patience, but I have been entirely disappointed. Is it to be wondered at, I ask, that we cannot go for the resolution?

Let us look at things as they are. When the proper time for the session of a Grand Jury arrives, the county clerk draws from amongst the names of the people of the county fifteen or eighteen names to constitute the Grand Jury. These men, thus selected, are summoned to appear at the county seat at court time. There they take a solemn oath, and then receive from the judge a charge relative to their duties and responsibilities; this charge is very often an hour in length. And who are present to hear it? I wish to call the attention of the Convention to this feature of the Grand Jury system; for I regard it as of the greatest practical value to the people at large; for it is while the judge is charging the jury that they receive some of the best lessons in the laws and institutions of their country. Witnesses, parties who have suits in the court, both the Grand and petit Juries, and large numbers of citizens are always present. A solemn and carefully considered charge to the jury is given by the court, instructing them as to the nature and objects of their office, and enjoining upon them their duty. The judge takes up the statute law and tells them what crime is, explaining the different degrees of crime and the various grades of punishment fixed for those crimes. The people hear all this, they are affected by it, they become more intelligent and better instructed upon legal subjects, and they go home and talk over the matter with their neighbors. We have in Indiana some ninety-odd counties, and thus we have in each year one hundred and eighty of these charges delivered in presence of a large number of the people of the State.

Who is to be selected to act in the place of this Grand Jury, should public examinations be substituted? A justice of the peace? One man instead of twelve or fifteen? Any one will see that there is but one-twelfth of the chance for an able and impartial investigation that there would be in the case of the Grand Jury.

But the friends of public examinations tell us that they are to be conducted openly; it is a fair, open matter, they say. But, sir, how often is it that Grand Juries refuse to find bills of indictment against accused parties? Then nothing is known of the matter, and the innocent citi-

zen, who has been falsely accused, goes on unharmed in his business. But in the case of public examinations how different is it. There the testimony has all been heard; the party has been brought up in public; malicious enemies have had the opportunity to vent all their spleen upon him, and the impression is somehow made on a great number of the bystanders that the accused party is guilty, and that impression cannot be eradicated, though the party is pronounced innocent by the examination. And if he should be presented for trial by the examining magistrate, he has no fair chance for an impartial trial; for nine chances in ten, some members of the petit jury will have been present at the public examination, heard the testimony, and become prejudiced against the accused. The hearing of the testimony, and the commitment of the accused for trial, cannot but have an effect upon them. For these and other reasons, it would, in my opinion, be the height of folly to abandon the old system and to adopt any new one that has been presented to this body.

It has been urged by the gentleman from LaPorte (Mr. Anthony) that the Grand Jury system is a very expensive one—that it costs the people of Indiana some twenty thousand dollars a year; and on this account, if for no other, should be amended or a better one substituted in its place. If the expensiveness of a system is to be the rule by which we are to decide upon retaining or abolishing it, let us abolish our supreme and circuit courts, for they are very expensive. We might abolish our legislature also, and save many thousands of dollars annually. But who will be good enough to tell us how much we should loose by such a “penny wise and pound foolish policy?”

Mr. President, I oppose this amendment to the original resolution, on the ground that it would, if adopted, defeat the object for which the Convention was called together.

If the people have complained of one thing more than another, it is the instability of Legislation. They have been, for many years, clamoring against this, and to provide a remedy against so much instability in future legislation, was one of the principal causes for the assembling of this body. The people desire that the laws should be more stable, and that the legislature should meet less often. In a word, sir, they do not wish the legislature to be simply a law-making and law-repealing power.

It has been proposed by some gentlemen to dodge this whole question by referring the matter to the legislature. Now, sir, for one I did not come here to shift the responsibility the people designed we should bear, off upon the shoulders of the legislature, which is to sit here in a few months. I know that there are many here who are disposed to favor the proposition to leave this question of Grand Jury or no Grand Jury, with the legislature; but I trust

that there are many here who will not act in that way. I hope that the venerable fathers among the delegates to this Convention, the silent workers who talk but little, will stand by me in this cause, and not shrink from the responsibility of settling this question in the new Constitution.

Much has been said by the friends of public examinations instead of the Grand Jury, about the secrecy of the latter system. Why, sir, you might as well complain of Deity himself on this score, for he hides from us all of the future; nor has he seen fit to reveal to us all things in the present. What man is there among us that has not a secret depository of his own? How many persons are there who would on no consideration divulge all that lies hid in their hearts! Very few, sir—very few indeed. There is no success in any great undertaking without a certain degree of caution, and perhaps absolute secrecy. Our political institutions emanated from that great and well recognized principle of human nature. Nature, in many of her operations, is secret. Man, made in the image of his Creator, has his secret repository. Many times have we all seen evils growing out of the divulgment of secrets. When I say that the care and secrecy of this institution weighs much in my mind in favor of its perpetuity; it proves that it is and must remain a pure institution.

Again: I am opposed to the amendment for another reason. We have been now for four days discussing the subject. The amendment proposes to leave the whole matter to the legislature, whereby all this discussion, the twenty-four hundred dollars which that discussion has already cost the State, and all the time it may yet consume in this Convention, would be entirely lost. Shall we, by the adoption of the amendment loose all this? Can they discuss the matter with more ability than we are doing? I contend that we are the men to decide this question, and better qualified than any legislature that will come after us.

Again, sir: it strikes me that we should be endangering the acceptance by the people of the Constitution we shall make, if we abolish the Grand Jury system. I say this because it is well known that this matter has not been agitated among the people. They have not demanded it at our hands, and on our part it would be too great a stretch of power. There are thousands among the people of Indiana who would vote against a Constitution containing a clause abolishing the Grand Jury. We ought to act very prudently in every thing we do here. I think there is a spirit of innovation prevalent in our midst that should be carefully guarded against. I have seen and conversed with many men who took a warm interest in the assembling of this Convention, before and since the election of delegates, and the caution generally given was, "be careful and avoid doing too

much." It strikes me, then, that we should pause and reflect, and make sure that we are not already going too far—so far that the people will not accept and approve of our doings.

Some of the friends of the proposition to abolish Grand Juries have said, only give us time enough and we will present a system in its stead which will meet the general approbation. Well, sir, have not the gentlemen had time enough already? And what have they produced? Nothing at all that any considerable number of the Convention will agree to accept. I am not willing to take trust for pay. There is the able gentleman from Tippecanoe, (Mr. Pettit,) who has been laboring to find a substitute for three months or more, and what has he produced? Now, sir, I am willing to give these anti Grand Jury men four or five days longer time in which to get out their substitute, but, after they have had so much time, I am unwilling to give them any more at the expense of the State.

Mr. TERRY moved that the Convention adjourn.

Mr. RARIDEN. Will the gentleman withdraw his motion a moment, to give me an opportunity to present a proposition which I am desirous of getting before the Convention at this time?

Mr. TERRY expressed his willingness to withdraw his motion, if Mr. RARIDEN would renew it for him; to which Mr. R. assented.

THE STATE BANK.

Mr. RARIDEN then presented the following:

Resolved, That the following be adopted as an article on corporations:

INCORPORATIONS.

The Legislature shall have power to pass general laws under which individuals may incorporate themselves for any purpose, as a body corporate, with such powers, privileges, and liabilities as the Legislature may see fit to bestow and impose upon them; and, after such incorporation, under such general law, the rights and privileges of such corporation shall in no wise be diminished by legislation, without the consent of the incorporators; and in all litigation, where the rights and acts of such incorporation may be involved, the same rules of construction and interpretation shall be applied to corporate acts that are applied to the actings and doings of natural persons. But no bank or any other pecuniary institution, with the functions to loan money, issue bills of credit, or receive deposits, or any of them, shall ever be incorporated under such general law, without the stockholders thereof being individually liable for all the acts of such incorporation to the full amount of their stock.

Resolved, That the following be adopted as a substitute for article 10 in the Constitution:

The State Bank of the State of Indiana, with

the consent of the Board of Directors thereof, shall continue to exercise and enjoy all and singular, the functions and privileges bestowed upon it by its charter and the amendments thereto, until the first of January, 1865, remaining in all other things as though its rights and functions had not been prolonged by this Constitution; except that the Board of Directors may increase the capital stock of the State in any branch of said State Bank out of the fund set apart by the charter of said bank for the use of common schools, to such amount as said board may think safe and profitable, and, at the same time, increase the individual stock of said branch to the same amount, which increased stock shall be in all things as the original stock of said branch, except that the Legislature of the State, at any time after the creation of the State stock out of the avails of profits upon said stock to purposes of common school education, or in aid of a sinking fund for the extinguishment of the State debt; and nothing herein contained shall prevent the Legislature of the State, at any time after the year 1862, from prolonging the charter of said State Bank, from enlarging or diminishing the capital stock thereof, or from modifying its powers and liabilities, by and with the consent of the Board of Directors thereof, or from re-chartering another State Bank with such capital, powers, and liabilities as the Legislature may think proper to bestow upon it; and any time after the expiration of one year from the adoption of this Constitution by the people of the State, the Legislature may provide for the incorporation of other banks within the State with such capital and such powers, franchise, privileges, and liabilities, as may be thought proper by the Legislature; *provided, however*, that no monied incorporation in the nature of, or with any of the functions of a bank of issue, discount, or deposit, shall ever be granted by special act, or created under any general law, without making the stockholders thereof individually liable for all the liabilities of said institution to the amount of the stock owned by such individuals at the time such liability occurred.

Mr. RARIDEN. My object, sir, is to present this proposition, which is upon a subject of great importance, and one that will occupy a great portion of the time and earnest consideration of the Convention, in so tangible a shape that no one can mistake its purport.

A MEMBER. Nobody will ever mistake the paternity of that proposition.

Mr. RARIDEN. Perhaps not. But I was going to remark that the subject of corporations and banks would draw out much discussion here, and it has been my object to draw up a brief, clear, and comprehensive proposition, for the subject of that debate. The first proposition is to be an article to be inserted in the new Constitution in relation to corporations. The other

refers to banks, and is a substitute for the 10th article in the present Constitution.

I ask that the propositions may be laid on the table and ordered to be printed.

SEVERAL VOICES were here raised against the printing.

Mr. PETTIT. I really hope that no objection will be made to the printing of these propositions. In the first place they should be printed for the use of the Convention; and in the next place they should be printed in courtesy to the gentleman who presented them. There is not a single proposition there that I can go for; but it is certainly right and proper that they should be printed. I hope that at least one hundred and fifty copies will be ordered.

Mr. CHAPMAN called for a division of the question,

And the question being first upon the motion to lay on the table, it was agreed to.

Mr. PRATHER moved that three hundred copies be printed.

Mr. SMITH of Ripley. I believe that by a resolution of the Convention every proposition laid on the table will be printed, as a matter of course. I regard the propositions just presented as very important ones, and I desire to see them printed, although all are aware that I cannot vote for them. But I will now say to the gentleman (Mr. Rariden) that I am opposed to this course of procedure, because it is anticipating the action of the committee to whom the preparation of a report upon this subject has been entrusted.

If we continue to introduce propositions of this kind how long will it be before we shall get a report from that committee? The banking question is one of the most important that will come before us, and it is of the highest importance that we get the report before us soon.

Mr. RARIDEN. It is for the purpose of expediting business that I have offered these propositions. It will not obstruct nor delay the committee in making their report. I took the position in the beginning that every subject must be thoroughly discussed in the Convention before the committee should report upon it. Instead of desiring to obstruct or hinder the committee I desire to give them the opinion of the Convention upon the subject matter of their report, and, sir, I hope all the committees may be thus admonished of the sense of the Convention.

Mr. KELSO. I am in favor of printing these propositions, and for this reason. There is, to be sure, a Bank Committee composed of some seven or eight members, and we have submitted to them the tenth article of the Constitution of Indiana. But suppose them to return whatever report you please, every member has then the right to introduce and propose any amendment to that report he may see fit. So many may be introduced and consented to by the Convention, that by the time you get the article in the

new Constitution the committee who brought in the original article might be unable to distinguish a line of their original report. Now I am in favor of full discussion here upon every subject to be reported upon, so that the committees may know the sense of the Convention upon the subject of their reports, and they will thus be enabled to present more perfect reports, and such as will go through this body with but slight alterations.

I hope the propositions will be printed and distributed all over the country. I cannot support them, and I do not believe there is one man in fifty among the people of the State, who would have imagined that a proposition to extend the charter of the State Bank from eighteen hundred and fifty-four to eighteen hundred and sixty-five, would have been presented to this Convention. I say it is important that the people should see and know that such a proposition has actually been made. The report of the Cashier of the State Bank was printed.

A VOICE. That was a matter of information.

Mr. KELSO. And so is this of the most interesting kind. I hope no further objection will be raised to the printing of these propositions.

Mr. PEPPER of Ohio. I shall go for the printing of the propositions just presented, although there is no one of them which I can support. It is due as an act of courtesy to the gentleman, (Mr. Rariden,) and the propositions themselves should be spread all over Indiana.

Mr. LOCKHART. I shall vote to print the propositions just offered, and along with them I should like to have printed the following:

Resolved, That in the opinion of this Convention, the interests of the people and the honor of the State demand that a provision be inserted in the Constitution prohibiting the Legislature from incorporating any bank or banking institution in this State.

A motion was made and negatived to print three hundred copies of the propositions.

A motion was then made to print two hundred copies, which was agreed to.

On motion, the Convention adjourned until to-morrow morning at nine o'clock.

FRIDAY, OCT. 25, 1850.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. HULL.

The journal having been read,

Mr. READ of Clark moved that the regular order of business be suspended, for the purpose of receiving reports from committees.

Mr. KELSO moved to amend the motion so as to suspend the rules generally for one hour.

Mr. READ accepted the amendment as a modification of his motion.

The motion was agreed to.

CONVENTION.

Mr. FOSTER rose for the purpose of making a correction in the published report of the proceedings. The introduction of a set of resolutions had been erroneously attributed to him, he said; and while he coincided in some of them, he certainly did not wish to be considered the author of the others.

The resolutions, said Mr. FOSTER, are these:

1st. "*Resolved*, That there shall be a provision in the Constitution prohibiting free blacks from emigrating into this State."

2d. "That the pay of the members of the Legislature be fixed at two dollars *per diem* for the first six weeks, and one dollar *per diem* for any length of time thereafter."

I am not demagogue enough to propose such a resolution as that, sir."

3d. "That no officer shall be elected or appointed for a longer time than four years."

But without detaining you, sir, by reading them all; one is that the Grand Jury system be abolished. Now I assure you, sir, that I never introduced any such resolutions as these; and I hope they may be attributed to their rightful owner.

Mr. MOORE. I will inform the gentleman from Monroe that I am the author of those resolutions, and I desire to say, at the same time, that I presume there is no more demagogueism in them than is frequently exhibited by the gentleman from Monroe himself. I think he is about as much of a demagogue as I am.

Mr. PETTIT. I desire to make a correction also of the report of some remarks made by me on the second day of the session in reference to my resolution for the appointment of three committees. There is a large omission in the report, but of that omission I have no complaint to make. I only say as a general thing, however, that it is the duty of the Stenographer to report all that members say; he is not at liberty to leave out any portion of the remarks of a delegate without his consent, and especially at the suggestion of any other person. He ought not to mutilate the report. But I wish more particularly to correct another paragraph which I will read:

"With reference to the proposition of the gentleman from Allen, (Mr. Borden,) he must say that he considered it of but little practical utility. It was true that if, as the gentleman proposed, nineteen committees were organized, a number of gentlemen would be gratified in being appointed chairmen of those committees. For one, he was willing to take the tail end of any committee, although he would take occasion to say that a committee thus constituted

would be like a kangaroo—strongest in the hind quarters.”

Now it will be recollected that what prompted this remark was that a gentleman near me, when I said I had no ambition to be at the head of any committee, rather sneeringly and tauntingly, as I thought, cried out “consent,” to which I replied, very well, consent, Mr. President, but I am inclined to think that the committee will in that case be like a kangaroo—strongest in the hind quarters. The remark could not have been justified on my part without the ejaculation which called it out first having been made. I hope that so far as that is concerned, the Stenographer will make the necessary correction in the original report, so that it may appear correctly when published in book form. As to the omission that I have referred to, I am quite as well pleased that it has been made, but I thought it proper to state that it was not done at my instance.

Mr. BORDEN. If the gentleman from Tippecanoe designs to intimate that I had anything to do with, or was in the remotest degree the cause of the omission that he refers to, he is entirely mistaken. I have never said a word to the Stenographer on the subject.

Mr. PETTIT. Not at all. I did not suppose that the gentleman from Allen had anything to do with it. I suppose that the Stenographer, thinking it unimportant, had taken it upon himself to leave it out. I never understood from him or from any other person that it was calculation or design which induced the omission.

The PRESIDENT laid before the Convention a communication from the Auditor of State on the subject of the enumeration of the inhabitants, which was laid on the table, and 300 copies ordered to be printed.

The PRESIDENT also laid before the Convention a communication from the President of the State Bank, relating to the affairs of that Bank, which was laid on the table.

Mr. DUNN of Jefferson presented two petitions from citizens of Jefferson county, praying that the manufacture and sale of intoxicating drinks be prohibited.

The petitions having been read, were referred to the committee on the legislative department.

Mr. READ of Clark, from the committee on State officers other than executive and judiciary, submitted the following report:

MR. PRESIDENT: Committee No. 4, to which was referred sections 21 and 24 of article 5 of the present Constitution, have had the same under consideration, and directed me to report the following article and sections, and ask that they may be inserted in the new Constitution:

ARTICLE —.

SEC. —. A Secretary of State shall be chosen by the qualified electors, and be commissioned

by the Governor for two years, until a new Secretary be elected and qualified: *Provided*, That no person shall be eligible to the office of Secretary of State more than four years in any term of six years. He shall keep a fair register, and attest all the official acts of the Governor, and shall, when required, lay the same, and all papers, minutes, and vouchers relative thereto, before either House of the General Assembly, and shall perform such other duties as may be enjoined upon him by law.

SEC. —. There shall be chosen by the qualified electors, and commissioned by the Governor, a Treasurer and Auditor, whose powers and duties shall be prescribed by law, and who shall hold their office for two years, and until their successors be elected and qualified: *Provided*, That no person shall be eligible to the office of Treasurer or Auditor more than four years in any term of six years.

The article and sections reported having been read a first time.

Mr. RARIDEN said, he would like to know if there was any rule which prescribed the process through which these provisions of the Constitution must pass, and how many readings they must have.

The PRESIDENT remarked, that they must necessarily have three readings; that was the usual course.

Mr. PETTIT said, as this was the first portion of the Constitution which had been reported, he would suggest that it would be proper that there should be some understanding as to what must be done with it; and in order that they might know precisely what they were about, he would move to lay the report on the table, and that it be printed; and he would say a single word in reference to the number to be printed. He desired that the number should be so large that there should be at least two, if not three copies of each division of the Constitution for each member, so that, if, by the time that particular item came up for consideration, the first copy should be lost, there would be another in the document room to which reference might be had. He desired that there should be surplus copies, not for the purpose of sending them abroad, but that every member might have a copy in his possession when the article or provision should come up for consideration. He would move, therefore, —

The PRESIDENT. The report is not now pending. It has been introduced and read a first time. When it comes up on its second reading, the gentleman's motion will be in order.

Mr. PETTIT. Sir, it is in order now to move the printing of the report. Is it not?

The PRESIDENT. No sir. The Chair would remark, that, under the rules, a motion to print cannot be made when the subject has passed from the consideration of the body.

Mr. PETTIT. Where is that rule to be found?

The PRESIDENT. In Jefferson's Manual.

Mr. PETTIT. That may be a rule for the Legislature, but it is no rule for this Convention. We have never adopted the rules contained in Jefferson's Manual. The Convention ought not to tie its hands upon so necessary a motion as a motion to print.

Mr. DOBSON. By the way of obviating the difficulty, I will move to suspend the rules, that the article may be read a second time now.

Mr. WALPOLE said, that, according to parliamentary usage, by which legislative bodies were governed, when a bill was read a first time, the motions in order were, to reject the bill; that it pass to a second reading—or to lay on the table and print; the latter motion he thought was the proper one. He objected to the motion of the gentleman from Owen, (Mr. Dobson,) because if it were agreed to, it would throw this report one step in advance of the position which, according to the regular order of business, it ought to occupy.

Mr. READ of Clark said, he feared that unless the Convention pursued the parliamentary course, they would go into confusion.

The PRESIDENT remarked that it must be apparent to every one, that the rules which has been specifically adopted by the Convention were insufficient for the government of its action in all particulars, that they must necessarily, impart, at least, be governed by parliamentary law. If they were to disregard every thing but what was written in their code of rules, they would not be able to get along with the business of the Convention.

Mr. PETTIT withdrew his motion to print.

Mr. DOBSON, also, withdrew his motion to suspend the rules; and the report passed to a second reading to-morrow.

The PRESIDENT announced the first business in order to be the consideration of the resolution offered by the gentleman from Ohio (Mr. Pepper.) The resolution instructs the committee on currency and banking, to report a provision declaring that after the expiration of the present Charter of the State Bank, all connection between the Government and the Bank, shall cease.

Mr. PEPPER of Ohio said, he desired to call the attention of the Convention, for a few minutes, to the subject embraced in this resolution; and he was apprehensive that, unless he availed himself of this suspension of the order of business at this time, he might not have an opportunity to express his views in relation to this object for some time to come.

I desired to say, continued Mr. Pepper, in regard to this question, that it is a distinct question, and that it is a question about which I have been induced to believe there could be no great difference of opinion on the part of gentlemen, without distinction of party, who claim to be in the true sense of the term republican. The doctrine that Church and State shall be dis-

connected, and that the Government and Banks shall be disconnected, are doctrines equally republican in their character.

Now, sir, it is a question of importance; it is one of those questions which are to be decided by this Convention. It is, in my judgment, the most important question that is to be deliberated upon, or acted upon during the session of this Convention. Upon this question I am ready and willing to show my hand—to declare my convictions—to avow my principles. While I wish most earnestly and most seriously, that this resolution will be adopted in some form, for I do not insist on the phraseology, I wish to say that I am, at the same time, opposed to what is usually termed free Banks. I wish it to be understood that I am opposed in sentiment to all systems of Banks, and banking that have been in use in this country I mean Banks of issue. But, while I give these as my own sentiments, I am persuaded that the people of my particular district, as well as the people of the whole State, are not now prepared to dispense with a paper currency. They are not willing to do it. They are in favor of a paper currency. I believe that to be so. And I am, therefore, in favor of incorporating one of the best elements for the security of the people in this Constitution, a provision, that we may have a well regulated State Bank—if you please to call it so, without any connection with it as a co-partner or stockholder, on the part of the State. If we should have any banks hereafter, I should wish that the State may exercise a control equal to that which she now exercises over the State Bank, and the branches of the State Bank of Indiana.

Well, sir, I have said that I believe it to be a fundamental republican principle that the states, in their political organization, shall be disconnected from banks and banking. I have no idea, Mr. President, that a state, in its existence as a body politic, is any more fit to deal in bank stocks as a co-partner, or stockholder, than it is fit to deal in any other commodity, merchandize, produce, or what not. And this would seem to be consistent with common sense. It seems to me that every gentleman must acknowledge that this position is true. But let us look at the reason for it. A state can certainly manage no department of business, by or through any other means than an agent; and it is well known, by every business man—by every gentleman who has reflected much on the subject of business, that business is *never* so well attended to by an agent as by the principal, or person mainly interested. A state is, therefore, not fit to be banker for this reason. It may be said that our State Bank and its branches have worked wonderfully well; that it has been, perhaps, better managed than any institution of the same character, in any of the states of the Union. I will not deny that the officers of the State Bank and its branches have managed their

business, so far as I know, very well and very prudently, generally. It may be said that the Bank has made for us, at a State institution, a large fund for education, for common school purposes. That fund is represented as being now over eight hundred thousand dollars; and it is supposed that it will be over a million of dollars at the expiration of the present charter of the State Bank. Well, sir, suppose it should be a million of dollars. I can show this Convention, if they need any such information, but I presume they are already in possession of it, that this fund has been lost to the State, not by any improper proceeding on the part of the State Bank or its branches, but it so happens that it has been loaned, under the authority of the Legislature, by the President of the Bank, for purposes of internal improvement.

Well, sir, I believe the then President of the State Bank was an honest man—I believe he is an honest man now; and that the transaction in regard to this matter was a perfectly honest transaction, but the result has been that the money is lost to the State.

Now, this is, to my mind, the strongest argument in support of my position, that the State is not fit to be banker, or to be engaged in banking operations.

Although I am persuaded that the affairs of the Bank have been managed with great prudence indeed, and that a statement of its affairs will show large profits to the stockholders as well as to the State, yet I have no fancy that the State shall be connected with banking operations at all. And, besides, is there any evidence that this good management will continue?

It may be said that the men at present engaged in that institution are good business men—men skillful in the transaction of the business pertaining to banking. Of this I have no doubt; but will they live forever? Have we any assurance that their successors will be as well qualified, of as good business tact and qualifications as they are? I think we have not.

The whole history of nations and of individuals, has left us melancholy examples of the caprice and weakness of different ages since the commencement of civilization. Individuals and nations have gone mad on many subjects, but especially on the subject of finance and money operations generally. It has been wisely said that men think in herds; and I will add that they go mad in herds. If we look at past history, we shall find many thousands of examples of this; and it should teach us the impropriety of connecting monied institutions with State governments or any other governments. How many delusions of this kind have prevailed within the short period of a few hundred years; and even within the period of the lives of some who are now present. The most extraordinary of all these, perhaps, occurred

before our Revolution, and not long before it. I mean the South Sea bubble, and the great Mississippi scheme, with which the government of France was connected; and not only the government, but almost every leading peer of France, and which ruined a whole community. If it had been merely an individual concern—if it had been a corporation entrusted with government stocks, it could not have produced a tithe of the injury that it did produce. And this, it appears to me, affords us a strong argument against a government having any connection with Banks or incorporations of any kind.

Well, sir, as I have remarked, if we examine history we shall find that whole communities, at various times, have gone mad in consequence of delusions in regard to money projects. These have been a more common means of leading men into madness and folly, than almost any other; and it takes a long while to bring the people back to sober sense and reason.

Well, sir, I said I was opposed to what is commonly denominated free Banks. I believe we are not at present prepared for that system; that is one reason, and I will not enter at present upon the discussion of that subject, because I do not wish to discuss it, further than to call the attention of gentlemen on all sides to one provision contained in the resolution which I have offered, upon the merits of which it is necessary and proper that we should decide before any plan of Banks or Banking shall be determined upon.

If we determine that the State shall not hereafter be a stock-holder in Banks, or in any way connected with Banking operations, the committee on Banks and Banking will be prepared to make their report, in conformity with such determination on the part of the Convention.

At present, I have reason to think that the committee on Banks and Banking, and particularly the chairman of the committee—a gentleman with whom I have been long acquainted—whom I know to be an honorable and high-minded gentleman—will, notwithstanding the modesty of his pretensions as represented to us the other day in his remarks, be competent to manage the duties which have been assigned to him on the committee—that he will perfect a plan similar to the one indicated by the resolution of the gentleman from Wayne; and I have no doubt that it will be approved if carried into effect.

I believe, sir, that there is no evil more to be dreaded by a State, except war and pestilence, than a connection between the government and Banks.

These are my serious convictions; and entertaining these convictions, I most sincerely deprecate the extending of any favor to such a plan or such a system. But my first objection—and I think it is a proper objection—is, that it is a violation of the Constitution of the

United States, and I do insist upon it, that the sense of the Convention should be taken upon the single proposition. Shall the State hereafter favor the present system? Shall the State be connected with the business of Banking as a stockholder in any Bank? That is the question. And I wish that gentlemen who are opposed to the Government being connected with Banks, would show their hands; that they would come out, and stand up to the question, without fear, favor, or affection. I do not suppose that honorable members of this Convention labor under any fear or apprehension that Banks, as they now exist, will ever have it in their power to injure them. They have no fear of being under any such influence.

Sir, I have no wish to create any feeling against Banks, nor the manner in which the affairs of Banking are conducted. I even admit, as I said before, that they have been well managed, that they have been prudently managed, but I am seriously opposed, on principle, as I have no doubt every true republican is, to any connection between popular Governments and Banks.

I desire, sir, that this subject shall be discussed. I wish to have the opinions of gentlemen on the subject. I hope that it will not be smothered. I wish that the friends of the proposition may have an opportunity of discussing it, and that its opponents will have an opportunity of showing their reasons against it, and if they can produce a conviction in the minds of members of this Convention that the resolution ought not to pass, of course I shall acquiesce in the decision that the Convention may make; but I do hope, as I believe this to be a very important measure—and I think every gentleman will so esteem it—that it may not be hurried to a decision until every gentleman who desires to say any thing in relation to it, shall have had an opportunity to do so.

Mr. KELSO. This is certainly a very important matter, and one that ought not to be hastily shuffled through. There is an amendment pending to make the resolution a matter of inquiry, instead of an imperative one, as at present. My colleague has just remarked that he is not particular about mere verbiage, if so let him consent that his imperative resolution be reduced to one of inquiry.

Mr. PEPPER of Ohio. I will remark that I am a member of the committee on banks and banking, and we have agreed that this resolution, if not previously otherwise disposed of, shall be referred to the same committee of the whole to which the report of our committee may be referred.

Mr. KELSO. Then to preserve it for that reference, I move to lay the resolution on the table.

Mr. REED of Monroe. I wish that the gentleman from Switzerland (Mr. Kelso) would withdraw his motion for one moment.

Mr. KELSO. I will withdraw it a moment to oblige the gentleman from Monroe.

Mr. REED. I wish to present to the Convention at this time, the words of a man of as remarkable sagacity as ever lived. I will only read two or three paragraphs from the farewell address of Andrew Jackson to the American people. He says:

"The several lessons of experience will, I doubt not, be sufficient to prevent Congress from again chartering such a monopoly, even if the Constitution did not present an insuperable objection to it. But you must remember, my fellow citizens, that eternal vigilance by the people, is the price of liberty; and that you must pay the price if you wish to secure the blessing. It behooves you therefore to be watchful in your State as well as in your Federal government."

This passage, (said Mr. Reed) if there is a line of this memorable address more important than another, particularly commends itself to the notice of this Convention.

"The power which the moneyed interest can exercise, when concentrated under a single head and with our present system of currency, was sufficiently demonstrated in the struggle made by the Bank of the United States. Defeated in the General Government, the same class of intriguers and politicians will now resort to the States, and endeavor to obtain there the same organization which they failed to perpetuate in the Union; *and with specious and deceitful plans of public advantage, and State interests and State pride*, they will endeavor to establish in the different States one moneyed institution, with overgrown capital and exclusive privileges sufficient to enable it to control the operation of the other banks. Such an institution will be pregnant with the same evils produced by the Bank of the United States, although its sphere of action is more confined; and in the State in which it is chartered, the money power will be able to combine its whole strength, and to move together with undivided force to accomplish any object it may wish to attain. You have already had abundant evidence of its power to inflict injury upon the agricultural, mechanical, and laboring classes of community, and over those whose engagements in trade or speculation make them dependant upon bank facilities, the domination of the State monopoly will be absolute, and their obedience unlimited. With such a bank and a paper currency, the money power would in a few years govern the State and control its measures."

"The mischief springs from the power which the moneyed interest derives from a paper currency which they are able to control, from the multitude of corporations with exclusive privileges, which they have succeeded in obtaining in the different States, and which are employed altogether for their benefit; and unless you become more watchful in your States, and check

this spirit of monopoly and thirst for exclusive privileges, you will, in the end, find that the most important powers of government have been given or bartered away, and the control over your dearest interests has passed into the hands of these corporations."

One paragraph more, Mr. President, and I have done:

"The paper money system, and its natural associates, monopoly and exclusive privileges, have already struck their roots deep in the soil; and it will require all your efforts to check its further growth, and to eradicate the evil. The men who profit by the abuses, and desire to perpetuate them, will continue to besiege the halls of legislation in the General Government, as well as in the States, and will seek by every artifice to mislead and deceive the public servants. It is to yourselves that you must look for safety, and the means of perpetuating your free institutions. In your hands is rightfully placed the sovereignty of the country, and to you, every one placed in authority is ultimately responsible. It is always in your power to see that the wishes of the people are carried into faithful execution, and their will, when once made known, must sooner or later be obeyed. And while the people remain, as I trust they ever will, uncorrupted and incorruptible, and continue watchful and jealous of their rights, the government is safe, and the cause of freedom will continue to triumph over all its enemies."

"But it will require study and persevering exertions on your part, to rid yourselves of the iniquities and mischiefs of the paper system, and to check the spirit of monopoly, and other abuses which have sprung up with it, and of which it is the main support. So many interests are united to resist all reform upon this subject, that you must not hope the conflict will be a short one, nor success easy. My humble efforts have not been spared during my administration of the Government, to restore the Constitutional currency of gold and silver; and something, I trust, has been done towards the accomplishment of this most desirable object. But enough yet remains to require all your energy and perseverance. The power, however, is in your hands, and the remedy must and will be applied if you determine upon it."

These are the words of the illustrious Jackson—they are the most appropriate to this time and place, and I will not add to them any speech of my own.

Mr. RARIDEN (in his seat). Now let us have the song of Moses, after the Israelites had crossed the Red Sea. (Laughter.)

Mr. KELSO renewed his motion to lay the resolution on the table.

The motion to lay the resolution on the table was agreed to.

Mr. HAMILTON. With the leave of the Convention, I should like to make a brief explanation.

Leave was granted by unanimous consent.

Mr. HAMILTON. I perhaps have been misunderstood. I am not wedded to any particular plan of settling and disposing of this bank question. Whether we shall grant a renewal of the charter of the State Bank or not, is a question that should be left to the Legislature. But I rose to say that my friend from Ohio (Mr. Pepper) made me endorse the sentiments of the gentleman from Wayne (Mr. Rariden). Now I respect that gentleman very much, but those propositions offered by him are his own sentiments, and not mine. I neither endorse them nor disapprove of them. So far as I am concerned, I wish to approach their consideration with calmness; and I must express the hope that they will be weighed well by all, without regard to party feelings, and I hope that democratic or whig feelings and views will not enter into the discussion during all our deliberations.

Mr. PEPPER of Ohio. If the gentleman from Allen will not endorse the gentleman from Wayne (Mr. Rariden) I certainly owe him an apology.

Mr. RARIDEN, in his seat, no endorsement is needed, gentlemen.

The PRESIDENT announced that the hour for taking up the special order of the day had arrived.

Mr. COOKERLY said, that Mr. Terry who had the floor for this morning, and who was prepared to speak upon this question, was unwell and could not address the Convention at this time.

A VOICE. Speak in his place.

Mr. COOKERLY. I feel obliged for the suggestion, but I do not represent that side of the question.

Several members here called repeatedly for the question which was upon the amendment to the resolution of the delegate from Tippecanoe (Mr. Pettit) proposing to abolish Grand Juries.

The PRESIDENT. The question is—

Mr. BORDEN. I hope, sir, in courtesy to the gentleman who has the floor, and intended to speak this morning, that the Convention will consent to postpone the special order of the day.

The PRESIDENT was about to put the question upon the adoption of the amendment to the resolution when

Mr. PETTIT said, I hope, sir, the question upon this important matter will not be taken until the Convention is full. There are some members who wish to debate it who are not present to claim the floor, because they understood that it was pre-occupied for this morning, and in courtesy to that gentleman we should continue the debate. There are many who have expressed a desire to hear from their constituents upon this matter before they voted, and these would be gratified if the subject could lie over for several days.

If no other gentleman desires to discuss the question (relative to the abolition of Grand Juries) I will move that the special order of the day be postponed until next Monday morning at nine o'clock.

SEVERAL VOICES. Postpone it until Monday week.

Mr. PETTIT. Very well, I have no objections, and I move that the special order be postponed until one week from next Monday.

The question being put upon the motion to postpone, it was agreed to.

The PRESIDENT. The next business in order is the resolution offered by the gentleman from Randolph (Mr. Hawkins).

The resolution is as follows:

Resolved, That the committee on the elective franchise and apportionment of representation, be instructed to enquire into the expediency of providing by a clause in the new Constitution "that a majority of the legal votes of this State at a general election, by a direct vote upon the subject, may extend the right of universal suffrage."

The pending question being upon the following amendment, proposed by the gentleman from Posey, (Mr. Hovey,) to insert the words, "except negroes, mulattoes and Indians,"

The question being put upon agreeing to the amendment,

The ayes and nays were demanded.

Mr. KELSO. As this is merely a resolution of inquiry I hope that the amendment will be withdrawn and the resolution permitted to go to the committee to which it is directed.

Mr. COLFAX. Allow me to add my appeal to the gentleman from Posey that the amendment may be withdrawn.

Mr. KILGORE moved to lay the resolution on the table.

The motion was agreed to.

So the resolution was laid upon the table.

Mr. PEPPER of Crawford offered the following resolution:

Resolved, That the committee on the elective franchise and apportionment of representation, enquire into the expediency of so amending the Constitution that the number of Representatives in the Legislature shall never exceed one hundred, and the number of Senators shall never exceed fifty, leaving the Legislature with power to reduce said number at any time, if such reduction shall become necessary.

Mr. COOKERLY moved to amend as follows: Strike out all after the word "resolved" and insert:

"That the committee on the elective franchise and apportionment of representation, be instructed so to amend the Constitution, that the House of Representatives shall consist of seventy members, and that the Senate shall consist of thirty."

Mr. COOKERLY remarked, that he would like to have the resolution made the special order for some day next week.

Mr. RARIDEN suggested, as an amendment, that the basis of representation should be one Representative for every twenty-five hundred inhabitants, and one Senator for every five thousand inhabitants, until otherwise changed by the Legislature.

Mr. COOKERLY. If in order I will move to make the resolution the special order for Wednesday next.

Mr. WALPOLE moved to amend the gentleman's (Mr. Cookerly's) motion by referring the subject to a committee of the whole, and making it the special order for Wednesday next at two o'clock.

The motion was agreed to.

Mr. WALPOLE moved that the committee on apportionment be discharged from the further consideration of the several resolutions which were referred to them, but now made the special order for some future day. If the committee is discharged, said Mr. W., these matters will be discussed and determined upon in committee of the whole, and the labor of the Convention will be abridged.

Mr. WOLFE. It will be too early to discuss the matter, for we shall not have the census returns all in.

The motion was agreed to.

Mr. FOSTER offered the following resolution:

Resolved, That the Secretary of State be directed to procure, as soon as practicable, from the Marshal, the number of inhabitants of this State, and that he further be directed to procure from the proper authorities, the number of inhabitants in each State of the Union, according to the present census, as authorized by act of Congress, and furnish the same to this Convention.

Mr. KELSO. What is the object of this resolution? If it is for our benefit in this Convention, I would move to amend, so as to make it the duty of the Secretary to lay this information before the Convention, after it has been obtained.

Mr. FOSTER. I believe that my resolution is german to the subject before the Convention, which is the apportionment of the representation of the State. We are assembled at a most opportune time for the apportionment of the State, for both legislative and Congressional apportionments. The census has just been taken by the General Government, and we have the fullest, the most accurate, and most reliable information as to the basis of apportionment. We have as good right to make a Congressional apportionment, as any future Legislature that may assemble.

Mr. KELSO. I now understand the gentleman, and I move so to amend his resolution, as to make it the duty of the Secretary, to lay the

census returns before the Convention, when he shall have obtained them.

Mr. PETTIT. I think, sir, that we are anticipating entirely too much in proposing to make a Congressional apportionment in this Convention. It will be two years from next August, before there will be a Congressional election, under a new apportionment.

Now, sir, I am willing to vote for that resolution, so far as it proposes to collect the census returns for the State of Indiana—but I shall oppose that part of it, which proposes to collect the census returns from all the States in the Union. It seems to me that it would be putting the Secretary of State to a great deal of unnecessary trouble and labor, to collect the census returns of all the United States. He would have to write to all the Secretaries of other States; for all of this information has not yet been forwarded to the General Government at Washington.

I move to strike out of the resolution of the gentleman (Mr. Foster) so much as relates to collecting the census returns of other States.

Mr. FOSTER. I believe that it is conceded on all hands, that we need to get the information called for, so far as this State is concerned. And, I differ with the gentleman from Tippecanoe (Mr. Pettit), in his views of the necessity and policy of making a Congressional apportionment at this time, and I can cite the gentleman to precedents in favor of my position. The Congressional apportionments of 1830, and of 1840, were made while there was yet another Congressional election, under the old apportionment.

It is well known that by an act of Congress, the old mode of apportionment is changed, and that, hereafter, the House of Representatives at Washington, is to consist of a certain number, and that the States, in apportioning, must send but a given number of representatives, so that the aggregate shall not exceed the number fixed. We must ascertain the number of inhabitants in all the States, before we can know to what number of Congressmen we are entitled. It was with this view that I drew up the resolution now before the Convention. It will involve but a slight expense, and as to the labor it may require, the writing of some thirty letters, not more.

It has been suggested, that all the newspapers would publish this information, and the Convention might get it from them. This will not answer the purpose at all, for if the newspapers do contain the census returns, they will not be in an authoritative form, and we must have it in an official and authorized form.

I am willing at any proper time, to discuss the right of this Convention, to apportion the State for Congressional purposes. I hope that the amendment of the gentleman from Tippecanoe, will not prevail, but that the original resolution will be adopted.

Mr. COOKERLY said, he thought that if the Convention had the right to apportion the State into Congressional districts, so long a time before their would be an election under it, it would be entirely unnecessary to do so. He desired to see the amendment that had been offered by the gentleman from Tippecanoe, adopted.

The PRESIDENT stated the question to be first upon the amendment.

The question being taken, the amendment was adopted.

The question next recurring upon the original resolution (Mr. Foster's) as amended, it was adopted.

Mr. WATTS offered the following :

Resolved, That the chairmen of the several committees of this Convention, report back to the same, the Constitution of the State, with the several proposed amendments, and that this Convention will take up the same, article by article, with the proposed amendments, to the same, and debate and pass the same in full Convention.

Mr. WATTS. I have a few remarks which I should like to make to the Convention, upon the subject of this resolution.

It has been said, that there should be no reports made from standing committees, until the Convention has given a pretty full expression of its sentiments, upon the subject matter of that report. By my plan the Constitution would be read over section by section, and the opinion of the Convention upon the various subjects, would be gathered as we went along, the various amendments could be offered in their proper places, and when we had read and amended the last paragraph, the Convention would be ready to adjourn, and its members to go home. I think such a course would very much expedite business, and save a great deal of expense and time.

On motion by Mr. MILLER, the resolution was laid upon the table.

DEAF AND DUMB ASYLUM.

Mr. TAGUE offered the following :

Resolved, That the Superintends of the Asylums for the Deaf and Dumb, and the Blind, be requested to inform this Convention, at an early a day as practicable, the number of students in each, together with their names, ages, counties, &c., together with the cause of their deafness, and blindness, if known. Also, that the Superintendent of the Asylum for the Insane, report to this Convention, how many inmates are under his charge at present, how many have been discharged as cured, and the causes of the insanity of each, so far as he knows.

Mr. MORRISON. I move to amend by striking out from the resolution, that part, which calls for information, as to the causes of these diseases.

It would be a very lengthy history indeed, if we were to have a detailed and circumstantial account of the remote, and almost numberless causes, and inceptions of these afflicting maladies. I hope the gentleman will accept of the amendment.

Mr. TAGUE. I will accept the amendment.

The question then being upon the original resolution,

Mr. KELSO. Of what possible use can the resolution now be? There can be no necessity for this body, knowing the number merely afflicted with these diseases.

Mr. MORRISON. The resolution has as much virtue in it now, as before the amendment. This Convention has not assembled for the purpose of ascertaining cures for optical or other diseases, and, therefore, it is not necessary that we should know the causes which resulted in the blindness of the unfortunate inmates of the Blind Asylum. We cannot desire to know, whether the causes of blindness in this one case, was *ophthalmia*, and in another, weakness of the optical nerve.

Mr. KELSO. The gentleman from Marion (Mr. Morrison) thinks its unnecessary for us to know the causes of disease, because, he says we are not assembled here for the purpose of curing the inmates of our State benevolent institutions. Yet he think it important that we should know the number of inmates. I would ask him if he thinks we are here to erect buildings for the Deaf and Dumb, and the Insane of the State?

But as the mover of the resolution has signified his willingness, I move that the resolution be laid upon the table.

The motion was agreed to.

Mr. GIBSON offered the following:

Resolved, That the Secretary of State be requested to furnish this Convention with a list of the names of all persons pardoned, or whose sentences have been commuted by the Governor, during the twelve years ending on the 1st of January last; the crimes for which they were sentenced, the nature of that sentence, the date of the sentence, and the date of the pardon; also, all fines and forfeitures by the Governor remitted during the same period, the amount so remitted, the names of principal and surety, and the crime or misdemeanor for which the forfeited recognizance was taken or fine imposed.

Mr. READ of Clarke moved to amend the resolution so as to reach over a period of twelve years. He said that much more satisfactory results would be arrived at from going back twelve years.

The amendment was accepted by the mover of the resolution, and the original resolution adopted.

Mr. BRIGHT offered the following:

Resolved, That for the purpose of furnishing the information required by the Convention of the Secretary of State, he be authorized to employ a clerk temporarily, until such information can be obtained.

Mr. BRIGHT. The resolution of this morning, calling upon the State officers for information as to the amount of fines remitted and sentences commuted, will require so much additional work that the services of a clerk are much needed for the time being.

Mr. KILGORE moved to amend the resolution so as to give the Secretary of State the right to call upon one of the Assistant Secretaries of this Convention for any assistance he may require in order to furnish information to the Convention.

The amendment was agreed to.

Mr. HARDIN. If the gentleman from Jefferson (Mr. Bright) is right, I think we should re-consider the resolution passed this morning, and so amend it as to require less labor and time in preparing the information.

Mr. READ of Clarke. In a communication which I had with the Governor a few days since, I understood him to say that he had made out an answer to the interrogatories propounded to him.

Mr. GIBSON remarked, that all of the information called for was highly important.

Mr. HARDIN remarked, that if the vote was re-considered he should move to extend the inquiry beyond the term of twelve years.

Mr. GIBSON. Twelve years is sufficient for all practical purposes. The resolution, as it is, calls for nothing but what we want. It will elicit no information that the Convention does not need. I venture to say, sir, that this Convention will be surprised when the communication from the Governor comes in, to see the amount of fines and forfeitures that have been remitted. No prerogative of the Governor's office has been more abused than this. I allude to no person in particular; I am speaking of all the Governors, without distinction.

Mr. READ of Clarke. I would make no charge against any of the Governors, but I must say, that in my opinion, the pardoning power has been more abused than any other in the State. And yet I freely admit, that had I been in the Governor's place for the last twelve years, I might have granted as many pardons as the Governors have. I know that the case of a wife on her knees before the Governor, begging for executive clemency in behalf of a husband—or a mother for a son, is most affecting, and an abuse of the power does not reflect so much upon the chief magistrate of the State as upon the system.

Mr. WALLACE. I agree with the gentleman from Clarke (Mr. Read) when he says that there is no power so difficult and delicate to exercise as the pardoning power. I, sir, have had some experience in this matter, and,

perhaps, can speak understandingly upon the subject. I think that the resolution calling for information as to the exercise of the pardoning power, should be amended so as to embrace all of these acts of executive clemency since the organization of the Government.

I agree with the gentleman from Clarke, that we should endeavor to lighten the responsibility of the Governor in this respect. He should have some one to share it with him.

The power vested in the Governor to remit fines and forfeitures has also been used to a questionable extent. And I would say, in regard to this, what I say of the pardoning power; the Governor should have some other body or officer with whom its exercise and its responsibility should be shared.

Mr. TAYLOR. Will the Secretary please read the resolution?

The resolution was read.

Mr. TAYLOR. I do not think, sir, that any resolution having for its object the authorizing of the Secretary of State, or the Governor, to employ an additional clerk or clerks, is at all necessary, and if gentlemen will give me their attention for a moment, they will see that this Convention is entirely wrong in attempting to make provision in regard to this matter. I presume that it is generally known that the Governor of a State has at his disposal what is called a "contingent fund," upon which he may draw when he thinks that the exigencies of the public service demands. Should he overdraw the amount of this "contingent fund" he would inform the next Legislature of the fact, and the amount would be promptly voted. So we need not arrest the deliberations of this Convention to inquire whether or not the Governor has sufficient assistance to enable him to perform all the duties of his station.

The vote being taken upon the motion to reconsider the resolution calling upon the Executive for certain information, the Convention refused to re-consider.

On motion by Mr. PEPPER of Crawford,

The Convention adjourned until nine o'clock to-morrow morning.

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SATURDAY, Oct. 26, 1850.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. MILLS.

PROPOSITIONS TO AMEND.

Mr. OWEN, from the committee on the rights and privileges of the inhabitants of the State, submitted the following report, and the committee were discharged from the further consideration of the resolutions and memorials therein referred to:

Mr. PRESIDENT: The committee on the rights and privileges of the inhabitants of the State,

to whom were referred sundry resolutions and memorials on the subject of imprisonment for debt; on the extension of the right of trial by jury; on the taking of private property for public use without compensation first made; and on the propriety of prohibiting negroes and mulattoes from settling hereafter in this State, have had these subjects under consideration, and have instructed me to report the result of their deliberations in four sections, herewith submitted, to be incorporated in their proper places in the amended constitution.

The resolutions and memorials are herewith reported back to the Convention, with a recommendation that they be laid on the table.

And the committee ask to be discharged from the further consideration of these subjects.

SECTION —. There shall not be imprisonment for debt, except in case of strong presumption of fraud.

SECTION —. In all cases where the amount in controversy shall exceed the sum of twenty dollars, and in all criminal cases whatever, the right of trial by jury shall remain inviolate.

SECTION —. No man's personal services shall be demanded without just compensation. No man's property shall be taken by law, without just compensation first assessed by a jury of freeholders and tendered to the owners by the person to be benefitted—but such tender, if rejected, shall not bar the right of appeal.

SECTION —. The General Assembly, at its first session under the amended Constitution, shall pass laws prohibiting *negroes and mulattoes* from coming into, or settling in, this State; and prohibiting any negro or mulatto from purchasing or otherwise acquiring real estate hereafter.

The sections reported having been read a first time, were passed to a second reading.

Mr. STEVENSON desired to move that they be printed.

The PRESIDENT. The motion would not be in order until the propositions should come up for consideration on their second reading.

Mr. NILES. As a member of the committee on the rights and privileges of the inhabitants of the State, I beg leave to submit a minority report; with reference to the same subjects that are embraced in the report of the majority which has just been read. It was my misfortune to be unavoidably absent from the meeting of the committee on yesterday. Though standing alone, as I happen to do, I have this morning prepared a counter report which I beg leave to submit, and which I will read.

Mr. NILES read the following minority report:

Mr. PRESIDENT: As a member of the committee on the rights and privileges of the inhabitants of the State, I respectfully report back to the Convention sections five and seven of the present Constitution of the State, which read as follows, namely:



"That in all civil cases where the value in controversy shall exceed the sum of twenty dollars; and in all criminal cases *except petit misdemeanors, which shall be punished by fine only, not exceeding three dollars*, in such manner as the Legislature may prescribe by law, the right of trial by jury shall remain inviolate."

"That no man's particular services shall be demanded, or property taken and applied to public use without the consent of his representatives, or without a just compensation being made therefor."

And I recommend their adoption as parts of the new Constitution, in lieu of the sections on those subjects, reported by a majority of said committee.

I also signify my dissent from the report of the majority of said committee relative to negroes and mulattoes. JNO. B. NILES.

The PRESIDENT. The Chair would remark to the gentleman from Laporte, that any proposition submitted for the action of the Convention must come from the majority of the committee. A minority has not the right to submit matter for the action of the Convention.

Mr. NILES. I must confess, sir, that I had some doubts upon the subject, and to satisfy myself I submitted my report to several experienced gentlemen, who thought that it would be in order. It would be clearly irregular except for the peculiar rule adopted by this Convention with reference to reports from the committees, providing that reasons shall not be reported—that simply the articles or sections shall be reported *without argument*. A committee evidently includes all its parts. And it occurred to me that this rule must modify the common rule of legislative bodies throughout, and that unless a minority are permitted to report sections to be substituted for those reported by the majority, their lips must be sealed.

The PRESIDENT. The Chair is of opinion that the minority have the power to report reasons.

Mr. NILES. If that is the decision of the Chair, and consented to by the Convention, I shall remain content.

Mr. EDMONSTON. The gentleman from Laporte can attain his object by proposing the matter of his report by way of amendment when the propositions reported by the majority shall come up.

The SECRETARY again read the articles reported by a majority of the committee, and they were passed to a second reading on to-morrow.

Mr. STEVENSON desired to make a motion to print, but

The PRESIDENT said, the proper time for a motion to print would be when the subject should come up for a second reading.

## STATE DEBT.

Mr. HALL, from the committee on the State Debt and Public Works, reported the following, which was read a first time and passed to a second reading:

Mr. President: The standing committee on that branch of the Constitution which relates to the State debt and public works, have directed me to report the following article, which is asked to be incorporated in the new Constitution, to wit:

### ARTICLE —

SECTION —. The credit of this State shall never be given or loaned in aid of any person, association, or corporation.

SEC. — The General Assembly may contract debts to meet casual deficits or failures in the revenue, for the purpose of paying the interest on the State debt—but such debt shall not, at any time, exceed one hundred thousand dollars —*Provided*, that the State may contract debts to repel invasion, suppress insurrection, or, if hostilities are threatened, provide for public defence.

SEC. — No act of the General Assembly shall authorize any debt to be contracted on behalf of this State, except for the purposes mentioned in the — section of this article, unless provision be made therein to levy and collect an annual tax sufficient in amount to pay the interest thereon, and to discharge the debt within twenty-five years; nor shall such act take effect until it shall have been submitted to the people at a general election, and shall have received a majority of all the votes cast for and against it.

SEC. — The General Assembly shall have no power to pass laws to diminish the resources of the sinking fund, as now established by law, but may pass laws to repeal it.

### AMENDMENT OF THE RULES.

Mr. OWEN gave notice that on to-morrow, or some day thereafter, he intended to offer a proposition so to amend the rules, that reports of sections or propositions to amend, shall be printed upon their first reading.

### COUNTY AREA.

On motion by

Mr. KILGORE, the resolution submitted by him on yesterday, was taken up for consideration, and read by the Secretary. It is as follows:

*Resolved*, That the committee on county and township organization, powers, and officers, be instructed to report a section for the new Constitution, in lieu of Sec. 12, Art. 91, of the present Constitution; expressly prohibiting the Legislature from reducing any county now organized, below four hundred square miles.

Mr. COOKERLY proposed to amend by changing the proposition so as to make it a resolution of inquiry.

Mr. SMITH of Ripley said, the committee on

county and township organization had already two or three resolutions before them, in the very words of this one.

Mr. COOKERLY withdrew his amendment.

Mr. LOCKHART proposed to amend the resolution so as to give a discretion to the Legislature upon this subject.

Mr. ROBINSON proposed to amend the amendment by striking out from the original resolution, the words "four hundred," and inserting the words "three hundred."

Mr. KENT inquired of the chairman of the committee on county and township organizations, whether a similar proposition was not already before that committee?

The PRESIDENT. The gentleman has already stated that there are two or three.

And then, upon the farther motion of

Mr. KENT, which was agreed to, it was

*Ordered*, That the resolution and pending amendments, be laid upon the table.

#### STATE DEBT.

Mr. MAGUIRE offered the following resolution:

*Resolved*, That the committee on the State debt and public works, be directed to inquire into the propriety of inserting in the new Constitution, a clause providing that the proceeds of the State's interest in any of the public works, shall be devoted to the payment of the principal of the public debt; and also, that any surplus in the treasury, at any time hereafter, arising from taxes for general State purposes, shall be set apart for the same purpose.

Mr. KILGORE proposed to amend, by inserting, at the proper place, the words, "set apart for the benefit of common schools."

The PRESIDENT. The gentleman will send up his amendment in writing.

Mr. EDMONSTON moved to lay the whole matter upon the table; but withdrew the motion at the request of

Mr. MAGUIRE, who desired to explain the object of the resolution. He said that the committee upon the State debt and public works, had had a meeting yesterday, with reference to the subject which they reported upon this morning; and, at that time the subject of this resolution was agitated before the committee, and it was considered by them that they had no power to report upon a matter which had not been referred to them. With regard to the resolution itself, and the amendments, (he continued,) the resolution contemplates that the proceeds of the public works of the State—such as the Madison Railroad, the Central Canal, or the Wabash and Erie Canal, (if it should ever be redeemed by the State, which is not very probable,) may be appropriated for the payment of the public debt. It is well known that the debt was contracted for the purpose of making internal improvements for the State, and, therefore, it seems

but right and proper that their proceeds should be appropriated to its payment.

Mr. Kilgore's amendment having been prepared in writing, was now read, as follows: strike out the words "devoted to the payment of the public debt," and insert in lieu thereof, the words, "set apart for the benefit of common schools."

Mr. HALL. I hope the amendment will not be adopted. The resolution is merely a proposition of inquiry; and, as stated by the gentleman from Marion, (Mr. Maguire,) the subject was spoken of in committee on yesterday, and it was thought proper to have it referred to them before taking action upon it. What conclusion the committee may come to upon its consideration, is unknown to me. I hope, however, the amendment will not be adopted, and that it will be the pleasure of the Convention to let the resolution take the ordinary course—let it go to the committee, and, should they come to an affirmative conclusion upon it, and report that this fund ought to be applied to the payment of the State debt, gentlemen will still have ample opportunity to investigate the subject.

Mr. BORDEN. In the portion of the State where I reside, this subject of doing something toward the payment of the State debt, has been considerably agitated. I am glad, therefore, that the resolution has been introduced, and hope it will be adopted. I think it would be well to insert a provision in the Constitution of the State, directing that, when the 25 cts. on the \$100 valuation, now levied under the arrangement with the bond holders of the State, shall produce an excess over and above paying the interest on the debt, that that excess shall go into a sinking fund, and be applied to the retiring and payment of the principal of the debt itself. I believe that, if this Convention should close its labors without doing something for the extinguishment of the public debt, and relieving the people from the burthens of taxation which are now bearing them down, the body will fail to answer one of the purposes for which it was convoked. And the only way by which that object can be attained must be by a prudent husbanding of all our resources, and applying them faithfully to this purpose.

The question being taken upon the amendment, it was not agreed to.

And the question was then taken on the resolution and it was adopted.

#### NEGRO SUFFRAGE.

Mr. COLFAX offered the following resolution:

*Resolved*, That the committee on the elective franchise be instructed to inquire into the expediency of separately submitting the question of negro suffrage to the people.

Mr. COLFAX said:

Mr. PRESIDENT: I know how unpleasant and embarrassing it is for a member to offer and at-



tempt to advocate a proposition in any deliberative body where he realizes that the feelings, and as I may be permitted to add in the present case, the prejudices of the majority are strongly and immovably enlisted against it. But, notwithstanding this, I desire to speak briefly in support of the proposition I have presented.

It matters little—very little, sir,—to a man who seeks only for justice and truth, whether he be on the popular or unpopular side. If his views are honestly entertained; if his propositions are dictated by duty, he should stand up fearlessly, regardless of the fate that may await him or them. Whether he shall be received with applause or hisses—whether his propositions shall be swept down in defeat, or triumph in success—whether he shall find himself in a strong majority or a weak minority, should not, in the least degree, influence his action. And, therefore, Mr. President, the question, whether this resolution would be adopted or rejected, did not enter my mind when I penned it, nor has it affected my course now. But I have thought that I could show to the satisfaction of impartial men, some reasons why it is eminently right and proper that the Convention should adopt it.

And *First*: It is a question which underlies all others in the formation of our organic law. It is the decision as to who shall be admitted as partners in the right to govern—who shall be allowed to participate with us as citizens. It is the first question for consideration. And who, sir, so proper, so well qualified to settle this important question as the people themselves? What better method can be devised for its adjustment than that it should be separately submitted as a distinct, isolated question to that people? Certainly, in so doing, we strike out no new or untried path. We would but be following in the footsteps of Constitutional Conventions in other States, composed of as wise and discreet members as this, which have gone before us. In the great Empire State, a majority of the Convention were opposed to an unlimited extension of the right of suffrage to the negro race; but that Convention said to the people, “we submit this question to you. We leave you, the sovereigns here, to decide who you will admit to the rights of citizenship with you.” We would but follow the example of Wisconsin, which has twice submitted the question for decision at the ballot box: We would but follow in the footsteps of Connecticut. We would but adopt the course of Michigan, the State which borders us upon the North, where her Convention has only recently adjourned. We would but coincide with what will be, as I understand, the probable action of Ohio, the great State that borders us on the East. Certainly, sir, we cannot err much in a free State like ours (if it is not out of order to call this a free State) if we follow the examples thus marked out. We do not ask for an

incorporation of such a clause in the Constitution. It is merely to submit it separately, *apart* from all other questions, to a separate, distinct vote of the people. Whom can it harm? Whom will it injure? No one, sir, no one. Many differ with this Convention in regard to this question. But in this way, those who do thus differ have an opportunity to satisfy their convictions of duty, and what they regard as the demands of their conscience.

And *Secondly*: Mr. President, it seems to me that if we look at the law under which this Convention assembled, we can draw no other inference from it upon this question, but that a separate submission of the suffrage section was intended. It is expressly provided that we should have the power to submit distinct questions to separate votes at the time of the voting upon the new Constitution. And I ask gentlemen to point me to a single State Convention which has separately submitted *any* distinct proposition to the people, where this matter of negro citizenship was not one of those separate submissions. The Legislature which passed this law knew this fact, and I hold, therefore, that by the adoption of this resolution, we would be acting in exact accordance with the views and expectations of the Representatives of the people, who, in accordance with their vote at the polls, have called us together.

But *Thirdly*: Mr. President, we should thus submit this question because such a course would almost certainly strengthen the vote upon the adoption of the new Constitution. It is well known that there are, at least, five thousand voters in the State (others rate them as high as ten thousand in number) who are ardently and, I believe, honestly and conscientiously in favor of Universal Suffrage to all classes and condition of men, to be restricted only by a certain term of residence. Vote down such a proposition as this—refuse even to allow of its submission, certain as you profess to be, and are, of its rejection by a decisive majority, and you force these men, nearly all of whom will be in favor of the reforms of the new Constitution to sink all other questions in this, and to exhibit their devotion to a principle they cherish by voting against the adoption of the whole instrument.

As sworn Delegates, sir, I believe it be a solemn duty devolving on us all to adopt such a course, and to take such action, as will the most certainly insure the adoption of the new Constitution that we frame; and to prevent the expectation of its friends from being thwarted, and the heavy expense of this Convention from being worse than wasted by the rejection of the instrument that comes from our hands. And, sir, look what an opposition it is morally certain to encounter, be its details ever so carefully, and judiciously, and impartially arranged and agreed upon. Look at the vote at the polls on the question of calling this Convention. Were there not fifty-two thousand voters who said no?

This large portion of the people have thus avowed that they would rather live under the evils (for all acknowledge that there are some) of the present Constitution than risk the amendments that would be proposed in this age of reform. We know full well—we should not, we cannot, shut our eyes to the fact—that no Constitution can be made acceptable in all respects to a large portion of these opponents of this Convention. And besides, the majority who voted for the convocation of this body, were composed of men who favored every possible shade of principle—of men, some of whom gave it their support because they hoped for the adoption of this provision, and some for another, and so on. Many, very many, of these *must* be disappointed. The result of our labors cannot please all, even of those who voted for this Convention. And when you consider these things, you must see that the new Constitution is destined inevitably, no matter how wise its provisions may be, to be met with an opposition too considerable to be lightly regarded or needlessly increased. Gentlemen must remember how it was when the New York reformed Constitution—one of the best and wisest that has been framed in this Republic—was submitted to the voters of that State for their decision. The very large vote (I think a majority) cast against it in the city of New York cannot have been forgotten, for when it was announced it astounded the friends of reform. Other counties also voted against it, but happily it was adopted, perhaps because this very question of negro suffrage was separately submitted. And when members know that there is a large portion of the people who will vote against reform in every shape, because they reverence and cling to the past—because they doubt the expediency of changes proposed—because, in a word, they are anti-progressive, I ask them if they do not act unwisely in rejecting this proposition. By so doing they outrage the feelings of those who look upon the question involved in it as one of solemn principle. You say to them who only ask of you an opportunity such as has been afforded in other States, to absolve themselves from an apparent acquiescence in your decision as to who shall have the right of suffrage,—“you shall have no such opportunity. We have the power and we cut you off from it.” And will they not say to you in reply, “we will have none of your work.”

It is needless for me to repeat what I have once before stated in this Hall, that for reasons which seem satisfactory to my mind, I am personally opposed to negro suffrage. This position has not been concealed. I stated it repeatedly during last summer's canvass on the stump, in a printed circular, and to all of all parties with whom I conversed on the subject. But I also stated that, though it was evident to every one that the majority against that extension would be overwhelming, I should vote to submit the question to a separate vote of the

people themselves, and thus allow every man to relieve his conscience with respect to it.

Sir, Mr. Jefferson wisely and truthfully declared that “Error ceases to be dangerous, when Truth is left free to combat it.” And, if gentlemen think as they profess, that such an extension is a dangerous heresy and error, and that it might sink the reputation of the State, in the opinion of some of her sisters or neighbors, let them go upon the stump, and warn the people against it.

Mr. President, there are several gentlemen of this body who have stated to me that they voted for the amendment of the gentleman from Posey (Mr. Hovey) to the resolution of the gentleman from Jay, (Mr. Hawkins,) because they understood that, by the wording of that resolution, this question could be again and again submitted to a popular vote; and they were opposed, if that *was* intended, to an agitation and re-agitation of the question after it had once been settled. Now, all we ask in this resolution is that it shall be submitted *once*, when the New Constitution itself is submitted, so that the people may decide, once for all, who shall be admitted into partnership with them in the civil compact. And, for my life, I cannot see what there is in this so obnoxious and objectionable.

In conclusion, but a word. It has been gratifying—it has been an augury of good—to see the spirit of courtesy which has pervaded this Hall, on every side, during our deliberations. Every member has had an opportunity, if he desired it, to record his name in a direct vote upon the proposition he might present. The only exception I remember was the other day, in refusing to the gentleman from Jay (Mr. Hawkins) that privilege—and by amending his resolution so as to completely destroy its vitality, making it objectionable, even to its friends. The same course may be taken with this resolution. It may be loaded down with amendments, and thus be kicked out of the way. But I can only appeal to the courtesy of membership on this floor not to take this course, but to allow us the privilege of recording our votes directly upon this resolution, unembarrassed with amendments. It is simply a resolution not compulsory in its character, but merely directing the committee to enquire into the expediency of the proposed separate submission of the negro suffrage question to the rightful arbiters—the people themselves, in their primary capacity, at the polls.

MR. COOKERLY. The vote upon the resolution of the gentleman from Jay, (Mr. Hawkins,) cannot but be regarded as a full expression of the sense of the Convention; and I was astonished to see the gentleman from St. Joseph (Mr. Colfax) come forward so soon afterwards, and offer a resolution upon the same subject, and in almost the same terms, as that which was then voted down. Sir, the gentleman has



tried to score us into the support of the resolution by saying, that some five or ten thousand citizens of the State will vote against the new Constitution, unless it shall contain his provision. Sir, I, for one, will vote against his proposition, and if those five or ten thousand will vote against the new Constitution, let them do it. I have no apprehensions upon this subject, sir. If we make a good Constitution for the people, I believe they will accept it; and if we do not make a good one, I will help them to reject it. I am willing, however, to accord to the gentleman a direct vote, by yeas and nays, upon his resolution.

Mr. MILLER of Fulton. This resolution, I understand, proposes to submit the question but once to the people. I voted the other day for the amendment of the gentleman from Posey (Mr. Hovey) to the resolution of the gentleman from Jay, (Mr. Hawkins,) because I did not believe in having this matter submitted again and again to the people. But I feel disposed to vote for this resolution, for the reasons given by the gentleman from St. Joseph, (Mr. Colfax,) that is, in order to secure the free soil vote for the new Constitution, and in order to quiet the minds of all parties. I assure the Convention, that I should vote against this proposition at the polls, if it were submitted twenty times to the people. I am sure it would endanger the new Constitution to refuse to submit this question, and I think, also, with the gentleman from St. Joseph, that it would be discourteous to refuse a direct vote upon this proposition—it being nothing more than a mere resolution of inquiry.

Mr. OWEN. I am not sure but that I shall vote in the minority, upon this subject. It seems to me, that the practical results of the motion of the gentleman from St. Joseph, (Mr. Colfax,) are simply two. One is, that if we submit this question separately to the people, we shall have a somewhat larger vote in favor of the amended Constitution; and it must be confessed that, so far as this goes, it is a desirable result. With all respect to my friend from Vigo, (Mr. Cookerly,) I must be permitted to say that his manner of putting the question, so far as relates to this proposition, is not a proper one. He says the gentleman from St. Joseph tries to threaten the Convention with the loss of ten thousand votes, which will be cast against the new Constitution if there be no separate submission. I do not think that a fair way of putting the question. If I understood the gentleman from St. Joseph, properly, his object is an excellent one. It is to conciliate the feelings of a minority. This is the second result. And, surely, any policy tending to increase good feeling among the inhabitants of the State, is as desirable as that we should have good will here, amongst ourselves. It strikes me that the proposition embodied in the resolution before us rests upon the same principle as that rule of this body under which a small minority of the Con-

vention can call the yeas and nays. I, for one, am willing to give the yeas and nays to two, or three, or four, if they express an earnest desire to record their votes upon any proposition. And I don't know that I am disposed to deny even to the small minority of the people, asking for it, the right to be heard at the polls upon this question; or if I should do so, it will be for this reason, that if we do submit the question, its tendency may be to increase an unreasonable excitement which it were better to keep down.

No man who knows any thing about public affairs in Indiana, will maintain for a moment, that the proposition to grant to negroes the right of suffrage, can obtain amongst the people more than a very small minority. I do not pretend to decide how small that minority may be; but for one, I believe it would be so inconsiderable that, when positively ascertained, it would tend to make the minority satisfied and quiet. And yet another effect would be produced by such a vote. The consciousness that there is not the slightest disposition in the State to grant to negroes the right of suffrage—that consciousness, it seems to me, under the circumstances, should suffice to show, that it is neither to the interest of the State, nor to the interest of the negro population itself, that they should increase among us. This consciousness governed me in the vote which I gave in the committee, upon the proposition reported this morning to exclude all negroes and mulattoes, hereafter, from the State. They can never obtain political rights here. They can never obtain social rights here. And for these reasons, I think, we ought not to have them amongst us. We ought not to have in our midst a race, daily increasing, who must, of necessity, remain disfranchised; a class of people to be taxed, without being represented; on whom burdens are imposed, and who have no voice in deciding what these burdens shall be. That is my deliberate judgment; but however strongly I may feel in the matter, and however confidently assured of the wisdom and good policy of such a measure, yet I am not at all sure that it would be either unwise or impolitic—even with the certainty of its adoption by an overwhelming majority—separately to submit the question of negro exclusion and negro disfranchisement to the decision of the people.

Mr. EDMONSTON. I deem it due to myself, and to those whom I have the honor to represent, to say a few words upon this subject. I must differ from the gentleman from Posey, (Mr. Owen,) though upon most questions I have the happiness to agree with him. I cannot view the matter in the light in which he presents it—that we should submit this one proposition, which can arouse nothing but a factious feeling in the State, merely to gratify this faction, which is bound to trouble the State by agitating this question, which we know ninety-nine-hundredths of the people of the State will vote against. But why should we submit this

principle alone? Why not submit every proposition in the same way, to gratify the feelings of the minority? Why, sir, the people might as well come in themselves and make a Constitution without the intervention of delegates, as for us to refer every question to their decision at the polls, especially one which we know to be so well settled in the minds of the people as this is. Sir, pass this resolution, and get this question before the people, and what will be the consequence during the summer before coming to the polls for its decision? Why, sir, you would have the State flooded with those lecturers, who would not hesitate to dissolve this Union in order to carry out their principles. I, for one, cannot consent to give them the opportunity; but I am ready to meet the question with that manly firmness, which, as representatives of the people, we are called upon to exercise in the settlement of all questions here.

Mr. SMITH of Ripley. I rise for the purpose of remarking, that this matter which the gentleman desires to propose to the country, has already been considered by the committee on the elective franchise. I think I understand that this morning they reported back that portion of the bill of rights.

In view of the fact that the committee have reported a proposition denying this class of persons a residence amongst us, if it should be the pleasure of the Convention to submit a proposition of the kind proposed by the gentleman from St. Joseph, it would be sheer mockery. However, I will remark, that I have no objection to the gentleman's proposition going before the committee as a resolution of inquiry. I think he has a right to have the subject inquired into; and I hope his resolution will be carried without a call for the yeas and nays. Whenever the report of the committee upon this subject shall come up, we may have the yeas and nays upon the final vote.

Mr. BARBOUR. The gentleman from Ripley (Mr. Smith) has in some degree anticipated me in the remarks which I intended to make. Whenever any proposition is introduced here, I feel disposed to treat it with courtesy; but, in a case like the present, when we know a very large majority of the people and of this body are against the proposition, I feel myself, also, disposed to go against it; and, sir, I will not vote for it, since the report of this morning from the committee on the rights and privileges of the inhabitants of the State, incorporating into the Constitution a section to exclude negroes and mulattoes from immigrating into this State, and from the right of possessing property here. This proposition, I suppose, will be adopted into the Constitution in some form or other; and, after that, I would not vote for any proposition to place in the Constitution such an inconsistency as that implied in the resolution of the gentleman from St. Joseph.

Mr. OWEN. I do not know what was the

intention of the gentleman from St. Joseph, but I agree entirely with the gentleman who has just taken his seat, that, if we submit the question of negro suffrage alone, and do not include the other matters to which he alluded, we shall act in an unadvised manner. I had supposed, and still suppose, that the gentleman from the North, if his proposition succeeds, intends to follow it up by moving a separate submission of the rest of the subject. Certainly, if we refer to the people one branch of the subject only, our action will be very inconsistent.

Mr. DOBSON. I move to amend the resolution by adding the following. I want to settle it right while we are about it:

"That all persons voting for negro suffrage shall themselves be disfranchised: *Provided*, There shall not be a majority voting for negro suffrage."

Mr. TAYLOR. Although this question is one which does not present itself to me in a very favorable light, yet there is more in it, perhaps, than upon a short reflection one would think there is. Now, sir, it is a matter of deep concern, both to the Convention and to the people, that this question should be settled; and I venture to say, that the Convention would not act wisely by rejecting the only means by which it can be settled. I admit that it is nothing more nor less than the spirit of fanaticism which agitates this question, and that a very large proportion of the State look upon the question as a fanatical one. I also look upon it as fanatical. I am not, however, upon this account, opposed to the resolution, and would not say that I am opposed to allowing colored people to come into the State. At the present time, I confess that I am not prepared to go so far as that; though, if the report had been made last week, I cannot say but that I should have supported it then. Although I am as much opposed to abolitionism, and the right of negroes to vote, as any gentleman, yet, when we come to see that quite a large portion of our citizens are in favor of free soilism—a question to which I have ever been opposed, regarding it as even more mischievous than abolitionism itself—a question which proposes to fix an unfortunate race of people upon our soil, and proposes no relief at all for them, is without any merit in fact; but when we consider that this large portion of our citizens—including some of the ablest men of the State—regard this question in the light in which, it is regarded in the section reported this morning, would it not be unwise and impolitic to take away from negroes and mulattoes the right of immigration and the liberty of holding property? I make these remarks, because I think it would be the wiser course to refer to the committee both the resolution and the section reported this morning by the committee on the rights and privileges of the inhabitants of the State, with instructions to report upon the whole. I cannot but



think that it would be more wise for the Convention to make a special provision in the Constitution authorizing the people to vote for or against these questions, than for us to take it upon ourselves to decide them. Although the people might decide against negro immigration, I cannot but look upon this as doubtful; for it appeals very strongly to the principles of humanity and justice to say that a man, free in other States, shall not come in amongst us at all. It seems to me that this would be going further than to say, he shall not exercise the elective franchise. I cannot say that I would vote for this proposition; but I should vote, at all times, against negro suffrage. I am in favor of this resolution, believing that the Convention should not, in a spirit of faction, oppose it. I agree with the gentleman from Posey, (Mr. Owen,) and the gentleman from St. Joseph, (Mr. Colfax,) that the friends of negro suffrage, although composing but a very small minority of our constituents, have rights as well as the majority; and they are looking to our proceedings here with as much anxiety as those who are opposed to them. But, because they are in the minority, are they to be disfranchised? I have said that I was opposed to all fanatical questions; but I think there can be no harm in allowing these subjects to go to the committee, and I should be gratified to see them submitted for the decision of the people.

Mr. DOBSON. Having submitted an amendment to the proposition, I will say a word, because, as a legal question, I am disposed to treat the subject fairly—to give it a fair hearing and a fair trial. Two or three papers upon this subject have been referred already, and a similar proposition was offered only the other day by the gentleman from Jay, (Mr. Hawkins,) and, by a most decided vote, its character was changed; and this morning the subject has come up again. Now, if we are going to have this question presented, I want to meet it squarely. Sir, whenever you begin to talk about making negroes equal with white men, I begin to think about leaving the country. The substance of my amendment is—and I want it fairly understood—that, if those who are in favor of negro suffrage are in the majority, we will leave the country; and if we are stronger than they, let them leave and we will remain. Let every man be asked this question at the polls, and, as he shall answer, let it be known who he is. The free-soil question does not come up here: that is quite a different thing. But as far as the question of negro suffrage is concerned, if we are to have any more of it, I want to act upon it in this most definite manner. I am satisfied that perhaps three-fourths of the citizens of the State would rather leave, if the negroes were to be allowed to come here and exercise the elective franchise. The negroes and whites are of different races, and ought not to be placed together. No pure negro has wishes

and wants like other people. Look at the condition of the negro in his native Africa. What was he, and what is he, there? We have improved the race by making them our servants; and every one who has discovered any merit has come out from that portion of the race which have been brought here. Their condition here is tenfold better than there; for, in Africa, when a great man's wife or sister dies, five hundred heads have to fall to make servants for the departed in the other world. The African in our Southern States is a happy man, in comparison with the African proper. The advantage is all on the side of those who have been stolen, if you please, and brought here as slaves. And now, the spirit of this proposition seems to be, that since the condition of these negroes has been bettered so much, they are sufficiently qualified to come over here amongst us Hoosiers and vote.

Mr. FOSTER. Sufficient to the day is the evil thereof. I hardly think it worth while, Mr. President, to continue this discussion. I understand the resolution to be merely a resolution of inquiry, and not a resolution instructing the committee to bring in an amendment. I am disposed to treat the gentleman from South Bend (Mr. Colfax) with the same courtesy that I would any other gentleman upon this floor. I am willing that his resolution should go to the committee; and such, I suppose, will be the will of the majority, if the Convention do not pursue the same course which they did on yesterday.

For one, I am willing to allow the proposition before us to go to the committee, and I hope the yeas and nays will be taken in regard to it at some time, so that we may all show our hands. It is well known, sir, that I am opposed to negro suffrage. It was the question in our canvass last summer; and it is also well known that I am opposed to the immigration of negroes: and I am well aware that a large majority here are opposed to it, particularly on account of the very stringent course taken with reference to free negroes by a neighboring State. There is no need of excitement when we come to the consideration of this question, since we have it in so tangible a shape. I shall be prepared to meet it at any time; and I am confident that it is the most prudent course for us not only to prevent the immigration of negroes, but deprive them of any thing like suffrage. The gentleman from Laporte (Mr. Taylor) has intimated that he is prepared to vote against negro suffrage, but not so well prepared to vote against negro immigration. But in the name of common sense, I would ask, if negroes are to be deprived of suffrage, why should we want any more of these cattle amongst us? It seems to me there is an inconsistency in this.

Mr. KILGORE. I rise merely to say that we certainly live in an age of progression. I have been very much astonished to hear gentle-

men express themselves as they have, in relation to free-soilism, for I am sure that within the last two years some of these gentlemen have been in favor with that party. Gentlemen who would seem now never to have been in favor of free-soilism, and would, doubtless, just as readily denounce the Wilmot Proviso, in less than two years back were ready to laud both to the skies. Two years ago there was not a prominent man in either of the two parties who would have been willing to denounce the Wilmot Proviso as a humbug; yet, in this age of progression, at this day, scarcely a single advocate of this measure can be found in the ranks of either party. Since it is possible, therefore, that the same spirit of progression might bring about the same state of things in the course of two years to come, would it not be better for gentlemen not to tie up their hands nor the hands of the people at home upon that subject? I am disposed to trust the people; I do not wish to tie up their hands. I am willing to trust them, though they may sometimes for the moment err; but, give them time, and they will always come out right.

With respect to the proposition made by the gentleman from St. Joseph, I have to say, that it meets my approbation. I am willing to venture the prediction, that this Convention will make it a Constitutional point to submit every question of a State loan to the people. Then if we are prepared to call out the people to decide upon a single question, such as the expediency of borrowing a few dollars, and to say that the Legislature may submit such a question session after session, why should we not be willing to submit this question, which is not necessary to be submitted every year, but periodically—say once in five or ten years? so that when the time shall come, if ever, in which the people will be willing to admit of negro suffrage they may do so. Gentlemen talk about leaving the State in such an event. Well, sir, I suppose they will not be tied down to remain within our borders, and I have heard of gentlemen leaving their country for their country's good: and wherever, in any country, gentlemen oppose themselves to the popular will, I suppose they have no longer any business there. But, if this proposition were submitted to me to-day, I should be prepared to vote against it, although I am surrounded by those who are of the free-soil party. And, whilst I make this statement, I am willing that every other man should act as he may see proper. If any man's conscience should trouble him in this matter, let us leave this an open question, and, if we can, let us take the stump and convince the public mind that we are right. This, as I think, will certainly be a better course than to tie up the hands of the people at once. Let the truth be free to combat error, and we have nothing to fear. Let this matter go to the committee, and I hope that they will report favorably at the

proper time, and that their report will meet the approbation of the Convention. The people of the State of New York, I believe, have not suffered seriously from the success of this proposition there. I believe that some of the best men of that State are still there, not feeling constrained to leave merely because negroes are permitted to come up to the polls and vote; and I should think such a result need not seriously affect the honorable gentleman from Owen (Mr. Dobson).

Mr. ROBINSON. In the formation of a new Constitution we should endeavor to represent the rights and interests of all the people in the State. I should not have said a word now, sir, but I happen to stand here representing constituents, of whom a very large and respectable portion are free soilers, which party has been referred to in this discussion as a faction. It has been affirmed that those who entertain free soil views, compose a portion in this State. Well, if this be so, I think we ought to have the privilege of saying that they compose a very respectable portion. With regard to that portion of the community, though I believe they have been misled, that their opinions are founded in error, that their zeal upon this subject has generally led them beyond their knowledge; yet there is no party in the State of Indiana which stands higher in point of intelligence, moral honesty, and integrity, than this the old liberty party. They compose a large portion of the pioneers of this country. They were here improving the soil, perhaps, before some gentlemen, who have taken it upon themselves here to denounce them, were located upon it. I am sorry to see an amendment offered to this resolution, which can proceed from nothing else than a disposition to insult the good sense of this party. I say, sir, that I regret this. I regret to see those of our fellow-citizens who have borne the burden, the labor, and perils of the settlement of this country, who are the workmanship of God, and are as justly entitled to the liberty of speech as ourselves, denounced here, because they entertain their sentiments honestly, and told plainly, that for this reason, they ought to be disfranchised and placed in the same condition with the African! I say to you, sir, that I was astonished to see this course taken by the gentleman from Owen (Mr. Dobson) because I feel, that we should act here in a spirit of conciliation. I never can, and I never will, vote for negro suffrage, although I expect to stand with the majority of this Convention upon every measure of needful reform. I believe that the action of an adjoining State, has rendered it necessary that the State of Indiana should defend herself from the accumulation of the negro race within her borders. However hard this may seem to operate, even if it exclude certain citizens of other States, American born, I shall vote against their emigration as an act of jus-



tice to ourselves. But, with respect to the resolution, I wish to take that course which will tend to reconcile the discordant political elements of the State, as much as possible. I believe, that, to adopt the amendment of the gentleman from Owen, would be to throw a fire-brand into the community. I believe that this Convention should not authorize the people to vote upon the settlement of this question. I believe that if the whole people were to come together at the polls to vote upon this subject, it would only tend to widen the breach. I believe it would increase the amount of dissension upon this vexed question, which is already spread abroad in the land. I should not wish to see the day when the people should meet at the polls upon the question of negro suffrage. But while I am not willing to vote for the principle of the resolution, it does seem to me that the party, which it proposes to represent, at least, have a right to be heard here as citizens of the State of Indiana. I believe it is due to them that this subject should be referred to the proper committee; that it should be considered there; and I believe, that upon an examination of the question in committee, it would be found most expedient and advisable to report in opposition to the principle contained in the resolution, accompanying the same with reasonings to satisfy this party that their rights have not been lost sight of.

The gentleman from Delaware (Mr. Kilgore) has correctly estimated that less than two years ago, instead of denouncing this party as unworthy of the ballot box, because of the principles which they honestly entertain, they were supported by the very gentlemen who have denounced them here, and it was a contest between Whig and Democrat which should be considered the best free soiler. I recollect about that time I went into the field as a candidate with the gentleman from Delaware, thinking that I was as much of a free soil man as any, but I found that my Democratic friend was so far ahead of me, that the result was a most admirable licking sustained by myself. [Laughter.] And now two years have not yet elapsed; the wedding has been consummated; the courtship is at an end; and forsooth, we are told that if the same party shall continue to advocate the same principles they did when we opened our arms and invited them to our embrace, they shall have no right at the polls! Had it not been for this, I should not have said a word upon the subject. My own principles are known at home. It is known there that I am opposed to the principles of free soilism; that I am opposed to negro suffrage, and in favor of excluding the blacks from the right of immigration, because it is impossible for the two races to coalesce as neighbors and fellow-citizens. Yet, I can allow, that the contrary view may be consistent with the character of honest and high-minded men, and I cannot say to such men

that because they choose to exercise the principle of christianity and humanity, and have the honesty to show their hands, they shall not enjoy those rights which were bought by the blood of their fathers. I hope the resolution will be referred; and that the committee will make such a report as shall leave the liberty party no right to complain. If we do this much, I think that it will be apparent that we have done our duty.

Mr. BLYTHE. There are one or two reasons that will govern my vote upon this resolution. It is proposed to submit a question to the vote of the people of Indiana, upon which, as I conceive, the people have already expressed their opinion. I think that opinion is clearly indicated in the kind of feeling which evidently prevails upon this subject among the members of this Convention. Every gentleman who has spoken upon this question, even those who appear to take the lead in advocating its reference to the proper committee, tell us that they themselves, when they shall come to the ballot-box, will vote against negro suffrage; and some even go so far as to say, that they will vote for excluding free negroes from the State altogether. Gentlemen make this declaration who represent a *Liberty* constituency—a constituency whose opinions are most ultra, and unalterably fixed upon this question. Was not this question very generally discussed throughout the State during the late canvass? And have not the people indicated their opinion, very clearly and distinctly, in the result of that canvass? I know that the people in the “pocket,” as it is called, with comparatively few exceptions, favor the exclusion of free negroes, and are against negro suffrage. The opinions of that small minority of our fellow citizens, who think otherwise upon this subject, I respect, and their *rights* I would be unwilling to violate. But their *rights* they have exercised, and their opinions they have expressed. So far as the “pocket” is concerned, I appeal to its representatives here, whether, at the late election, they did not express their opinions upon this question? And if this be true, that the voice of the State has been heard, I ask why should it be left an open question any longer, to agitate the public mind?

There is another reason, sir, why I am opposed to this resolution. I think it our duty here, in a manly and independent manner, to take the responsibility of acting decidedly and distinctly. I am for shouldering the responsibility which pertains to the decision of every question which may arise here. Sir, the presumption is, that we have been selected to fill our places here because of our real or supposed ability and integrity—because we are intelligent and honest enough to carry out what we believe to be the wishes of our constituents. For this cause I maintain that we should act in a manly and independent manner. We should take the responsibility of incorporating into the

Constitution whatever we may deem proper, and whatever may be in accordance with instructions received from the people. I am unwilling, sir, to submit to the people single propositions, independent of the body of the Constitution; but I insist that we should submit a Constitution complete in all its parts, and let the people take the responsibility of adopting or rejecting it. Gentlemen may call this anti-democratic or anti-republican; but I call it republican and democratic, both. Now, sir, if we submit the proposition contemplated in the resolution of the gentleman from St. Joseph, (Mr. Colfax,) any other gentleman, with equal propriety, may claim to have his proposition also submitted to the people, and generally with more propriety. For example: there is the resolution proposed by the gentleman from Tippecanoe, (Mr. Pettit,) which was some days ago before us, and debated at great length. There is much more reason why we should submit that proposition than this, for it is admitted by the friends of this resolution that the majority in this body represent the feelings and wishes of the people of Indiana, with the exception of some five or ten thousand; whereas, upon the proposition of the gentleman from Tippecanoe we stand here perhaps equally divided; at all events, neither the friends nor the opponents of Grand Juries can claim any thing like a large and decided majority, and can any one tell which-way the people of Indiana would decide if the question were submitted to them! Some tell us the people would reject Grand Juries; but, sir, this is very doubtful; I believe they would adhere to the present system. And because this is a doubtful question, it might be referred to the people with more reason than the proposition of the gentleman from St. Joseph. But I am opposed to submitting any single proposition; for if we submit one, why not submit all? I will take this occasion to remark, however, that if this proposition had been submitted in an earlier period of the session, in all probability it would have found more favor than at present, but now, since the very committee to which it is addressed have reported upon the question—

Mr. COLFAX. (interposing.) It is the committee on rights and privileges which have reported. This resolution is addressed to the committee on the elective franchise.

Mr. BLYTHE (continuing). I was mistaken about that then. However, we have a report upon another branch of this same question, upon which there seems to be manifested a very great unanimity of opinion. I agree with the gentleman upon my left, that it would be acting inconsistently to refer this matter of the resolution to the people, and retain in the Constitution—as we surely will—the matter contained in the report from the committee on rights and privileges. For these reasons I shall oppose this resolution.

Mr. HAWKINS said, that he thought gentlemen over the way were getting very considerate in reference to the interests of the people; particularly as to the manner in which the Constitution shall be constructed, and submitted to their constituents. They were remarkably anxious to do up the whole work themselves. Willing to take the entire responsibility upon their own shoulders, of deciding, absolutely, all questions appertaining to the welfare of Indiana; leaving no question for separate submission. And they justify this course, (a violation of all humane precedent,) by telling us, in the discussion, that a large portion of the people of the State had decided already on this great question of human rights. The gentleman from Vanderburgh (Mr. Blythe) stated, in the course of his remarks, that this question had been decided by the people of every portion of Indiana. All over the State of Indiana, says the gentleman, this question has been discussed, and, for proof thereto, announces, in a very triumphant manner—we have discussed this question in the county of Vanderburgh,—that is to say, *we* are the State. Now, he ventured to say that the question, as presented by this resolution, was not decided against by any large portion of the people. He was the fortunate or unfortunate individual that first introduced a resolution somewhat similar to the one under consideration; reserving to the people the right to decide, by their vote, the question of universal suffrage. And, he desired briefly to inform the Convention of the discussion that took place in the district he had the honor to represent. Although he knew, as well as any gentleman on this floor, that, if a question of this kind was submitted to the people of Indiana, they would, by a triumphant majority, refuse to give the right of suffrage to the negro population. Yet, he had an opponent, a very worthy and distinguished democrat, who was in favor of submitting this question to the arbitrament of the people. He was a man who, being actuated by the best of motives, and alive to human sympathy, also knew well how to strengthen himself in the estimation of a peculiar portion of the people of Indiana. Long before he (Mr. H.) had opened the canvass, there had been promulgated, and accepted by all parties over that district, the very principle contained in the resolution he presented to the Convention a few days since. Looking upon it as a principle right and proper, he (Mr. H.) had adopted it. He stood pledged to the principle, and was ready to advocate it here or elsewhere, now and forever. And he should have presented the resolution if he had met with expulsion from his seat in this body. On the same principle, he was in favor of the resolution of the gentleman from St. Joseph, (Mr. Colfax.) He was not afraid to trust the people of Indiana, at all times, upon important questions of this character. He was in no wise fearful of the result. Knowing, as all must, that the people would



give a triumphant vote against "*negro suffrage*," he could not see any good cause for so much sensitiveness. It was the legitimate province of a free people to decide all questions of importance to themselves; and this, above all others, being a great question of human rights, should be retained by them, for their action upon it at any time. If the question was submitted to the decision of the people now, he should vote against granting the right of suffrage to that unfortunate people. If he were of those who were willing to confer all the rights of citizens, in the broadest sense of the term, upon that population, he would not, under the state of feeling that now exists, extend to them the right of suffrage: they would not be permitted to enjoy it. But, for the credit of Indiana, and as a matter of right and justice, he would leave it an open question, so that, if the time should ever be, that the people willed them the exercise of this great right, they might do so without any Constitutional barrier. Gentlemen talk about fanaticism and a fanatical spirit! Tell him of the fanaticism that actuated those who favored the principle of universal suffrage. If their desire to extend and perpetuate universal freedom and equal rights to all, be called fanaticism, what term, I ask, is properly applicable to those in the majority, for refusing to permit that portion of the citizens of Indiana who favor this principle, the opportunity and privilege of declaring their honest sentiments through the ballot box. It is, to say the least, arbitrary; but I cannot but call it fanaticism—the offspring of a fanatical spirit!

Gentlemen were not willing to give any countenance to this proposition, because, say they, it will produce excitement and agitation, furnishing a hobby upon which men could ride into office.

He thought that any endeavors to stifle a declaration of principle upon this subject at the ballot box, as desired, would tend to increase anew the agitation and excitement upon which certain politicians had already rode, and again desired to ride into office.

He desired, for one, to take these fertile topics for political excitement and agitation out of the hands of the politician, and place them where they belong—in the hands of the people. He doubted not but that all these questions would be settled by them satisfactorily.

Gentlemen of the majority had seen proper to introduce a proposition prohibiting the immigration of negroes and mulattoes into this State, and from acquiring or holding property. When the appropriate time comes, it will be discussed; it is out of place now. He would say, however, that he looked upon a proposition of that kind, to prohibit the immigration of any portion of God's rational human beings, born on American soil, and under the protection of the stars and stripes, as a greater outrage upon all the principles of our boasted institutions than any other yet presented, with all due deference,

not even excepting the resolution now under discussion. The one proposes that a majority may declare in favor of the exercise *by all* of an inherent and inestimable right; the other proposes to expatriate and exile from the land of their birth the American negroes, the only home they can claim upon earth, not of their own free will, but by force. Adopt the one, and free principles triumph: adopt the other, and a stain is fixed upon the fair fame of Indiana that time cannot wipe out.

Mr. PEPPER of Crawford, said:

Mr. PRESIDENT: I am opposed to the amendment of the gentleman from Owen, (Mr. Dobson,) because it is a direct insult to a very respectable portion of the citizens of Indiana—law-abiding, tax-paying citizens. I also oppose the resolution of the gentleman from St. Joseph, (Mr. Colfax,) because it is calculated to keep in agitation those sectional feelings growing out of the slavery question, from which the country has already suffered much, and which every citizen in Indiana should feel a desire to see finally settled.

It may be, sir, that a few men could be found in this State favoring negro suffrage; and so you might find a few men in favor of a thousand other equally absurd notions, and who would wish those views engrafted in the laws of the State, but would this be a sufficient reason for this Convention to submit each man's proposition, as a proposed amendment to the Constitution, merely that he could have the peculiar gratification of voting his sentiments?

I think not. No man favors freedom of conscience more than I, but as all laws should be general and operate on all alike they must necessarily, under our form of government, reflect the will of the majority; and whilst no man will go farther to protect and favor the rights of the minority than myself, I am, at the same time, utterly opposed to pandering to the prejudices of political factions—factions whose motto is "rule or ruin."

Sir, the more this negro question is agitated and kept before the public mind by leading men and politicians, the more importance attaches to it, and greater will have to be the exertions of the moderate men to counteract those influences. For the truth of which I have only to appeal to the past history of the country.

No State, perhaps, is more under the influence of sectional abolitionism than our sister Ohio; there this faction holds the balance of power and rules the political interests of that great State, operating with one party to-day, and with the other party to-morrow—always corrupting where it can. They have kept the Legislature of that State from organizing for weeks, thereby defeating legislation and virtually clogging the wheels of government—inflaming the public mind, and unsettling to some extent, the business pursuits of life.

They have attained this position not from the merits of their cause, but from the fact that men join their ranks for power, knowing that one or the other of the great parties is bound to have their support to succeed, and in making the trade they always provide for their own household.

I hope Indiana never will be cursed with such influences.

I go against the resolution on other grounds. I am opposed to submitting distinct propositions—the Constitution in parts.

We have been sent here to alter, amend, or change the organic law of the State, with the understanding that that instrument when thus altered or amended, should, as a whole, be submitted to the people for their acceptance or rejection. Let us submit nothing but what we first approve—let us not shuffle responsibility from our own shoulders. For one, I am willing to meet all questions and settle them here first, and then submit them to the people for their action.

But, if we allow the gentleman from St. Joseph, for whom I have the highest respect, to submit a distinct proposition, we might with the same propriety allow every delegate on this floor to submit his favorite proposition. The result might be the whole instrument, however good in the main, would be rejected.

For the purpose of settling this question of submitting distinct propositions I have drawn up a resolution which I will offer at the right time, for the consideration of the Convention, which is as follows:

*Resolved*, That no separate and distinct proposition shall be submitted by this Convention as proposed amendments to the Constitution to be voted upon by the legal voters of the State; but the amended Constitution, as a whole, shall be submitted to the people for their acceptance or rejection.

Mr. DOBSON said, he would give briefly the reasons that had induced him to offer the amendment which had called forth so much criticism from members. He had thrown it out merely to show how a minority could be annoyed as well as the majority. Gentlemen had declared that we had met this question at the very threshold with *insult*, and had treated its friends uncourteously. The various propositions in relation to negro suffrage and their emigration into the State had been discussed and referred to appropriate committees, and reported upon to the Convention, and he considered if there was any insult offered, it was to the majority in bringing forward these propositions again and again that had already been acted upon, merely for the purpose of making political capital. He had offered his resolution then, merely to show the minority that there were means for annoying them as well as the majority. He apprehended that there was not a member on that floor in favor of negro suffrage, and if he was mista-

ken he would like to be corrected. Will any member rise in his place and declare that he will vote for negro suffrage?

SEVERAL MEMBERS. No one—no one.

Mr. DOBSON. There is no one here in favor of giving negroes the right of suffrage. What was all this discussion about then? It was already evident that the present discussion upon these subjects was kept up for political purposes. Certain members (alluding to Robinson and Kilgore) had charged leading democrats with billing and cooing with the abolitionists, alleging that they formerly dare not denounce the *Wilmot Proviso*, but were now coming forward and disavowing ever having favored that clique.

Without admitting the justice of the charge, Mr. DOBSON said, the question here presented and that of the *Wilmot Proviso* was wholly different; one had no connection with the other. He was opposed to slavery; opposed to extending it over our newly acquired territory; but, at the same time, he was opposed to making our State the receptacle for all the free negroes in the Union, and of all the broke down and worthless slaves in the South, that might be turned loose upon us, by holding out the idea to them that we would give them all the privileges of the white citizen—making them our equals in every particular.

If gentlemen have no desire to give negroes the privilege of voting, why continue to press the question one, two, three, and perhaps more times.

The gentleman from St. Joseph (Mr. Colfax) was very good to this same abolition party—he proposes to let them vote once—why not keep the subject open to agitation, and let them vote at every August election? If sincere, such is the step he should take, and not after one trial block the game against them for all time to come.

He had only to say that if the minority were desirous of making political capital out of these questions, there was another side to the question, and that was that the same course could be pursued by the majority, and perhaps with greater success. Nevertheless, he had no idea that such a plan would be resorted to. Resolutions and petitions of the character, like that now presented, had been referred to the appropriate committee, and by that committee been reported upon, and he doubted not it would be settled in a manner satisfactory. It was granted, or appeared to be granted, on all hands, that the Convention, as well as the people, were almost unanimously opposed to negro suffrage—if this were so, and they all knew the fact, of what use was it to consume their time in useless and worse than useless discussion on the subject? The subject had been discussed throughout the State, and the people of the State had instructed their delegates here to vote upon the question and all that remained for them to do was to in-



sert in the Constitution that was to be submitted to the people, an article prohibiting the right of negroes to vote at the polls. Any further discussion of the question now or on the passage of a proposition to give it to the people in a distinct form for their vote—was unnecessary.

As to the remarks of the gentleman from Delaware, (Mr. Kilgore,) in regard to the idea of gentlemen leaving the State rather than to live on an equality with negroes, he did not know that the State would suffer a very serious loss if both of them were to leave—the State probably, could get along very well without either of them [laughter and cries of "consent."] He had asked leave of absence for fifty-six hours from the Convention for the gentleman from Delaware, and he could not but think if he had asked it in sober verity, to the end of the session, that it would have been granted, and that he could have been very well spared during the remainder of the session.

To speak seriously in regard to a portion of this matter at issue, he must object to this idea of submitting separate propositions in connection with the Constitution, for the people to vote upon. The people had sent them there to form a new Constitution entire—a Constitution better than the old one, and all that it was their duty to do, was to enact such a Constitution, and submit it to the people for adoption or rejection.

He could get up forty propositions to submit in a distinct form to the people, if they were to allow the principle in this instance. Every gentleman knew that the people would vote down the principle of negro suffrage, then why submit it in a distinct form at the polls? He would now withdraw his proposition, or amendment, for fear that some gentleman might think seriously of it; he had merely offered it to let gentlemen know that if they were disposed to annoy or give provocation in regard to any subject they could be paid back in their own coin. The negroes had his sympathy—he was sorry for them, but he could not consent to place them on an equality with the whites; we should hold out no inducements to bring them here—but rather hold out inducements for those that are here to leave in a reasonable time, induce them to go back to Africa—they will take with them the Bible, and a knowledge of our Institutions—they will ultimately occupy all that country and become a prosperous and happy people.

Mr. BERRY offered the following amendment:

Strike out from the resolving clause and insert in lieu thereof the following, viz: "That the committee on the elective franchise, &c., be instructed to report a provision for the new Constitution, providing that negroes and mulattoes shall be voters at all elections in this State."

Mr. B. said, that having offered the amendment which he had, he deemed it but justice to his constituents, his colleagues, and himself, to say that they were all opposed to the extension of the right of suffrage to any portion of the colored population, and his only object in offering the amendment was to enable gentlemen to vote on the question, in so tangible a manner, that their constituents could properly understand them, and determine the necessity and propriety of referring the resolution. When the question should be taken upon the adoption of his amendment he should demand the yeas and nays, and vote no.

Mr. MAGUIRE observed, that he desired to make a brief explanation in regard to the course he had pursued a few days ago, in reference to this question, when a resolution of similar import was proposed by the gentleman from Jay, (Mr. Hawkins,) in order that the motives which influenced him might not be misunderstood. It will be recollected, said he, that the gentleman from Posey (Mr. Hovey,) offered an amendment to that resolution, which, if adopted, would defeat the object contemplated by the mover of the resolution, and he had voted in favor of laying the amendment on the table, for the purpose of enabling the mover to have a direct vote on his own proposition.

He wished to say that he had always voted for resolutions which contemplated simply an inquiry into the expediency of proposed measures, and this he thought he should still do, provided the resolutions are respectful in their character. This he thought was due, as a matter of courtesy, to gentlemen who offer propositions, and in no wise committed him to the support of measures embraced in the resolutions. The inquiry could do no harm, and if deemed inexpedient by the committee to which it may be referred they will report against it, and that is generally the end of the matter. Sometimes gentlemen feel bound to introduce matters for the consideration of the Convention, when they are satisfied that a majority of the members are opposed to the object of the inquiry, and sometimes indeed when they may themselves be opposed to it. The resolution of the gentleman from Jay was respectful in its terms, and he had a right to introduce it; and if the Convention chose to refuse the liberty to have the matter inquired into, it was still due to him that the vote should be taken upon his own proposition, and not compel him, by an amendment which destroyed its object, to vote against his own resolution. Besides, he thought it was better to permit it to be adopted without opposition, and if the committee should have made a report which did not meet the views of the Convention, action could then have been taken and a fair opportunity presented for a test vote, without involving the question of courtesy. The demand of the yeas and nays never determines the sense of a deliberative body, as to the merits of a

measure when the proposition is in the shape of an inquiry, and hence the call of them in such cases is calculated to embarrass members, and subject them to misapprehension. My constituents, said Mr. M., are opposed to extending the right of suffrage to colored persons, and they knew he concurred with them in opinion. Whilst he was utterly opposed to the further extension of slavery, and was far from wishing to oppress the colored man, he did not think that any purpose of usefulness or humanity would be answered by conferring upon them, in the present state of public sentiment, the right of suffrage.

Having said thus much in regard to the resolution of the gentleman from Jay, he would briefly allude to the resolution now under consideration. If this were an original proposition he should feel constrained, for the reasons previously stated, to vote in favor of its adoption. He must say, however, that he regretted its introduction again, and he would be glad if the gentleman could, consistently with his sense of duty, and his obligations to his constituents, withdraw it. The question had already been settled by a decisive vote that an inquiry into the subject matter of the resolution was no deemed expedient. It must be apparent that it operates as a fire-brand, producing unpleasant excitement and disturbing that harmony and tranquility which it would be desirable always to see prevail in the discharge of the important and responsible duties with which this Convention is charged. The re-introduction of the same matter already decided against, could not, as he could perceive, be productive of any beneficial consequences. The resolution, it is true, proposes only an inquiry into the expediency of the measure, and that measure proposes only the submission of a question to the people for their consideration and determination. If this Convention were, by consent, to determine that that question should be separately submitted to the people to be voted upon by them, that would by no means subject the members to the charge of being in favor of negro suffrage. It would only manifest a deference to the will of the people, and a confidence in their judgment and capacity for self-government, which we all profess to entertain. That the people, with their present feelings on the subject, would vote down the proposition by an immense majority, is not at all doubtful.

If the Convention should insert in the Constitution a general clause by which the Legislature might be permitted, under wholesome restrictions, to propose to the people propositions for such amendments as in the progress of things may seem to be demanded, (and he thought it would be proper to do so,) that would afford an opportunity, if at any time it should be deemed advisable, to submit this or any other question to the people.

He concluded by saying, that while he disliked very much to vote against a resolution of

inquiry, couched as this one is in respectful language, and introduced by a gentleman for whom he had much respect, he could but feel regret that so exciting a subject should be a second time brought before the Convention, after it had been determined by so large a majority that it was not a proper matter for consideration.

Mr. COLFAX remarked that, so far as imputations of unworthy motives were thrown out by one or two gentlemen who had spoken upon this subject, he should not attempt, as he did not desire, to answer them. Members, of course, had the right to suspect the motives which prompted acts of others. They had a *right*, perhaps, to suppose that they were governed by any thing else but duty. But, said Mr. C., when such remarks are indulged in, I shall not attempt to refute or to reply to them. Conceding to every gentleman in this Hall that *his* course is prompted by honorable aims and by clear convictions of duty, I shall not assail or impugn their motives, however widely I may differ from them. And it is for them to decide whether they will treat others who differ with them, twith the same respect.

I need not repeat the reasons for the introduction of this resolution. They were given but an hour or two since. It has been presented, not because those who favor it are themselves friendly to negro suffrage, but because they believe the adoption of the course suggested by it would give more general satisfaction to those in favor of that extension, and would strengthen the vote upon the adoption of the reforms in the main instrument which this Convention will doubtless approve and present to the people. But if the Convention did not see fit to allow the reference of this simple inquiry, there was of course no remedy. The minority would not reply in a similar manner; for, believing as was wisely said a few days since by the gentleman from Posey (Mr. Owen) that there were perhaps *ten* questions worthy of examination and inquiry, to every *one* that was worthy of adoption, they would make no resistance to the fullest inquiry on all subjects, even though they might differ in the widest degree from the views of their movers.

Mr. President, there has been some complaint by gentlemen on the other side, in regard to the time occupied in the discussion of this question. Who, sir, is responsible for this? If the resolution under discussion had been an imperative one, in which the principle itself was to be decided by a test vote, the charge might more properly have been made. But, sir, it has been gentlemen on the other side, who have led this debate into the channel where it now is. They had debated the motion almost as if it were an article of the Constitution, reported by the committee, and this question, now to be taken, was upon its final passage. And they had also endeavored to make its adoption a test ques-



tion, as it should not be. I endeavored, in presenting it, to avoid a line of argument which would provoke a long discussion or inflame prejudice; briefly stating the reasons which prompted the resolution of inquiry. And I stated then, as I state again, that we do not wish to weary this body with a discussion of this question that seems to them so unpalatable. But we do desire, and we do demand, the privilege of placing ourselves upon the record as being favorable to a proposed distinct vote of the people upon this question. True, gentlemen who seem specially to dislike any allusion to the colored race, except it is from their own stand-point of hostility, complain that this same proposition has been made two, three, four times already, and that the Convention is thus weary of it. I take issue with them or this, for the very reverse is the case. The proposition, the only other one at all akin to this, of my friend from Jay, (Mr. Hawkins,) differed materially from mine. It, as must be remembered, proposed that the question might be taken whenever the Legislature might direct, and, by inference, as often as they might direct. Whereas the one under discussion, following the precedents of other States, only contemplates one submission of the question, to be at the very time when the new Constitution itself is voted upon. And, sir, this is the first, the very first, resolution of this kind which has been presented.

How, Mr. President, has it been met? At the very threshold it encountered the strongest, most determined, and, I might almost say, bitter opposition. Every appeal has been made by its opponents that could tend to its rejection. No argument has been left unused that would excite prejudice against it or its supporters. And the free-soil party who, though small in numerical strength, number in their ranks as high-minded and honorable men as any upon this floor, and who have the right, as American citizens, to have their course considered as based upon what they believe to be their duty, have been dragged in here to be abused and denounced.

And what great boon did we ask? We asked the bare privilege of recording our votes upon this proposition, unembarrassed by amendments and provisos, which would vary it from its original language and intent. This privilege had been extended to all other members, upon all other questions, when they desired it. It may be refused now. Some two or three amendments have been proposed or suggested to prevent the attainment of this object. All appeals to the courtesy or magnanimity of gentlemen upon the other side may be fruitless. But, if they are, it will only be another proof of the fact which history and experience teach us, that majorities, not always just, are often tyrannical.

Let us pause, gentlemen, and look back at the course pursued by those who differ with you.

Resolution after resolution was introduced, either expressly advocating or looking to the prevention of the immigration of free blacks into the State. How were they treated? Was there a solitary word of objection raised against their being received and referred to an appropriate committee? Was there an attempt made to prevent or to hinder the fullest investigation of that great question, which involves vital interests of humanity? No, sir, no. All opposition was reserved till the friends of that measure had had time to mature their views, and present them, in an article, to the Convention. This is what *we* deemed courtesy required, nay, demanded. But a different measure of it has been meted out by gentlemen on the other side. No sooner was the proposition of the gentleman from Jay before the House, than an amendment was proposed to it, and subsequently adopted, which destroyed all its vitality. And no sooner was this resolution introduced than it is met by amendments, in spite of all appeals to the contrary, and those who dare to defend it have their course sneered at, and their motives impugned.

Sir, if men are to regulate their course by the amount of favor and laudation with which their propositions are received, there would be little progress in the world, and less reform. How was the proposition for taking the election of Judges from the corrupt system of legislative elections and giving it to the people, at first received? Only with sneers and hisses. Its author was a mere demagogue, of course, endeavoring to flatter the people for their votes—so the argument ran—and the plan that he proposed was unsafe, and dangerous to the independence of the judiciary. But he knew that sneers were not arguments, and he persisted. And where is that reform now? Where stands the man in this hall who dare raise his voice against it? And what does experience, that wise teacher, tell us of the result of that experiment in the States which have tried it. Look, sir, also, at the manner in which that wise reform of the freedom of the public lands to actual settlers was received, when first presented for public consideration. Its advocates were denounced—branded as agrarians—their principles derided, and they themselves held up to contempt and scorn. But, I rejoice to say, they faltered not. And where is that principle now? Borne on the rising, swelling tide of public approval, it is destined in a few short months, or years at farthest, to become the permanent and established policy of our country. From such lessons as these, I have learned to follow wherever duty leads, regardless of what may be the temporary verdict upon the question, and I shall not shrink here or now from any responsibility I have assumed.

It has been triumphantly declared by the gentleman from Owen, (Mr. Dobson) that there was no member upon this floor who dared to

rise and avow himself personally, in favor of negro suffrage. He had asked, and re-echoed the question, "where is the man—let him show himself!" Unfortunately, for what was doubtless intended as the remainder of the gentleman's argument, no one replied. And he went on to argue therefore, that, as there was no one here in favor of that extension, it was ridiculous to submit it to the people. But, sir, is it indeed true, as appears to be assumed, that we are the people; and that if none of us favor a proposition, its advocates among the masses are too inconsiderable to be counted or noticed? Do one hundred and fifty men, sitting within the bar of this Hall, constitute the People of Indiana, or at least, that portion only entitled to respect or regard? Why, sir, each one of us, with few exceptions, but barely represents the *majority* of his immediate constituents. They were voted for only by that majority—their views differ, perhaps widely, from large, and respectable and intelligent minorities. We can only claim, therefore, to be the mouth-pieces—the chosen delegates, of these majorities; for the minorities had no part or lot in our selection; and we come here really against their will. Thus, sir, these minorities are unheard upon this floor. But have they no rights? Even though they may have no man to speak for them here, are they not part and parcel of the whole people of the State of Indiana, for whose interests we should labor, and whose rights we should endeavor to protect, and not to trample upon. Even though there may be no man here who is in favor of universal suffrage, is it not well known that there are thousands of respectable citizens in the State who are in favor of it? And they are not confined either to the Free Soil party. I found while canvassing, prominent citizens, not belonging to the third party, who warmly advocated it, one, in particular, now in my mind, who is confessedly one of the most influential members of the Democratic party, who had held office, and had been a popular candidate, too, on that side of the question but very recently, who told me, and had spoken of it too, openly, that, if the question was submitted to the people, he should unquestionably vote in its favor. There were several thousands, undoubtedly, outside of the Free Soil party who were advocates of this principle.

It is needless to occupy the attention of this Convention longer. From all the indications, it has been prejudged that this matter should not go to a committee, and I do not wish to weary the patience of those who have at least, given me an attentive hearing. I have been gratified at the exhibitions of real courtesy that have so frequently been witnessed in this Hall, since the commencement of the session. And notwithstanding the fate that probably awaits my motion, which will be aided too, by gentlemen who, though disposed perhaps, to give it a reference, feel that they have the strong

feelings of a constituency to represent and carry out, I shall myself, so far as my action is concerned, endeavor to cultivate and to assist in increasing that spirit of courtesy, which so essentially aids in producing harmony and kindly feelings amongst the Delegates in this Hall.

Pending the question, on motion,  
The Convention adjourned until 9 o'clock on Monday.

MONDAY, Oct. 28, 1850.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. BABB.

Mr. BORDEN presented the petition of certain persons of color residing in Allen county, in this State. He felt bound, he said, to state the fact that the petition was from colored persons, that the House might not be deceived; as he believed it was the first petition of the kind that had been received from a class of persons who were not legal voters.

He also presented a petition from certain inhabitants of Steuben county, on behalf of the colored race.

The petitions were read by the Secretary.

Mr. KELSO said, he supposed a final disposition might as well be made of this matter at once. It might as well be at once determined whether they would have any thing to do with petitions of this character or not. He would move that the petitions be not received.

Mr. PETTIT said, he should not vote for the proposition of the gentleman from Switzerland (Mr. Kelso) to reject the petition. I shall not, said Mr. Pettit, vote to reject or refuse to receive any petition that is sent here by any persons or by any individual who can either sign a petition for himself or get anybody to do it for him. At the same time, I certainly shall be as far from granting the prayer of these petitions as any one can be.

Mr. EDMONSTON said, he would suggest to the gentleman from Switzerland that these petitions had better lie on the table. Unless the gentleman desired to make some remarks, he would move that they be laid upon the table.

Mr. KELSO said, he had no particular solicitude on the subject. His only purpose in making the motion was to settle the matter at once, and to let it be clearly understood that the Convention was not disposed to receive petitions of this character; but there was another question which would necessarily arise, and that was, whether the emigration of blacks into the State could be prevented. And the decision of that question would turn upon the question whether they were citizens or not. If they were not citizens, they had no right to petition; the provision of the Constitution of the United States respecting the right to petition, was ap-



plicable only to citizens, who were authorized by it to assemble together in a peaceable manner and petition Congress or the Legislature for a redress of grievances, and if they were citizens, he apprehended the Constitution of the United States would nevertheless be found to interpose obstacles to the admission of petitions from that class of people. He made these suggestions from the desire he felt that this question should be disposed of; but as he did not desire that the free action of the Convention should be impeded, he would withdraw the motion.

Mr. EDMONSTON moved that the petitions be laid upon the table. At the request of Mr. Borden, however, he withdrew the motion for the present.

Mr. BORDEN said, he had another petition of the same character to present, and it was his intention to submit a motion or resolution for the reference of all of them, with definite instructions, to a committee. Such a resolution, being imperative, the matter would lie over one day. In the event, however, that the proposition of the gentleman from St. Joseph should be adopted, he intended to move that the petitions be referred to the same committee to which that gentleman proposed to refer the subject.

Several MEMBERS. Let the subject lie over until the other question is disposed of.

Mr. BORDEN. Very well. I have no objection that it should lie upon the table for the present. If the Convention will extend to me the courtesy to take the subject from the table when the other matter shall have been disposed of, I will consent that the petitions shall lie upon the table.

Mr. EDMONSTON renewed the motion that the petitions be laid upon the table.

The motion was agreed to.

Mr. BORDEN then presented another petition, and it having been read by the Secretary, he moved that it also be laid upon the table for the present.

Mr. SMITH of Scott requested the gentleman from Allen to withdraw his motion for a moment, to enable him to submit a remark.

Mr. BORDEN withdrew the motion.

Mr. SMITH of Scott said, he desired simply to remark that it seemed to him that it would be perfectly useless for the Convention to receive petitions of this character. They could take no action upon them. It occurred to him that they were in violation of the Constitution of the United States. A petition of a similar character, said Mr. S., was presented here a few days ago, purporting to be from the denomination of Christians called Baptists. I have as much sympathy for them as for any other denomination of Christians; but when I see them presenting petitions here in open violation of the Constitution of the United States, I must withhold my assent to the recep-

tion of such petitions. I have no sympathy with any such measure as they ask for. If the gentleman from Allen (Mr. Borden) would consent, I should like to see a motion made to reject the petitions.

Mr. DOBSON said, he thought they should at least admonish those who were sending these petitions here, that it was not proper that they should continue to send them. He would make no motion on the subject, however. The petitions that he referred to were those which were gotten up and signed by religious sects, and forwarded to this body as expressing the wishes of such religious sects or societies. The people of the State, said Mr. D., have a right to petition in their capacity as citizens; but when churches or religious denominations, in a body, sign petitions and send them up here, I think they are going counter to the spirit and genius of our institutions; it is altogether wrong. They are not recognized as such societies by our laws, and institutions. I did not rise, sir, to make any motion, nor to make an objection to the course proposed to be taken, but merely to offer the suggestion that I have made in reference to this class of petitions.

Mr. BORDEN. I think my friend is mistaken, when he says that our laws and institutions do not recognize religious societies. I believe that the law provides how they are to associate themselves together for religious purposes. The law does recognize different sects of religion.

Mr. DOBSON. But it does not recognize them as associated bodies for any political purposes, although it does recognize the individuals of which such denominations or sects are composed, as citizens.

Mr. BORDEN. Well, sir, petitions have been received from religious societies by the Congress of the United States. Such petitions were received soon after the Constitution of the United States was adopted. Petitions were received from the Society of Friends, at their yearly meeting in Philadelphia, on the subject of slavery and the slave trade. At various times this has been done. I do not know whether it is not right, when people are assembled in their religious associations, and on other occasions of assembling together, that they should be at liberty to sign petitions, as well as at political meetings. I cannot see the impropriety of sending up petitions signed in this manner, merely because they happen to be assembled in an association for religious purposes.

Mr. MORRISON of Marion. This, sir, is a subject which I regard as one of very considerable importance. I do not object to religious denominations presenting petitions here. They are not disfranchised. They have the same political rights as others. But I do not think the Convention is taking the right course in regard to this matter. I think if we were to refer these petitions to a committee, and let them

make a report on the subject, stating that it is in contravention of the Constitution of the United States, and giving such other reasons as they deem necessary and proper to be given, why it is inexpedient to receive petitions of this kind, we should stop the mouths of those claiming the right. For these reasons, I should like to see these petitions referred to a committee, and an argumentative report made on the subject.

**A MEMBER.** A standing committee cannot report argumentatively.

**Mr. MORRISON.** A select committee may. The laying of the petitions on the table, or rejecting them, is, I think, an aggravation of the case; it tends to irritate and to induce them to show their strength; but if we close their mouths by giving them an answer to their petitions, we shall have done our duty.

**Mr. BORDEN.** What is the motion?

**The PRESIDENT.** There is no motion pending.

**Mr. BORDEN.** Then I renew my motion to lay the petition on the table.

The motion was agreed to.

**The PRESIDENT** announced the unfinished business to be the resolution of the gentleman from St. Joseph, (Mr. Colfax,) to which an amendment had been offered by the gentleman from Franklin (Mr. Berry).

The resolution is as follows:

*"Resolved, That the committee on the elective franchise be instructed to inquire into the expediency of separately submitting the question of negro suffrage to the people."*

To this resolution,

**Mr. BERRY** has offered the following amendment: strike out all after the word "resolved," and insert the following:

*"That the committee on the elective franchise, &c., be instructed to report a provision for the new Constitution, providing that negroes and mulattoes shall be voters at all elections in this state."*

**Mr. MAY** moved to amend the amendment of the gentleman from Franklin, (Mr. Berry,) by adding the following words: "Under such restrictions and qualifications, however, as they may deem necessary."

**Mr. COLFAX** inquired whether the amendment must not necessarily lie over one day. The amendment, he said, was imperative in its terms—the resolution was not.

**The PRESIDENT.** There is a rule requiring imperative resolutions to lie over one day, but, when a proposition, whether it be imperative or otherwise, is taken up and acted upon by the Convention, the rule ceases to apply.

The question being on the amendment to the amendment,

**Mr. MAY** said, that he regretted that the gentleman from St. Joseph (Mr. Colfax) had thought proper to introduce the original resolution, which, together with the amendment, had now

so long detained the Convention. I, sir, said he, fully concur with those gentlemen who are opposed to submitting this question of negro suffrage as a separate and distinct question to the people. We are sent here for a specific purpose. That specific purpose, as it seems to me, is the formation of a Constitution.

Now, sir, it is not to be supposed that gentlemen who come up here from all parts of the State, entertain the same views of the many questions which are to be submitted to them. On the other hand, it is to be expected that they will entertain very different views of these various questions. But, because there is a difference of opinion amongst ourselves, are we, therefore, to come to no decision? Why, sir, we have come here, as I understand the matter, for the express purpose of making known, interchanging, and, if possible, reconciling these different views. If we find we cannot reconcile them, what then is to be done? Evidently, we are to ascertain the views of the majority, and, having ascertained them, we embody those views in a Constitution, and then send it forth to the people for their ratification or rejection.

Now, there have come up before this Convention, other questions, quite as important, it seems to me, as this question of negro suffrage. At any rate, questions, and important ones too, have come before us, upon which this Convention is more equally divided. Take, for instance, the question introduced by the gentleman from Tippecanoe, (Mr. Pettit,) in regard to the abolition of the Grand Jury system. There is not a member on this floor who does not know that the Convention is nearly equally divided on that question. Now, if we may, with propriety, refer to the people one question, why may we not, with equal propriety, refer another? And, sir, with how much greater propriety may we refer those questions, concerning which we know there is a great diversity of opinion, as well here as amongst the people. I conceive, Mr. President, that the duty which we have to perform is a very plain one. It is to frame a Constitution to the best of our ability, and then submit it to the people. This, it appears to me, is all which we have to do. I conceive it is no part of our duty to evade the decision, amongst ourselves, of any question. We are sent here to decide these very questions, and it is not incumbent on us to submit with the Constitution, a string of questions, to be also separately voted upon by the people.

I suppose, Mr. President, that our new Constitution will contain some provision for its future amendment, at such times and as often as the people desire to amend it, and that too without the expense and labor of a Convention, expressly assembled for that purpose. If such be the case—if such a provision be ingrafted upon it, then, sir, I will say that I hardly believe it possible that this Convention will frame a Constitution which the people will vote to reject.



They will see in that one provision, as I clearly see it, a germ from which will spring sufficient good to finally overpower and destroy so much of evil as the Constitution may elsewhere contain. For these reasons, I shall vote against submitting any separate and distinct questions to the people.

But, Mr. President, another question, entirely distinct from this, has been sprung upon us by the amendment which the gentleman from Franklin (Mr. Berry) has seen fit to offer, and that is the question of negro suffrage—the right of the negro to vote at all. Upon this question, I suppose, from what I both see and hear, that I differ *toto celo* from a large majority of the members of this Convention. I differ, at any rate, with every man who has thus far spoken on the question. Every man who has thus far spoken has been careful to announce that he would not vote to give to the negro the right of suffrage in this State. I, sir, however, think it is the duty of this Convention, so far as it can do so—certainly the duty of the people collectively—to give to the negro this right of suffrage under such restrictions as may, after a careful view of the subject, seem most wise and for the best.

I know very well, Mr. President, that I am broaching doctrine unpopular in this house. I do not forget, sir, that no longer ago than yesterday, upon the floor of this chamber, it was repeatedly by one gentleman demanded, in a tone rather more triumphant than I like to hear in such a deliberative body as this, “is there a delegate in this Convention who *dare* avow himself in favor of negro suffrage?” And from the fact that no member then rose to his feet in response, the gentleman may really have supposed that no member dared to avow that he held sentiments presumed to be so unpopular. But, Mr. President, let me ask—and, sir, I do it in a spirit of courtesy, not wishing to give offence—permit me to ask, I say, of the gentleman propounding that singular inquiry, “who constituted him the catechizer of this Convention? By what rule does he thus rise in his place, and in such a peculiar manner order the yeas and nays of this body, that he may ascertain the sentiments of its members?” Sir, I desire to say in this place, and say it distinctly, too, that I am neither his nor any other gentleman’s catechumen, neither here nor elsewhere. And, sir, I deny that either he or any other gentleman has the right thus to propound questions and to infer from my silence what are my views upon any subject within the range of the discussions of this Convention.

I have said, sir, that under certain restrictions, with certain qualifications, I would give the colored man the right to vote. I am not now prepared to say what these restrictions should be. I do not desire now to tell this Convention under what circumstances the negro shall be allowed to vote. It would be but labor lost,

for it is only too clearly to be seen that this Convention have already determined that the negro shall never vote in the State of Indiana. To that decision I of course submit; but, sir, I hesitate not to say, that it does not accord with my notions of right.

Mr. President, I hold to this doctrine—I believe this to be true: Either the negro is a man constituted like ourselves by nature, or else he is only an animal—a mere brute. If the negro be but the mere brute, then, sir, let us treat him as one in all respects. Let us treat him as men treat him in the slave-holding States. There we know men both class and treat him as other brutes. There the laws designate him as a chattel—as mere personal property. Let us also efface the divine stamp of immortality and the evidences of manhood from his features, and write, yes, brand the word, “chattel” upon his brow. Let us at least be consistent. Let us declare him subject to our control, and divest him by force, if need be, of every human right, deny to him all right of liberty and property, and finish the task by trampling to the dust his social as well as his political rights.

But if we decide that the negro is a man—that he has the attributes of humanity—then let us for our own sake, if not for his, for consistency’s sake, ever recognize him as a man and treat him as a man.

Now, sir, it does not follow that because we recognize the African as a man, as belonging to the human species, that therefore we must at once bestow upon him all the privileges, social and political, which we bestow upon other men. We recognize all those foreigners from the old world, who are thronging to our shores, as men. We acknowledge the German, the Swede, and others as component parts of the same human family to which we belong. We do not, however, make them inmates of our families, nor at once bestow upon them the elective franchise as soon as they touch our soil. But we do give them a cordial welcome to this land of freedom. We then say to them, “acquire a knowledge of our language, our laws and our institutions—satisfy us that you appreciate the political blessings that we enjoy—that you will be safe depositories of the elective franchise—and then you shall enjoy all the political rights we possess.”

And so, sir, say I in regard to the negro race. I contend that it is due to the African and to ourselves, to declare under what circumstances, and coupled with what restrictions, they shall enjoy the rights and privileges of men.

My own knowledge of the negro race is not great, I confess; though, be it great or small, it has been acquired by a residence as well in a slaveholding as in a non-slaveholding State. But were it even greater than it is, I have too humble an estimate of my own abilities—I think too little of my own political discern-

ment, to willingly say what qualifications should be prescribed, and what restrictions imposed upon this class of our population, to which they must submit before they can be recognized as citizens with political rights and franchises. But I know that in one State of this Union, one standing, too, among the foremost, if she is not herself the first, I know that there the negro has had the elective franchise conferred upon him under a property qualification. I confess, that, for my own part, I think very little of such a qualification, and I do not instance it to recommend its adoption. I have instanced the example of New York in order to show gentlemen that there that has been done which I say should be done elsewhere. I have done it to call the attention of gentlemen whose observation seems never to have extended beyond the assumed fact that negro suffrage is unpopular in Indiana, to the fact that other and abler men than myself—men recognized by all as statesmen—have held the opinions which I have advanced, and that other, and perhaps greater and more far-seeing States than Indiana, have deemed it the part of wisdom as well as of justice, under certain restrictions, to enfranchise the negro.

And, sir, in thus restricting the exercise of the elective franchise, we are guilty of no inconsistency. We not only refuse at once to enfranchise the foreigner when he lands from the emigrant ship, but we have thrown about our own selves certain restrictions, and have imposed certain qualifications. We say, for example, that no man shall exercise the right of suffrage until he has attained the age of twenty-one years. This is all right and proper. Now, I do not profess to thoroughly know the capacities of the negro race. I know but little of their mental or social development. Therefore, I will not say that at the age of twenty-one years the black man can be made sufficiently well informed of the laws and institutions of this country, and of the responsibilities and duties of the citizen to make him a safe repository of this trust. But I say, that if the black man has not intelligence and discretion enough at the age of twenty-one, to make him worthy the exercise of the elective franchise, then extend the prescribed age to thirty-one, or forty-one, or, if need be, to ninety-one. (Much laughter.) Draw the line somewhere. Let it be at the most suitable and proper age, whether it be fixed early or late in life.

There are other qualifications which may be mentioned in this connection. As, for example, literary or educational attainments. Gentlemen tell us that the negro race is a degraded and inferior one. I admit that this is true. I acknowledge that, as a people, they are far below the Anglo-Saxon race, both in point of intelligence and social refinement. Then, sir, let us prove our superiority by assisting, or rather our magnanimity by allowing, the negro to rise

above his present degraded sphere. We already allow him the privilege of supporting our government by paying his taxes with the rest. Gentlemen see no danger in that. Then let us grant him the right to vote, and thus participate in the government which he assists to support. Confer upon him the elective franchise—first surrounding it with all necessary restrictions; insist on a property qualification if you please—require attainment to a mature age; insist that he shall know how to read and write; add other qualifications if you deem them necessary, but still, if you would make him other than that degraded being which you say he is, under some circumstances or other, put within his reach this great privilege.

I do not know, Mr. President, but that I shall be misunderstood in these few remarks. I certainly do not wish to be. I am not, where I am known, deemed an abolitionist, as that term has come to be understood. Neither, sir, am I a free-soiler, at least I am not enough of one to have ever received many free-soil votes; and I have frequently encountered active opposition from the free-soil party. But, sir, though this be the case, still I shall never shrink from uttering my conviction that there is much truth in the principles of the free-soil party, and, sir, I know that many members of that party conscientiously adhere to them. It seems to me that I should be recreant to the cause of humanity were I to sit silently in my seat and allow such sentiments as have been promulgated upon this floor to go unanswered and uncontradicted. Sir, when the gentleman from St. Joseph (Mr. Colfax) introduced his resolution, I did hope that it would have been received in the same spirit in which it was offered. But it was not so received. The dignified and proper spirit in which the resolution was presented was not reciprocated. A very different spirit was at once displayed. I regret to see that there exists here a very decided disposition to crush every expression of sympathy for the negro race, and I have sometimes fancied I saw a disposition in this Hall to crush to the ground every man who ventured to give utterance to such sympathy. I hope I am mistaken. But against all manifestations of such a feeling I have risen to protest, and I do it none the less earnestly because I seem to stand alone.

Mr. READ of Clark said—

Mr. PRESIDENT: I have listened with much interest to the remarks just made by the gentleman from Steuben, (Mr. May,) and have a few remarks to offer in reply.

I also have a great sympathy for the negro race, and I am disposed to exercise every degree of courtesy and attention to every subject and to every proposition for the amelioration of their social condition. But, sir, representing a constituency which has a stronger feeling, perhaps, than any other in the State against the



enfranchisement or even the immigration into the State, of negroes, I cannot be silent until I have briefly given the reason why I shall vote against conferring upon the colored population of the State the right of suffrage.

Self-defence, sir, is the first law of our nature. Every instinct of our being demands that this adage should be recognized. What is our situation in the State of Indiana? We are surrounded by slave States and consequently have, and are always liable to have a constant immigration from those States both of fugitive slaves and of free persons of color. Slaveholders are always anxious to get rid of their old, decrepit, and superannuated slaves, and they are also anxious to be freed from the presence of the free blacks. Hence it is natural that both these classes should cross the Ohio River from Kentucky, and settle in this State as well as in Ohio.

What has Kentucky done, sir? The Constitutional Convention which was held in that State last fall provided that if any free negro should emigrate to that State he should be liable to be tried for felony, and the punishment provided is confinement at hard labor in the penitentiary.

It is also provided that if any slave shall be emancipated, and he does not immediately thereafter leave the State, he is liable to be treated as a felon and to be confined in the State Prison.

It is well known that, in slaveholding States, all the old, unserviceable, and superannuated negroes are set free, that their masters may not have to support them when they have ceased to be any longer serviceable or productive. The laws being stringent against their remaining in those States, as a matter of course they flock here. Now what I say is, that we should stand upon the natural right of self-defence—we should, in order to protect ourselves, enact stringent laws, or insert a clause in the new Constitution prohibiting the future emigration of blacks into this State.

It appears to me, sir, that there are but three courses left open for the people of Indiana to pursue with regard to the negro population of the State.

The first is, amalgamation—aye, sir, I repeat it, amalgamation.

The second is, to give up the State to the possession and rule of the black population.

The third is, to prohibit the immigration of negroes to the State, to give no encouragement to those that are here that they can ever enjoy equal social or political privileges, and keep the State for ourselves and our descendants.

Mr. President, I do not hesitate to say that I am for the latter course as a choice of the three. [Consent, consent!] There should be no feeling about this matter; we should be courteous and forbearing towards those who differ from us on this question, although they may be in a

very small minority. But while I respect the feelings of other gentlemen and of their constituents, I must be allowed the same freedom to express my own and to represent the views and feelings of the people whom I have the honor to represent here. I do not know how it would suit the people of some of the northern counties of the State to have negro suffrage granted, but I tell gentlemen that my constituents would feel themselves very much degraded and grossly insulted to be asked to electioneer among negroes at their polls.

Not to detain the Convention with any lengthened remarks, I will conclude by saying that, viewing the matter as I do, I shall support a proposition prohibiting negroes from emigrating into the State; and shall oppose any proposition to bestow upon them the right of suffrage.

Mr. STEVENSON. Mr. PRESIDENT: As this debate is upon a subject upon which every citizen in the State is interested, and the result is watched for with anxiety in all parts of Indiana, I wish to occupy the time of the Convention a few minutes, while I shall very briefly give my reasons for the vote I should cast upon a proposition to prohibit all persons of color from emigrating into the State hereafter, and also prohibiting any future Legislature from bestowing upon the negroes the elective franchise.

I am willing to acknowledge, sir, that the white race are under some obligations to the black race in this country. They occupy an inferior social condition; they are much degraded; it is the duty of a wise and humane people to work for the elevation of such a race. The people of the United States can have no interest in degrading and sinking lower in the scale of being, the black race; but the question is, can they be elevated so much as to be on an equality with the white race, politically as well as socially? Have they the natural capacity for such an elevation, and is it compatible with the best interests of the white race that the negro should live in its midst upon such terms? For one, Mr. President, I frankly confess I do not believe in the possibility of such an elevation being compatible with the safety and best interests of the Anglo-Saxon race.

There is a marked, an apparent, and an unmistakable inferiority, both as to physical and mental qualities in the African race. Now I contend if it is once conceded that you can never elevate the negro to an exact equality with the whites in this country—an equality which shall extend to all social, and to all political privileges—the right to hold an office as well as the right to vote, you will never be able to do the negro any real good in this country. The result of this conclusion, to which I believe that all must arrive, is, that the only remedy left open for this greatest evil in our midst, is to be found in colonizing the negroes in their native Africa. This is not only the exclusive remedy,

it is not only the last resort of a people seeking to relieve themselves of a low and degraded black population, but it is eminently practical and the very best thing that can be done for their good, as well as our own. Colonize them in Africa, where they are surrounded only by their equals, governed by a man of their own color and race, and allowed a free participation in all the institutions and privileges of society and government.

Look, sir, for a single moment at the condition of that most unfortunate people in this country. You will, after a careful view, be convinced, not only of their physical and mental inferiority but the impossibility of the two races commingling and living together on terms of equality. The careful observer must also be convinced that if the good of the black race, as well as the white, is to be consulted, the former should be colonized.

I maintain that it is highly impolitic for a refined and superior class to keep in their midst an uncultivated, a degraded, and inferior race. Because the natural tendency has been proven by experience, not to be elevation of the degraded, but the deterioration, the lowering, of the better class, towards the standard of the inferior class. The past has shown us that as the blacks increase in number, the disturbance between them and their white neighbors increase. As the blacks feel their strength, whether in numbers or in the grant of greater privileges, they are disposed to abuse them instead of being discreet and modest, and making use of those privileges to make themselves more intelligent and refined, and thus more agreeable to the dominant race.

This being the case, the doctrine which I maintain and am prepared with all my humble powers to prove, is, that the people of Indiana should hold out no inducements, whatever, to the negroes to settle and remain in the State, by granting privileges and franchises, or in encouraging them that they ever will be allowed any more, if indeed they are allowed the exercise of as many rights as they now have. Yes, Mr. President, the language that the representatives of the people of Indiana should hold to the black race is, *emigrate, emigrate* to your native country. They should all be sent to Liberia, or some other part of Africa. I believe that they have intelligence enough to build up a successful community on the shores of their native Continent, and to govern themselves. I believe that they would not only be happy and prosperous there, but that such a settlement would be a grand beginning for the Christianizing and civilizing the now benighted and barbarous continent of Africa.

I look upon the black race with sincere feelings of pity, and I have no feeling or antipathy against those who advocate the propriety of bestowing upon them the elective franchise. I believe that gentlemen who propose to give the

negro the right of suffrage, are actuated by the noblest feelings of our nature—I respect such exalted sentiments of justice and humanity. But at the same time I look upon the subject in an entirely different light, and conceive that those gentlemen do not sufficiently take into consideration the really practical part of the subject, and do not sufficiently weigh the facts I have presented. Notwithstanding all you can do for them, the blacks are still a degraded and inferior race. The single distinction of color must of itself alone keep up an eternal distinction between the two races.

I am well aware that the blacks of this country are almost universally opposed to leaving this country, and emigrating to Liberia, but it is because they are ignorant of their real interests. They are not capable of taking a comprehensive and practical view of their degraded position in this country, and measuring the vast advantage of colonizing in a land, whose climate and position is naturally suited to them, and where they can live upon terms of perfect equality with all around them; that there they may lay the foundations of a nation of their own, and, unobstructed by the presence of a powerful and superior race, improve their social and mental condition, and elevate themselves to a respectable, if not an equal place among the nations of the world.

To the institution of slavery I am opposed, in every light in which it can be viewed, and I have been opposed to it ever since I first began to think of it. And I would be foremost in efforts to help and assist them to elevate themselves in this country, but I have been for a long time convinced that they are, and always must be, unhappy whilst living in the midst of the whites. They are despised in their social relations, and cheated in their business transactions. They have not the intellect to protect themselves from the white people, and, in fact, they are but little better off here than in slavery.

I ask gentlemen to look around this city of Indianapolis, and examine the character and situation of the black population here, where they have an opportunity of making property if they will, and then tell me if the very best thing that can be done with them, and for them, is not to send them to Liberia. And to have the proper effect upon the colored population, they should be told from this chamber, by the voices of the people assembled, in the persons of their delegates, that they must emigrate to Liberia, and that they need hope for no extension of political privileges, and no amelioration of their present condition in Indiana. But, sir, so long as delusive hopes are cherished of their being favored, so long as efforts are made by a certain class in their behalf, so long will the negroes look upon this as their home, and clamor for protection and political privileges.

My own experience teaches me that they have



been but very little, if at all benefitted, by being freed from slavery. Indeed, you will confer no real and lasting favor upon this class of our population until you provide for their emigration to their native Africa, where they can all live upon terms of equality—one negro with another. But send them from among the white race, because so long as they are with them, they can never prosper.

They should never be allowed to amalgamate with the white race, and no statesman should ever favor any measure, the indirect result of which will be amalgamation between the races. Any encouragement given them to remain here, either by allowing them free emigration into the State, or conferring upon them additional political privileges will have this effect, because if the blacks stay in this country, there will always be amalgamation. I want none of this; I want Indiana and this country peopled, possessed, and governed by a pure white race. It is degrading to the feelings of every American, and I confess I am pained to see in the streets, the evidences of amalgamation which every where meet the eye.

In conclusion, Mr. President, I will repeat what I have before said—let us in this Convention, pursue such a policy and adopt such measures as will have the effect to induce the negro not to remain in this country, but to emigrate back to his native Africa. There they can live and prosper—they can introduce civilization and perhaps do for Africa what the Anglo Saxon race has done for America.

These are the considerations which will induce me to vote against the resolution introduced by the gentleman from St. Joseph (Mr. Colfax.) In voting against that resolution, and in carrying out the policy I have advocated, I believe I am acting for the best interests of the black race as well as the white race.

Mr. GRAHAM of Warwick. I intended, on Saturday, to make a few remarks upon this subject, and I feel myself disposed this morning, to carry out that intention. The resolution of the gentleman from St. Joseph (Mr. Colfax) proposes to direct the committee on elective franchise to enquire into the propriety of submitting the question to the people of Indiana, whether they will enfranchise the negroes. To this resolution an amendment was offered by the gentleman from Franklin, (Mr. Berry,) instructing the committee to report a proposition extending to negroes the privilege of voting. Another committee had already reported a proposition, forbidding negro immigration and the right of negroes to hold real estate. Now, if both of these propositions should be adopted by the Convention it would be doing and undoing at the same time. I do not deny that the Convention has the power to submit this question, but I do think it would be impolitic to do so, where there can be no doubt as to how the question would be decided by the people. Where there is such a

decided majority against the proposition, as in this case, I can see no necessity for submitting the question. I know that it is urged by some, that a submission of the question to the people would be calculated to allay excitement. But I think differently. I think it would be calculated to keep up excitement. I believe, sir, that amongst all who have appeared here as the advocates of this resolution, not one of them has avowed himself willing to vote for negro suffrage at the polls. Even the gentleman from Jay, (Mr. Hawkins,) after a most elaborate defense of the resolution, in the conclusion of his remarks gave us to understand, that, at the polls, he would vote against it. After all the argument which he made to show why this question should be submitted, it seemed to be comprehended in this—to grant to him the pleasure of voting against it. It is true, that, if this question should not be separately presented, it might induce opposition to the new Constitution, on the part of all those ten thousand voters, to which allusion has been made, because they could not have the privilege of voting for negro suffrage. But I cannot think that would be the case; because they would not better themselves by falling back upon the old Constitution.

I should think, sir, that the friends of free-soilism here should vote for a provision in the Constitution prohibiting negroes from settling in the State, for it is the manifest policy of the State not to encourage their immigration; and besides, the negro race never can be elevated to an equality with the white race, either socially or politically. If they might be elevated politically, they could not be so morally and socially. Sir, I desire that the State of Indiana should be a free-soil State, emphatically—that every one of her citizens may enjoy equal rights and privileges; and if we do not take this course of exclusion, as fast as the negroes shall be worn out in the service of Southern masters, they will be run into this State, not to enjoy equal privileges as our citizens, but to remain as paupers. There are some negroes here already, and if we should incorporate into our organic law no prohibitory provision of this kind, it would be an inducement for more to immigrate. The State of Ohio has already begun to feel the effects of the policy which they have been pursuing with reference to this very subject, and I have no doubt that their new Constitution will show this, by a clause prohibiting negro immigration.

It seems to be the policy of the gentleman on my right (Mr. Stevenson) to take back this unfortunate race to the country from whence they came, which may be well enough as far as it may be found practicable. But nature has made a broad distinction between the white and the black races, which could not be overcome. And if we cannot understand the reason for this distinction, should we, therefore, attempt to counteract or destroy it? These were some of

the reasons why he should vote against the proposition of the gentleman from Franklin, and against every proposition for the encouragement of negro immigration, or for the establishment of negro suffrage.

**Mr. CRUMBACKER**—

**MR. PRESIDENT:** It does seem to me that gentlemen are expending much thunder prematurely upon this matter. The question is, purely, whether the resolution shall be submitted to the committee authorizing them to make inquiry into the propriety of submitting the question of negro suffrage to the people. Such should be the limit of this whole argument; but, this morning, gentlemen have gone on to argue the propriety of entirely prohibiting the blacks from settling and holding property in the State. That question, also, will be met in proper time, but it is most clearly irrelevant now. Moreover, is it the province of this Convention to discuss the question where the black race can flourish best, and under what form of government they could most enjoy the rights of freemen? I might be ready and willing to discuss these questions, but I cannot conceive that it is either the province or the business of this Convention to continue a discussion which involves nothing more than an inquiry into the benefits and blessing of the Colonization Society, and the advantages which ought to be set before the Africans in this country, to induce them to colonize.

The gentleman who was last upon the floor, if I mistake not, made an error in reference to the committee which reported last Saturday, by confounding that committee with the committee to which the gentleman from St. Joseph has directed his resolution.

**Mr. GRAHAM** (interposed here and explaining) said, he referred merely to the inconsistency of sending this imperative resolution to the committee on the elective franchise, with the reported proposition prohibiting negro immigration.

**Mr. CRUMBACKER** (continuing). The gentleman from St. Joseph has directed his resolution to the committee on the elective franchise. With regard to the merits of this resolution I have but very little to say. I do not think this the proper time to discuss the question of negro suffrage. The question is simply, shall the resolution be referred? The gentleman asks for this, and appeals to the magnanimity of the Convention, and I hope his appeal will not be made in vain. My reason for expressing this hope is simply this: from the knowledge I have of a great portion of the liberty party in this State, I am satisfied that this course will be the best which can be adopted to allay the existing excitement upon this question, especially in the counties which I represent. I speak with the certainty of knowledge when I say that if this proposition were to be reported and acted upon here with some degree

of forbearance, it would have a sure tendency to allay excitement amongst the abolitionists of the North, however ultra they may be. And, on the contrary, if we should reject every thing which may be presented by those who would represent their wishes, such a course on the part of this body would raise such a storm of excitement as would pass all over the State, and perhaps result in the defeat of the new Constitution. Hence, I contend that it is expedient for us all, who would seek to save the new Constitution from rejection, to treat with forbearance and respect the opinions of that portion of our fellow-citizens who believe in the doctrine of universal suffrage. Gentlemen may be assured that if they spurn the opinions of this portion of our citizens, they will raise a feeling of excitement in the bosom of every man of them, which will burn, not only against our action in this matter, but prejudice their minds materially against every thing which we may do.

I desire to make a few remarks with reference to certain language which was applied to this party on Saturday, by some gentleman upon this floor. Not having been in my seat very long, it is impossible for me to know either the counties or the names of members; but the denunciation or the assertion to which I refer, attracted my attention, and although I cannot recollect who gave out the expression, I recollect its language very well. It was a denunciation of the free-soil party as a poor, miserable faction, which deserved only to be greeted with sneers and contempt.

**Mr. DOBSON** (interposing). If the gentleman refers to my language, I made no allusion to the free-soil party; my allusion was to the abolition party, if he will note the difference.

**Mr. CRUMBACKER.** I am perfectly satisfied with the explanation; but I am still constrained to say that the language, when applied to the old abolition or liberty party, must still be both offensive and unjust, for, from my own knowledge of a great many persons belonging to that party, I can testify for them to their respectability and sterling worth. They are an honor to their country; they are devoted to our institutions and to the Union; and they are not so ultra in their views as to wish to dissolve the Union, merely to carry out their principles. No, sir, but they will hold on to that government which approximates nearest their idea of universal suffrage and universal right to life, liberty, and the pursuit of happiness. They are not so factious in their nature as that it should be thought of them they would destroy the fundamental principles of government; but, on the contrary, they are men of benevolence, truthfulness, and patriotism. And it is not unfrequently the case that those who denounce them the loudest at some times, at other times will pay the highest compliment to them, whenever the faction happens to be strong, and



wherever their votes can be thereby secured. But not to occupy time, I will conclude by expressing again the hope that the resolution will be referred to the committee; that this appeal to the courtesy and magnanimity of the Convention may not be in vain, so that it may be manifest to free-soilers and abolitionists throughout the State, that the Convention, as a body, is not disposed to spurn their opinions with contempt.

Mr. EDMONSTON. I had not intended to say any thing, and should not, but for the charge that the majority here have not acted upon this question with proper courtesy. But so far from this being the case, I shall endeavor to show that the lack of courtesy upon this question rests chiefly upon the part of the minority. It will be recollected that early in the session petitions and memorials upon this subject were received, appropriately referred, and reported upon; the judgment of the Convention being recorded that it was inexpedient for them to act upon the question. Sir, if gentlemen who advocate this resolution were desirous only of making an issue upon the question, that was the time for them to have made it, and to have recorded their votes in opposition to the report of the committee. But not a word was said. A few days ago, a resolution was offered similar to that upon your table; and an amendment being proposed, completely nullifying the object of the proposition, the yeas and nays were demanded and accorded to them upon the adoption of the amendment, which was carried by a very decided majority. Was this acting discourteous on the part of the majority? Certainly not. But then, after this, they come in and contend that if their ten thousand voters are not conciliated they will go against the amended Constitution; but this threat has no terrors for me, so long as the alternative is that I shall agree to submit to the people the question of placing a buck negro upon an equality with a white man! Sir, I ask, in all candor, whether it is courteous for these eight or ten thousand to continue to harass the majority, from year to year, and from day to day, upon this subject, and then to ask for the adoption of conciliatory measures for the purpose of procuring their votes upon some important question? I trust, sir, that this is not the course that will be pursued here.

It has been charged that the adherents of this party, in the State, have been called a faction. Well, sir, I confess that I can look upon them in no other light. Look at the course pursued by them in the organization of the last House of Representatives in the Congress of the United States. Did not their course there evince a resolution that they must rule or ruin—that they would sink the government or carry their points? Is it reasonable that this small minority should rule the government of the United States? Or should not such conduct be condemned and despised? Yet they come up here

and ask that the negro race shall be placed upon an equal footing with the citizen, and call themselves respectable? I affirm that there is nothing respectable about such a course. I envy not the respectability of such a party. If it could be shown that, by any action of this Convention, the moral and social condition of the black race could be elevated to an equality with that of the white race, then I could accord some degree of respect to the course pursued by this party. But the distinction between these races has been made by the God of Nature. The black race has been marked and condemned to servility, by the decree of Omnipotence; and should feeble man claim to erase from them the leprosy which God has placed upon them? I am speaking of facts; I shall not attempt to look after causes; but every man must admit that if you guarantee equal rights with yourselves to the black race, that condition cannot long continue. Either you must surrender to them or they must surrender to you—they must rule or you must rule—such is their nature.

That I was glad the gentleman from Franklin had offered his amendment, as it would bring gentlemen to a distinct vote, and we would see how many were in favor of negro suffrage; for my part, I envy not the respectability of any man who is willing to throw himself in the scale and balance of Government with a buck negro.

I trust, then, to hear no more complaints about being treated with discourtesy, on the part of gentlemen who have only wanted the opportunity to vote. I trust, also, that the whole subject will be voted down, and the question put to rest; and that no fire-brand will hereafter be cast in here for the purpose of securing votes for the acceptance of the new Constitution. I do not impugn the motives of gentlemen, for I trust that every member is actuated by a higher principle than that. I would resign my seat before I would pander to any such factious influence. Let all the adherents of faction return to the fold from whence they strayed, for so long as our deliberative bodies, our Conventions, and our Legislatures, shall continue to foster and consider their pretensions, and gratify their demands, for the sake of votes, so long our Government will be distracted and convulsed from one end of the land to the other.

Mr. KILGORE. As I understand the question, the gentleman from Franklin (Mr. Berry) proposes, so to amend the resolution, as to make it the duty of the committee to report a section extending to the negroes the right of suffrage; and the gentleman from Steuben (Mr. May) proposes to modify this amendment by adding these words: "with such restrictions or qualifications as they may see proper." Gentlemen who are favorable to the amendment of the member from Franklin, could certainly have no objection to this modification, unless they

would allow to the negro the right of suffrage without qualification: gentlemen, also, who are opposed to the whole principle of the resolution, should it be adopted, could not object to the last amendment. Those, also, who are in favor of the right of negro suffrage, could not object that the Legislature should have the power of adding to the extension of this right to the negroes, such qualifications as they may see proper.

This is the question to which I shall direct attention. I shall not travel out of the way for the purpose of attacking either minorities or majorities. The last gentleman up, spoke of a minority, without indicating clearly to what minority he alluded. Surely, the gentleman could not have addressed himself to a whig minority, for I find some whig members over the way, advocating the same doctrine with the gentleman from Dubois.

Mr. EDMONSTON (interposing). I alluded to the advocates of the right of negro suffrage.

Mr. KILGORE (continuing). This question would not have been agitated, but for the other—that embraced in the report of the committee on rights and privileges. Those members who are surrounded at home by factious abolitionists, as they are termed by the gentleman, were disposed to let the Constitutional provision remain as it now stands; and gentlemen of the majority have shown themselves to be the agitators. They were unwilling to let the Constitutional provision remain as it is. They introduced the proposition, excluding negroes from coming into the civil compact, and tying up the hands of the Legislature, so that they shall, at no time, have the power to ameliorate the civil condition of this unfortunate race. Who, then, appears to be against excitement and agitation? There is nothing in the present Constitution, to prevent the negroes from enjoying the right of suffrage. The Legislature has always had the power to extend this right, either with or without qualification.

Mr. EDMONSTON (interposing). The reason I advocate the report, to which the gentleman refers, is, that the question may be settled at once; in order that the Legislature may not continue to be harassed with petitions upon the subject.

Mr. KILGORE (continuing). Yes, sir. But I do not know that there has been any agitation upon the subject of abolitionism, for the Legislature to encounter, for several years past. I believe there has not been a single application to the Legislature for negro suffrage. There has been an application or two, by way of petition, for negroes to be permitted to testify in courts of justice, which hardly passed from the hands of the Clerk, before they were laid permanently upon the table. But, sir, the people have a right to agitate this, as well as any other question. They have a right to discuss any question they please. Although gentlemen

here may deny to negroes the right of petition, white men may agitate and petition as much as they please. But these are a set of factionists, (in the language of my friend from Dubois,) who are entitled to no sympathies here and should ask for none, because, they are willing to place themselves upon an equality with negroes. I will ask that gentleman, if he was not himself once an advocate for the right of petition on the part of negroes?

Mr. EDMONSTON. That was before Mr. Van Buren had fallen from grace.

Mr. KILGORE. Aye, sir, the gentleman was once in favor of giving to the negroes not only the right of suffrage and all the rights of citizenship, but he was, at one time, one of the most ardent supporters of the pretensions of a free soil man to the highest office in this Union. The free soil party was just following in the wake of the New York politicians of 1848; and from this the gentleman, perhaps, may draw a distinction between the free soil party and abolitionism. The free soil party were mere followers after the doctrine which was long before understood in New York. Mr. Van Buren was denounced because he allowed himself to be nominated by the free soil party for the Presidency, as though he had changed his principles; yet, the principles of the Buffalo Platform were those by which he had been governed all his life. But then it was that many of the Democratic party, for the first time, were heard to denounce him.

But at this time there was a strife between the two great parties, dividing the State, which should be the most ultra upon the subject of free soilism. Both parties came together in convention, the two conventions met successively in this building, and they were both charged with having stolen all the thunder of the Buffalo convention. But as soon as the election was over the charm had passed away, and it was a time for parties to change ground, and for the gentleman from Dubois to dissolve the bands of matrimony into which he had entered; but I suppose it was not because he could charge the free soil party with having failed to carry out any of the terms of the compact. Sir, I object to any divorce in a case where the union has been so cordially formed.

But I merely refer to this for the purpose of showing that some gentlemen, who have no sympathies with the negro, seem to have forgotten their former acts and associations.

I suppose no gentleman would desire to place himself upon an equality with the negro; nor is it assumed by any that the negro race is not inferior. But, sir, I object to the intimation that the negro race is inferior by nature. Give them the proper training, and, my word for it, they will exhibit as much talent and enterprise as any class of beings upon God's footstool.

Gentlemen contend that the condition of the African race has been bettered by placing them



in bondage; and if that be true, how much more could we do for them by holding out inducements to them to acquire property and cultivate their minds? This, sir, will be one of the great reasons, which, (if it ever ought to be done,) will be most likely to prevail, for extending to them the elective franchise, and this, also, should be one of the reasons by which I myself might be induced, perhaps, to be in favor of a property qualification and a good English education, to constitute a voter, for we have this race amongst us, and we know not how to get rid of them.

I desire to be distinctly understood, that I am not in favor of negro suffrage myself, but I am willing to leave the question open to the people, where the old Constitution left it, so that, if, at any subsequent day, they shall find it to their interest so to do, the people shall have the right to extend the suffrage to the negro, with such restrictions as the case should suggest and require. And one of them, as I think, should connect this right, indissolubly on their part, with the acquisition of property.

There is no man here, I presume, who desires to place himself upon an equality with the negro; but what shall we do? If we find them illiterate, should that be an excuse for us to turn our backs upon them? We could easily find thousands of white men in our country equally degraded and equally ignorant. Why not turn our backs upon them, instead of admitting them to vote and hold office, after a residence in the State for a single year, regardless of any claim to a good name? Let me ask you, sir, if there were a hundred negroes in this State, and ninety of the number were better calculated to give a righteous vote upon any subject, than one out of a thousand of the foreigners who have been in the State for two years, would you not as soon admit to the polls these ninety negroes, as the foreigners? [Several voices—"no! no!"] Yet it would be an outrage upon republicanism to say that these foreigners should not vote until they had acquired the power to read and write. A man then who has no feeling in common with us, who never felt the pulse of liberty till he set foot upon our soil, such a man is to enjoy the opportunity and the right to vote and to hold office amongst us, whilst these rights are to be denied to the unfortunate black man, who has ten times more intelligence, and who has lived in the State of Indiana from his birth! I don't mean to be understood as saying that I would vote against the suffrage of foreigners, after they had been here a sufficient length of time. But I am only looking at the inconsistency of this course.

Permit me, sir, to refer to another fact. Looking over the State at large, I find that there are not proportionally so many black men confined in the Penitentiary; and of the few blacks which have been so imprisoned, they have been instigated to commit the crime for which they

were condemned, in four cases out of five, by designing white men. I have a little experience in judicial proceedings, which enables me to say that out of six or seven hundred blacks in my county, there never has been a single instance of crime among them, which has been punished by imprisonment in the State Prison. Still, this circumstance would not be a sufficient reason to induce me to vote for giving them the right of suffrage; and this may be a matter of prejudice upon my part, and time may cure it. Therefore, I am desirous of leaving this an open question, so that if my mind shall undergo a change, with the minds of others, I may vote to extend this right. And I will say to my friend over the way, (Mr. Edmonston,) that he, too, may find it convenient to look over this question again, in one or two years, when there will probably come round another scramble for abolition votes. All I ask of this body is to leave this question open to the people, and let us have a fair field fight for the result, whensoever the time should come for the contest.

If the amendment of the gentleman from Franklin is to be adopted, I hope the amendment of the gentleman from Steuben will be adopted also; if the former is to be adopted into the Constitution, I desire the latter to go with it; and I should vote against the former without the latter. If the right of suffrage is to be allowed to the negro, I want that the Legislature should prescribe restrictions and qualifications.

Mr. KENT said, it must appear evident to this Convention that this question has taken a wide range of discussion; much wider than the resolution and pending amendments, under the enforcement of strict parliamentary law, would warrant. And believing that each member of the Convention has made up his mind upon the question under discussion, and for the purpose of facilitating the business of this body, I call the previous question.

And there was a second.

The PRESIDENT said, the first question was upon the adoption of the amendment to the amendment offered by the gentleman from Steuben, (Mr. May,) adding the words "under such restrictions and qualifications, however, as they may deem necessary."

Mr. PEPPER of Ohio. I wish to state briefly the reasons which shall govern my vote.

The PRESIDENT. The gentleman cannot have that privilege however much he may desire it.

The question was then taken upon the amendment to the amendment, and was rejected without a division.

The question recurring upon Mr. Berry's amendment, the yeas and nays were demanded and ordered. They were taken, and the Secretary reported, yeas 1, nays 122, as follows:

YEAS.—Mr. May.

NAYS.—Messrs. Alexander, Anthony, Barbour, Bascom, Beach, Beard, Beeson, Berry,

Biddle, Blythe, Borden, Bourne, Bowers, Bracken, Bright, Bryant, Butler, Carr, Chandler, Chapman, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Colfax, Cookerly, Crumbacker, Davis of Madison, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Edmonston, Farrow, Fisher, Foley, Frisbie, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Graham of Warrick, Haddon, Hall, Holliday, Hamilton, Harbolt, Hardin, Helm, Helmer, Hitt, Hogin, Hovey, Howe, Huff, Johnson, Kelso, Kent, Kendall of Wabash, Kendall of Warren, Kilgore, Kinley, Lockhart, Logan, Maguire, March, Mather, Mathis, McClelland, McFarland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Moore, Morgan, Morrison of Marion, Morrison of Washington, Mowrer, Murray, Newman, Niles, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Read of Clark, Read of Monroe, Ristine, Robinson, Schoonover, Shannon, Sherrod, Shoup, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Stevenson, Tague, Tannehill, Taylor, Terry, Thomas, Thornton, Trimble, Walpole, Watts, Wheeler, Wiley, Wolfe, Work, Yocum, Zenor, and Mr. President—122.

So the amendment was rejected.

And the question then being upon the adoption of the original resolution, offered by Mr. Colfax, the yeas and nays were again demanded and ordered.

Mr. PETTIT asked for the reading of the resolution. He said he believed this was a resolution of inquiry, and he was willing to allow every such resolution to be referred, as a matter of courtesy.

SEVERAL VOICES. Read, read, read.

The resolution having been read by the Secretary—

Mr. PETTIT continued: There could be no resolution of inquiry, he said, although the same thing might be offered over and over again, for which he would not vote as a matter of courtesy, merely. He had only to say that he would not vote for this resolution, as a distinct proposition; but he would not treat the mover with the discourtesy of refusing to order the reference of a mere resolution of inquiry.

The yeas and nays were then taken with the following result, yeas 60, nays 62:

YEAS.—Messrs. Anthony, Bascom, Beach, Beard, Beeson, Biddle, Borden, Bracken, Bright, Bryant, Carr, Chandler, Chapman, Chenowith, Clark of Hamilton, Cole, Colfax, Crumbacker, Davis of Madison, Foley, Garvin, Gordon, Graham of Miami, Hamilton, Harbolt, Hawkins, Helm, Hitt, Howe, Johnson, Kent, Kilgore, Kinley, Maguire, March, Mather, May, McClelland, McFarland, Miller of Fulton, Milroy, Morgan, Mowrer, Murray, Niles, Owen, Pepper of Ohio, Pettit, Read of Monroe, Ristine, Robinson, Smith of Ripley, Smith of Scott, Steele,

Taylor, Trimble, Watts, Wheeler, Work, and Mr. President—60.

NAYS.—Messrs. Alexander, Barbour, Berry, Blythe, Bourne, Bowers, Butler, Clark of Tippecanoe, Cookerly, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Edmonston, Farrow, Fisher, Frisbie, Gibson, Gootee, Graham of Warrick, Haddon, Hall, Holliday, Helmer, Hogin, Hovey, Huff, Kelso, Kendall of Warren, Lockhart, Logan, Mathis, McLean, Miller of Clinton, Miller of Gibson, Moore, Morrison of Marion, Morrison of Washington, Newman, Pepper of Crawford, Prather, Read of Clark, Schoonover, Shannon, Sherrod, Shoup, Smiley, Snook, Spann, Stevenson, Tague, Tannehill, Terry, Thomas, Thornton, Walpole, Wiley, Wolfe, Yocum, and Zenor—62.

So the resolution was rejected.

Mr. Lockhart offered the following:

*Resolved*, That the Warden of the State Prison be requested to furnish this Convention with a list of the number of persons confined in the State Prison since the organization of the State government, the crime for which each was committed, the number of years each prisoner was sentenced to confinement in said prison, the length of time each prisoner remained in prison, whether any such prisoner was pardoned, and if so, how soon after his or her term of servitude commenced, and the age of each convict.

Mr. KELSO. A resolution similar to that has been before adopted, and I think that the information, which is of a more comprehensive character than that called for by the resolution just read, has been collected.

Mr. LOCKHART. The resolution referred to extends over a period of but twelve years, while this of mine goes back to the organization of the State government.

Mr. KELSO. What is the object of such a resolution?

Mr. LOCKHART. It is to obtain information to be laid before the Convention, of the age and sex, and other statistics of criminals, in order that we may judge of the necessity for another species of prison, an institution intermediate from the county jail and the State's Prison—something like a House of Refuge.

Mr. REED of Clark. I presume the Warden of the Penitentiary could furnish the information desired, and I move to amend the resolution so as to call upon that officer for the information sought.

Mr. LOCKHART accepted the amendment, and then the resolution was agreed to.

Mr. BARBOUR offered a resolution instructing the committee on State officers other than executive and judicial, to inquire into the expediency of inserting a clause in the new Constitution providing that the Governor of the State should appoint the secretaries, sergeant-at-arms, and doorkeeper to each legislature.

Mr. GIBSON. I move to amend the reso-



lution by adding in the proper place, "and the county commissioners appoint the members of the legislature." (Much laughter.)

Mr. BARBOUR. My object in offering the resolution is this: It is well known that these officers are annually elected by the legislature, after it meets here, at a great expense of time and money. A great number of persons from all parts of the State come up here every year for the purpose of getting some one of these offices, either as assistants or principals. I suppose that from fifty to one hundred assemble here at the opening of every session. The aggregate expense of all this is considerable—perhaps not less than two thousand dollars—which would be saved to the people of the State if the Governor had the appointment of these officers. It is also to be presumed that the Governor would be better acquainted with the merits of the candidates than members of the legislature, most of whom are always unacquainted with these candidates. It is well understood that the Governor is fond of pleasing the legislature; but to provide against every contingency, the legislature would have the power of removal. I throw this thing out more in the shape of a mere suggestion than as a formal proposal.

Mr. KELSO. I must oppose the proposition for two reasons:

First and foremost, the Governor of the State is not presumed to be acquainted with the claims and qualifications of all the people of Indiana for these offices, any more than other men. Were a proposition like this to be adopted, it would be a fair presumption that the clerk, sergeant-at-arms, &c., &c., would be selected in and about the city of Indianapolis, because it is here that his Excellency resides while holding office. This is manifestly unfair, and not to be thought of for a moment. The representatives come up here from every section of the State, and are severally intimately acquainted with the persons asking these offices at their hands. They are, then, as well and much better qualified than the Governor to select these officers and servants of the legislature, for they would know how to make a fair distribution to the different parts of the State.

Again, sir: suppose the legislature to be democratic and the Governor whig; or suppose the Governor to be a democrat and a majority of the representatives and senators whigs: the Governor would appoint his political friends; the legislature would demur, and would there not be furnished the cause and material for a regular political cat fight. [Laughter.]

It is much better that we should leave this matter where it has always been, with the legislature. Let them select their own officers and servants.

As to the expense of the election of these officers, the legislature can take no step without incurring expense. I remember that the

legislature once undertook to be very economical, and concluded to dispense with the services of an enrolling clerk, and made it the duty of the Secretary of State to perform the duties of that office. It was thus done somewhat cheaper, but the work was so badly done that the scheme was abandoned. No good came of it, and none would come of this.

Mr. BASCOM offered an amendment providing that the Governor should, at the same time, appoint the members of the Senate and House of Representatives.

The amendments and the original resolution were severally disagreed to.

Mr. KILGORE offered a resolution proposing to dispense with the further services of a sergeant-at-arms to this Convention.

Mr. K. remarked that the contested election case having been disposed of, he thought there was no further need for the services of a sergeant-at-arms. He meant no disrespect to the gentleman who now held that office.

The resolution was laid upon the table.

On motion by Mr. EDMONDSTON, the Convention adjourned until nine o'clock tomorrow morning.

TUESDAY, OCT. 29, 1850.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. MEYERS.

The Journal of yesterday was read and approved.

Mr. OWEN, from the committee on the rights and privileges of the inhabitants of the State, made the following report:

Mr. PRESIDENT: The committee on the rights and privileges of the inhabitants of the State, to whom were referred certain resolutions on the subject of homestead exemption, and of the rights of property to married women, have had these subjects under consideration, and have instructed me to report three sections to be incorporated in the bill of rights of the amended Constitution.

They have also instructed me to report back the resolutions referred to them in regard to the rights to property of married women, and to recommend that they lie on the table. Also, to report back a resolution in favor of securing by a declaration in the bill of rights to the head of each family in the State of Indiana a homestead exemption, for such action thereon as the Convention may see proper.

And they ask to be discharged from the further consideration of these subjects.

Mr. MURRAY moved that the resolution on the subject of homestead exemption be referred to a select committee.

The PRESIDENT. That motion is not in order.

Mr. COLFAX remarked that the resolution had been reported back with the view that it should be referred to another committee.

Mr. OWEN said, that the committee had reported back the resolution for such action as the Convention might see proper to take in regard to it.

The PRESIDENT. The Convention has concurred in the report and discharged the committee from the further consideration of the subject.

Mr. COLFAX. Yes sir, that leaves it open for the action of the Convention, and the resolution may now be referred to another committee, or the Convention may act upon it at once and either adopt or reject it as they see fit.

The PRESIDENT. The Chair understands the motion of the gentleman from Huntington to be to refer the resolution to a select committee. Of how many members shall the committee consist?

Mr. MURRAY. Of five members.

Mr. PRATHER moved to amend the motion of the gentleman from Huntington so as to make the committee consist of one from each Congressional district.

The amendment was agreed to, and the question being taken on the motion of the gentleman from Huntington as amended, it was decided in the affirmative.

Mr. BRIGHT, from the committee on the elective franchise, to whom had been referred a resolution directing them to inquire into the propriety of inserting in the Constitution a clause prohibiting the immigration of negroes into the State, made a report upon that subject, concluding with a recommendation that it lie upon the table.

The report was concurred in, and the subject was laid upon the table.

Mr. SMITH of Ripley, from the committee on county and township organization, made a report which was read a first time and passed to a second reading to-morrow.

Mr. GOOTEE, from the same committee, presented a minority report assigning reasons why the report of the majority should not be concurred in.

He desired that the report of the minority should be read.

Mr. PETTIT rose to a question of order. The rule, he said, required that all reports should be made without argument.

The PRESIDENT. This is the report or protest of a minority.

Mr. PETTIT. It is a report from a committee, and it contains an argument. It is all right that it should contain argument or reasons. It ought to be so, and the rule that prohibits argument in a report of a committee is all wrong. That is my view of it; but as you have adopted such a rule, it is necessary to adhere to it.

Mr. MORRISON. At the time that rule was adopted, it was intended that all reports of committees should be made without argument; but the Chair has decided, and I believe the Convention has acquiesced in that decision, that reasons may be given in the protest, or counter report.

The PRESIDENT. The Chair would remark, that according to all Parliamentary rules of which he has any knowledge, it is the privilege of the minority to set forth the reasons why they dissent from the decision of the majority. Upon that ground, the Chair has decided as he has, and he will adhere to that decision until it is reversed by the Convention.

Mr. PETTIT asked for the reading of the rule.

Mr. MAGUIRE. It will be recollected that, when that rule was under consideration, I moved to strike out the words "without argument," so as to permit all reports to be accompanied by the reasons which governed the committee.

Mr. KELSO. It seems to me that the decision made by the Chair is correct. A majority report is the report of the committee—a minority report is not. It has been decided by the Chair, and I think correctly, that when the majority of a committee report a provision for the action of the Convention, in the shape of an amendment to the Constitution, the minority may, in a report or protest, set forth their reasons for dissenting from the conclusion of the majority. It appears to me that this decision is correct, for the minority certainly ought to have the right to submit their objections in some shape or other.

Mr. PETTIT. The point of order that I make, is that the rule that has been adopted by this Convention, declares that all reports shall be made without argument. Although I consider that rule to be an improper one, yet the Convention having adopted the rule, it ought to be observed—otherwise you will put it in the power of the minority to write down the majority; the majority not being at liberty to assign their reasons on paper, the minority may bring in a long written report and write them down. Now you see the absurdity of the position. I give notice that on to-morrow I will move to strike out from the rules the words "without argument."

The PRESIDENT. The Chair would remark to the gentleman from Tippecanoe, that the report of the majority is the report of the committee, and the rule applies only to such report.

Mr. SMITH of Ripley said, that he would call the attention of the President, and of the Convention, to this point: any ten members might call the yeas and nays, provided it were done before the question was put, but every member had the right to enter a protest on the journal, without argument. But there seemed to be some difficulty about the interpretation of this rule.



Mr. BORDEN (interposing) desired to know if it was in order to discuss the question of order—no appeal having been taken from the decision of the Chair.

The PRESIDENT. The Chair considers it proper to discuss the point of order. The gentleman from Ripley will proceed.

Mr. SMITH. My object in rising was only to call the attention of the President and of the Convention to this rule, and to say that there appears to be some difficulty in ascertaining the limits and bounds of a protest, or minority report. I know that protests are required to be short, and respectfully worded, in all bodies where they are at all admitted. I do not entirely agree with my friend over the way, (Mr. Pettit,) that there should be no limitation. I do think that an argumentative report should not be made. I think it is sufficient for a committee to report without argument. But at the same time I think it is right that a member, who is in the minority, should have the privilege of coming in and showing his reasons—and they should be as brief as possible—why he does not agree with the majority of the committee.

Mr. OWEN. I desire to call the attention of gentlemen to the exact reading of this rule. It is as follows :

"That the standing committees shall be the following, to whom shall be referred all such matters touching the Constitution as properly belong to each, and that they report without argument, the provisions, alterations, and amendments required."

I think that this clearly applies to standing committees only. Under the circumstances, I consider the decision which the Chair has made, a proper one. The rule simply prohibits the committee proper—that is, a majority of the committee—from accompanying their report of sections and articles with an argument setting forth the reasons for the report. It does not compel the minority to make an argument, but they are not prohibited from doing so.

Mr. READ of Monroe. The minority of a committee, may not, under the rules adopted by this Convention, embody their views in the shape of articles and sections, in the spirit and form in which they would wish incorporated in the new Constitution, but they are privileged to give their reasons for dissenting from the articles and sections reported by the majority of the committee.

But, sir, it seems to me that the minority should not, of right, have this very decided advantage over the majority, who are debarred from giving the reasons which induced them to report in a particular manner. I am decidedly of the opinion that the minority should, when they dissent from the views of the majority, be allowed to report articles and sections in due form, which shall embody their views and opin-

ions, and that if one party on a committee be prohibited from accompanying their reports with arguments, both should. This is the course that was adopted in the Ohio Constitutional Convention, and in all the recent Conventions of this character whose proceedings I have noticed. The majority have their report of sections and articles printed, and the same courtesy is extended to a dissenting minority, and thus the Convention have both reports side by side, and can the better judge of their relative merits. It seems to me that such should be the course of procedure here.

On yesterday I gave notice of the introduction of a resolution amending the rules in this regard, and allowing the minority to bring in a report of articles and sections.

Mr. PETTIT. I will take an appeal from the decision of the Chair, in order that the practice under the rule may be settled.

The PRESIDENT. Does any gentleman second the appeal from the decision of the Chair taken by the gentleman from Tippecanoe?

Mr. BORDEN. I will second the appeal, out of courtesy to the gentleman.

The question being put, the decision of the Chair was sustained.

Mr. SMITH of Ripley. I suppose that under the rules, the report will be printed.

The PRESIDENT. The Convention has fixed the number of copies to be printed of each report at three hundred.

The report of the majority only will be printed.

The resolution proposing to dispense with the services of a Sergeant-at-arms was then taken up for consideration.

Mr. KILGORE. In offering the resolution on yesterday, no disrespect was intended to the worthy gentleman who now fills that post. But I thought, from the beginning, that after the Convention disposed of the contested election case, we should be able to dispense with the services of a Sergeant-at-arms, and thereby save to the State a considerable expense. There are no processes to be served, and no duties for this officer to perform.

An amendment was offered by Mr. BERRY, proposing to dispense with the services of a Stenographer.

Mr. KILGORE. I do not know that I should object to such an amendment to my resolution.

Mr. DOBSON. I do not know that I clearly understand the object of the gentleman (Mr. Kilgore) who offered this resolution, when he says that there is no further need of the Sergeant-at-arms because there will be no processes to be served. Perhaps this is an adroit movement on the part of that gentleman to get rid of that very useful officer, who might feel it his duty to take him (Mr. Kilgore) into custody for some disturbance during the session.

If the gentleman knew the effect of some speeches in this Convention, he might also vote to dispense with a Stenographer. [A laugh.]

Mr. KILGORE. As to any quarrel which I might get into with the gentleman (Mr. Dobson) over the way, I am sure any of the door-keepers could secure me, and if the gentleman should prove too belligerent, and refuse to surrender, I am sure the door-keeper and myself could secure him. [A laugh.]

As to the speeches that are made here, I will only remark, in reply to the gentleman, (Mr. Dobson,)

"O wad some power the giftie gie us  
To see ourselves as ithers see us."

Mr. KENT moved to lay the resolution on the table, which was agreed to.

The resolution proposing to amend the rules was taken up, and the mover,

Mr. READ of Monroe, said, that the object was, so to amend the rules as to allow the minority of a committee to report sections and articles in the same way that the majority now do, neither being accompanied with written arguments, but both to be printed and laid simultaneously before the Convention. We should then have the views of all the members of the committee, and could compare them one with another. I hope, sir, said Mr. READ, that the resolution will prevail, and that the rules will be amended.

The resolution was agreed to.

Mr. PEPPER of Ohio offered the following:

*Resolved*, That the Auditor of State be requested to inform this Convention of the quantity, situation, condition, and uses to which they are applied, of any unsold lots and lands included in the original donation by Congress for the establishment of a seat of government for this State.

Mr. PEPPER. I presume no objection will be made to our obtaining the information alluded to. I will, in a word, state the object:

The design is to ascertain, as nearly as possible, the quantity of land included in, and still belonging to, the "Donation" granted by Congress to the State for public purposes. My object in offering the resolution is to secure the preservation of these lots for the use and pleasure of the people of the State, as well as the citizens of Indianapolis, as public grounds. In all the large cities of our country it has become an object of great interest to secure squares and open plats of ground in their midst, to be ornamented with trees and shrubbery, and to serve the double purpose of public use and public gratification. While it is yet possible to secure such lots here, I wish to see it done.

The resolution was agreed to.

Mr. OWEN remarked, that a flood of resolutions were pouring in upon the Convention every day, and unless means were adopted to

bring the reports on sections and articles of the Constitution before the body, business would scarcely be forwarded for weeks to come. It was his opinion that these reports had better be made the special order for a certain day and a certain hour, several days or a week or more in advance, so that all would know when a given subject was coming up, and be prepared to debate it and vote upon it.

Mr. OWEN then offered the following:

*Resolved*, That, in all cases, the sections of the amended Constitution, reported by the minority of a standing committee, be printed along with the sections reported by the majority of the same committee.

Mr. BORDEN desired to make a suggestion. If, said he, we take up these various reports in Convention, will not the various amendments which will be offered, encumber the journal entirely too much! and would it not be better to go into committee of the whole upon these reports, where no journal will be kept of the multitude of amendments and motions!

Mr. OWEN said, he thought the better way would be to postpone to a day and an hour, previously named, at which time, a certain proposition or report might be taken up and discussed until disposed of.

As to the suggestion of the gentleman from Allen, (Mr. Borden,) he thought that this Convention had better not adopt the plan of frequently going into committee of the whole. My experience, said Mr. O., teaches me that it is better, as much as possible, to avoid going into committee of the whole.

Mr. SMITH of Ripley. With all due deference to the distinguished gentleman from Posey, (Mr. Owen,) to whose suggestions and opinions I am always inclined to yield my own, I must differ with him in this matter. I appeal to gentlemen of experience here, if the consequence of making "special orders" of reports and propositions does not lead to the consumption of most of the time of legislative sessions. I know that the propositions to which the gentleman from Posey has called the attention of the Convention, are very important ones, and ones in which all take a very deep interest. The day for which the proposition is made the special order, is some time distant, and, by the time it comes round, I presume that gentlemen will be provided with elaborate arguments and lengthy speeches, on both sides of the question. I have no doubt these gentlemen would be very much disappointed should they be deprived of an opportunity of fully discussing the question. But at this rate, the Convention will not have time to take up many other subjects equally important, and bestow upon them the attention they deserve. Look at the time consumed in the discussion of the single question involved in the resolution offered by the gentleman from Tippecanoe, relative to the abolition of the Grand Ju-



ry system! One week has already been consumed in debating that subject, and I presume at least another week or ten days will be required to finish it. Make all your important propositions "special orders," and we shall consume the winter, and then be far enough from the completion of the labor we were sent here to perform—the formation of a simple organic law for the State.

As I before remarked, I generally yield to the gentleman from Posey (Mr. Owen) because I have much confidence in his judgment and believe he entertains a disposition to proceed in the public business with all proper dispatch. But in this case I deem his position an untenable one. I think that all the reports from standing committees and important propositions should be referred to a committee of the whole Convention, and taken up from day to day until they are ready for final action, which can then be had without debate. Why is it that we see such a flood of resolutions poured in upon us here from day to day? Simply, sir, because we have nothing else to do. We assemble here in the morning—there is no special order to take up—we have not previously resolved to go into committee of the whole upon any subject, and our time is consumed by the offering of this multitude of resolutions, which, as is well known, must all go upon the Journal. But if we had portions of the Constitution referred to the committee of the whole, gentlemen would exhaust their propositions which are now offered in the shape of resolutions, in amendments to the sections and articles before the committee, and they would not encumber the Journal as they now do. Are not gentlemen aware that all these resolutions or the most of them, will come up again when the reports of committees are under consideration? I suggest, then, that the better way would be to have a standing order for every day, and immediately after the expiration of the morning hour, which will be consumed by the reading of the Journal, petitions, reports, &c., let the Convention resolve itself into committee of the whole, then all these resolutions can be offered in the shape of amendments and the Journal will not be encumbered with them. After the consideration of the various subjects in committee of the whole, unnecessary debate would be cut short in the Convention by the call for the "previous question," and our work would soon be finished and we would be ready to return to our several homes. Every gentleman who listens to me knows that what I say is true.

But I do fear, if all the favorite propositions of gentlemen, are to be made the special order for a day fixed long in advance, as for example, the Grand Jury question, gentlemen will have time to pump up all their thunder, and we may never get through.

I hope the gentleman from Posey will review

his position; he knows very well the eternal duration of discussion where there are no restrictions, and no bounds, and where important questions are made the special order for a distant day. I dislike the special orders, because they afford such ample time for the preparation of speeches. When a man has got all his implements of war, his uniform, accoutrements, provisions, and all his preparations made for a march and a battle, if not a siege and campaign, it will be very difficult to restrain him and cool his patriotic ardor. [Laughter.] When gentlemen have got their speeches all prepared, their arguments ready, and their authorities at hand, it is but courteous to hear them through, because others have spoken and they must have the same privilege. Why, sir, I had no idea at all of speaking upon this question of the abolition of the Grand Jury; and here is my friend from Decatur, who at first thought the idea so novel that it was unworthy of his attention, but now, if you could see his elaborate and formidable preparations for the inflictions [much merriment all over the chamber] he designs to bestow upon us, you might be alarmed. But we shall have to hear him, sir, and after he has finished, I may have to make a speech myself [renewed merriment] in reply, although I never thought of speaking upon the subject. In this way we shall be kept here until mid-summer.

Instead of this, we should refer reports and propositions to a committee of the whole. If you would discharge your present committees, burn your journals, and go back where you started from a month since, take up the old Constitution in committee of the whole, and go over it section by section, article by article, and, if need be, line by line, like sensible men, [renewed laughter,] and as was talked of before we came here, we should shorten the session very considerably. We should be able to perform all the work required of us, before the distinguished gentleman from Posey (Mr. Owen) gets his proposition concerning married women's rights [laughter] discussed and disposed of to his satisfaction; and before the gentlemen from Tippecanoe (Mr. Pettit) shall have fully discussed the abolition of the Grand Jury, and before the venerable—I don't like to use that term much, because it may be applied to me—gentleman from Wayne (Mr. Raridan) gets the Banks and Banking system of the State fixed to his mind. For the propositions of that gentleman (Mr. Raridan) have got to be made a "special order" also, and such a "special order" as they are subjects for! A proposition to extend the charter of the State bank, with all the petty banks hung around her in order; I suppose, that the greater may destroy the lesser. And then, Mr. President, I had almost forgotten that great and prolific source of discussion—the negro question! "Our negroes" we shall soon be calling them, as you hear some members of Congress, ranting about their negroes.

I do hope, sir, that my friend from Posey will reconsider his motion to make his proposition the special order for a distant day.

Mr. OWEN. I have the greatest respect for the judgment and good sense of the gentleman from Ripley (Mr. Smith). I have had occasion to know him well whilst serving with him in another deliberative body than this: but I must be permitted to say, that his present remarks, as I think, do not show his usual good sense in as favorable a light as I have observed it heretofore. What is the objection he urges? It is, that, if we make a special order, gentlemen will come here too well prepared to debate the questions before them. In truth, the especial object which I had in view in proposing a special order, is, that gentlemen may come here fully prepared. Too well prepared they cannot come. Nor do I doubt that it may tend to shorten, instead of prolonging, the time of debate, if we always came prepared as we should be. The apology was a good one, made by a gentleman to his friend, when sending him a long letter: "I write you a long letter, because I have not time to prepare a shorter one." So it will be with us. If we condense our thoughts, we shall shorten debate. But if we come here without preparation, we shall be tedious and diffuse. Subjects will come up, and must be considered and debated, whether we have prepared ourselves or not. Other gentlemen may be able to debate great measures of State policy, without deliberation. I freely confess that I never willingly engage in such debate without long preparation. I consider it due to myself, to my fellow-members, and to the subject, to bestow upon it the best powers I possess. Therefore I desire to know, beforehand, the day and hour when any important matter is to come under discussion, so that I may not be taken at unawares. The subjects to be presented to us are so multifarious, that, without such notice as this, we have little chance to be prepared as to their various details. There are the subjects of banking, of corporations generally, and many other questions scarcely less vital. Ought we not have notice on what day and hour any one of these is to be presented to the Convention, so that those who favor, and those who disfavor, the proposition to be considered, may have full opportunity to prepare, arrange, and condense, their respective reasons. Nor, even if debate should happen to be prolonged, are we to reckon here so much upon time. We are not acting here for a day, nor for a year, nor for ten years. We are acting, in all human probability, for a quarter of a century; it may be, for half a century. Shall we, with such a responsibility before us, overhurry debate? Shall we stand justified, before the people of the State, in doing so?

But, again, if at any time the Convention weary of debate, we can, according to parlia-

mentary rule, bring it to a close, by a call of the previous question; a thing, however, which I, myself, shall be slow to do, so long as any gentleman desires to be heard. It is far better, by proceeding slowly, to lose a day or two; than to make a wrong decision which might be hard to reverse. I hope it will be the pleasure of the Convention to adopt the resolution fixing the day and hour for the consideration of the subject indicated, so that it can be sprung upon none of us unawares.

The question was then taken, and the resolution was adopted.

Mr. KENDALL offered the following resolution:

*Resolved*, That the committee on the rights and privileges of the inhabitants of this State be instructed to inquire into the expediency of providing that hereafter all property sold on execution shall bring at least two-thirds of its appraised value.

Mr. MCLELLAND moved to amend the resolution by striking out the word "two-thirds," and inserting in lieu thereof the word "full," which was decided in the negative.

Mr. WOLFE moved to amend by striking out the word "property" and inserting "real estate."

The motion was decided in the negative.

Mr. RARIDEN said, he would prefer that it should be left to those coming after us to adopt their own rules of commerce. He did not see any propriety, however just and proper it might be in a legislative point of view, in adopting this as a part of the Constitution. The object of such a proceeding, as he understood it, must grow out of the apprehension that all wisdom, justice, humanity, and true policy, would die with the dissolution of this Convention; and if those who are to come after us should be left to pursue their own course in the regulation of matters which belong peculiarly to themselves, they would be sure to go wrong. He confessed that he could not see the propriety of adopting any such thing in the new Constitution; therefore, he should vote against any reference.

Mr. GRAHAM of Warrick, moved to change the reference to the committee on law and law reform.

Mr. BORDEN said, it seemed to him, that the duty of the committee on law and law reform was misapprehended. He supposed if that committee should report a single section for the appointment of commissioners to report upon this subject to some future Legislature, that their work would be accomplished; for it could not be expected that they were to report even so much as a plan for the sale of real estate under execution: it would be impossible for them to set out these matters in the Constitution. It would make a book larger than the statutes.

The question being taken on Mr. GRAHAM'S motion, it was not agreed to.



Mr. BORDEN proposed to amend, by changing the reference to the committee on miscellaneous provisions; but before the question was taken—

On motion, by Mr. MILLER of Gibson, it was

*Ordered*, That the resolution and amendment lie upon the table.

#### THE JUDICIARY.

Mr. BORDEN offered the following resolution:

*Resolved*, That the committee on the organization of courts of justice be instructed to inquire into the expediency of providing in the Constitution that the judicial power of this State shall be vested in

1. A Supreme Court.
2. Circuit Courts.
3. Justices of the Peace.

*Provided*, The Legislature may also vest such civil and criminal jurisdiction in the mayors of the incorporated cities of this State, as may be deemed necessary and proper, but such criminal jurisdiction shall not extend to capital offenses, or crimes punished by confinement in the State Prison.

The Supreme Court shall be composed of five judges who shall be chosen by the electors of the State, and shall serve for — years. The State shall be divided into five judicial districts of contiguous territory, in each of which districts one of said judges shall reside. Provision shall be made by law for designating one of the number as Chief Justice, and for so classifying said judges that one of them shall be elected every year.

The State shall be divided from time to time as the exigencies of the same may require, into judicial circuits, of contiguous territory. One judge shall be elected in each circuit by the qualified electors therein, to serve for six years. At least three terms of the circuit court shall be held in each county annually.

The qualified voters in the several townships shall, at their annual spring elections, elect justices of the peace, whose term of office shall be for three years. There shall be three in number in each township, and shall be so classified that one of them shall go out of office each year.

Mr. PETTIT proposed to amend by striking out the clause of reference and inserting a declaration that the proposition be inserted as so much of the Constitution.

Mr. WOLFE suggested, that the proposition contained no provision for probate business.

Mr. BORDEN said, that the proposition contemplated that the powers of a probate judge should be vested in a circuit judge. With reference to the motion to make this proposition so much of the Constitution, he had to say that he did not object. He submitted it, however, as a mere matter of inquiry. It contained nothing

but a statement of his own views upon the organization of the courts. He supposed the gentleman from Tippecanoe could not be insulted by a motion to direct such a proposition to the committee over which he presided.

Mr. PETTIT. Not in the least; but I must insist upon my amendment—adopting the proposition as a part of the Constitution.

The PRESIDENT. Will the gentleman send up his amendment in writing?

Mr. PETTIT (in his seat). If any gentleman can send me a pen I will prepare it.

Mr. BASCOM. I move that the Convention do now adjourn.

Mr. PETTIT (in his seat). Consent!

But the Convention refused to adjourn.

Mr. PETTIT then withdrew his amendment.

Mr. CHAPMAN proposed the following for the original resolution, stating that he did so at the request of one of the ablest lawyers in the State:

“That the committee be instructed to inquire into the expediency of providing that the Supreme Court shall consist of four judges, to be elected by the people by districts, to hold their offices for the term of five years, to have appellate jurisdiction, and that it shall require the concurrence of three of these judges to reverse the judgment of the court below.”

Mr. PETTIT said, he desired to state to the Convention that there were now referred to the committee on the organization of courts of justice, some dozen or fifteen resolutions—resolutions suggesting no other idea than what every practicing lawyer upon the committee must have resolved in his own mind. They consisted of directions to inquire into what must necessarily be inquired into by the committee, in order to the establishment of any judicial system. These resolutions imposed no obligation upon the committee, and they were all perfectly useless. Some half dozen of them, and perhaps a larger bundle, had been prepared with reference to abolishing the office of associate judge; a half dozen more had reference to a reporter for the supreme court; and there were two or three for abolishing the present Supreme Court and establishing a better in its stead. Of all these things it was the duty of the committee to consider, without being specially instructed. Then why encumber them with an hundred resolutions of inquiry? The committee had been called together, and it was understood and agreed upon that they would take no definite action upon these resolutions; but that they would report their propositions, merely, since they were not at liberty to report argument. They considered there was no necessity for encumbering the journal by bringing up the matter half a dozen times. It necessarily became the duty of the committee to consider whether the present Constitution had organized a proper and sufficient judiciary system for the State; and if not, they were to consult and see

wherein amendments should be applied, what particular matter should be stricken out, and what added. If it were not improper to make the statement, (and he supposed it would not be so considered,) he would say, that, by order of the committee, each member had taken it upon himself to present a plan or draft of his own, embracing his plan for the organization of the courts; and it was proposed to put them all together, and consider and adopt the best one, and report that to the Convention.

Mr. BORDEN said, he had great confidence in the committee, and he believed there was no doubt that any member of that committee was well qualified to prepare a plan which would be worthy of consideration, and perhaps greatly facilitate the business of the courts. But he submitted, whether it was not proper for every member of the Convention to submit his views with reference to the organization of the judiciary? And whether any member of the committee ought to think it an intrusion for such suggestions to be proposed and directed to them. There might have been some proposition, similar to his own, heretofore suggested and referred to the committee; but he had embodied his own ideas, and he would be glad if the Convention would order their reference.

Mr. PETTIT moved to lay the resolution and amendment upon the table.

The question being taken on the motion of the gentleman from Tippecanoe, it was not agreed to.

The question was then taken upon Mr. Chapman's amendment, and it was rejected.

The question recurring upon the adoption of the original resolution,

Mr. RARIDEN said, he could have no objection to the reference of these resolutions of inquiry upon every subject; but, from the manner in which they had come to be presented and adopted, they could not indicate to the various committees the concentrated opinion of the Convention. Since it had become a mere matter of courtesy to adopt these resolutions, they had ceased to have that tendency. It had become a matter of courtesy now to adopt the suggestion of any gentleman in the form of an inquiry, and send it to a committee. The committees could no longer receive them as an expression of the mind of the Convention. He saw neither good nor harm which the reference of this resolution could possibly do. He entertained the view of the gentleman from Tippecanoe (Mr. Pettit) upon this subject. If the resolution could have the effect of indicating to the committee what was the feeling of the Convention in the matter, then it would be very proper to refer it; but it was manifest that it could have no such effect.

Mr. BORDEN said, he did not know that his proposition did not indicate the feeling of the Convention upon the subject. He had submitted it to several members of the bar, and it had

received their approbation. If the Convention should think his suggestion contained nothing worthy of the consideration of the committee, he hoped they would not order its reference. Although he had not himself voted against the reference of any resolution of inquiry, he hoped the Convention, unless it should be considered worthy of approbation by the majority, would reject it.

The resolution was adopted;

And then, after the consideration of matters involving no debate,

On motion,

The Convention adjourned until 9 o'clock to-morrow morning.

WEDNESDAY, Oct. 30, 1850.

The Convention met.

Prayer by the delegate from Putnam (Mr. FARROW).

THE LEGISLATURE.

The Convention resolved itself into committee of the whole, (Mr. WALPOLE in the chair,) and took up for consideration the resolution of Mr. Pepper of Crawford, and the pending amendments thereto, which had been made the special order for this day. The resolution and amendments were read by the Secretary, as follows:

*Resolved*, That the committee on the elective franchise and apportionment of representation, inquire into the expediency of so amending the Constitution, that the number of representatives in the Legislature shall never exceed one hundred; and the number of senators shall never exceed fifty—leaving the Legislature with power to reduce said number at any time, if said reduction shall become necessary.

Mr. COOKERLY had proposed to amend by striking out all after the word "resolved," and inserting the following:

"That the committee on the elective franchise and apportionment of representation, be instructed so to amend the Constitution that the House of Representatives shall consist of seventy-five members, and the Senate shall consist of thirty-five."

Mr. RARIDEN had moved to amend the amendment, as follows: strike out all after the word "Constitution," and insert—

"That the basis of representation shall be one representative for every twenty-five hundred inhabitants; and one senator for every five thousand inhabitants, until otherwise directed by the Legislature."

The CHAIRMAN stated the question to be upon the adoption of the amendment to the amendment.

Mr. MILLER of Gibson suggested, that the committee on the legislative department had considered the subject embraced in this resolution, and the pending amendments, and would



be ready to report to-morrow, and, therefore, in order that the committee of the whole might have the benefit of this report, he moved that the subject be laid upon the table.

The CHAIRMAN said, such a motion was not in order in committee of the whole.

Mr. MILLER then moved that the committee rise, report progress, and ask leave to sit again.

The CHAIRMAN suggested that, according to his recollection, the several standing committees had been discharged from the consideration of this subject; and that this was done at the time when the subject was referred to the committee of the whole, and made the special order for this day.

Mr. COOKERLY. What committee does the gentleman from Gibson refer to?

Mr. MILLER of Gibson. The committee on the legislative department.

Mr. PETTIT called for the reading of the journal of October 25th, with reference to this subject.

And the passage referred to was accordingly read by the Secretary.

Mr. GRAHAM of Warrick said, he understood that, upon the motion of the delegate now in the chair, the Convention had discharged the standing committees having this subject before them, from its further consideration, and that it was referred to the committee of the whole, and made the especial order for this day. Notwithstanding this action of the Convention, the committee on the legislative department had proceeded to consider the subject, and would be ready to report to-morrow. The committee on the elective franchise, according to order, had not made out any report, preferring that the Convention should take what course they pleased. He trusted that the committee would not rise without giving some expression of opinion as to the prospective number of senators and representatives.

Mr. MILLER of Gibson said, he did not understand when this business was taken out of the hands of the committee on the elective franchise, that it was also taken away from the other committee.

Mr. GRAHAM of Warrick. Does not the journal read "all committees?"

Mr. PETTIT (in his seat). "The committees."

Mr. COOKERLY said, he hoped the committee would not rise. It was important that this question should be settled as soon as possible; in order that the committee on apportionment might go to work.

The question was now taken on the motion to rise, and it was lost.

The CHAIRMAN again stated the question to be upon the adoption of the amendment of the gentleman from Wayne, (Mr. Rariden,) to the amendment of the gentleman from Vigo, (Mr. Cookerly).

Mr. PETTIT said, he would like to have some ready writer or figurer cypher it out, and tell us how many senators and representatives we would have under the ratio of apportionment proposed by the gentleman from Wayne, provided there were a million of voters in the State?

Mr. DOBSON said, that if his figures were right, and he believed they were, there would be thirty-six senators and seventy-two representatives.

Mr. PETTIT inquired whether the rule applied to polls or citizens?

Mr. DOBSON. To polls.

A VOICE. "Voters."

The question being taken upon the amendment to the amendment, it was rejected; and the question recurring upon the amendment of Mr. Cookerly,

Mr. COOKERLY said: Mr. CHAIRMAN—I do not desire to trouble the committee any further than to say, that it does not seem to me that the Convention ought to reduce the number of senators and representatives. I think this is a reform which the people look for. I know they do in our section. We have too many senators, in my opinion; and too many representatives also: and we ought to reduce their number, if for no other purpose than that of economy. I would ask why, in the name of reason, seventy representatives and thirty senators cannot legislate just as well for the freemen of Indiana, as one hundred representatives and fifty senators? This is an old and familiar question in this State. It has been agitated in this Hall before; and, I trust the Convention, before it decides not to reduce the present number of senators and representatives, will, at least, stop and reflect seriously upon the subject. The great reason why the people voted for the call of this Convention, was embraced in the hope of being able to economize the public expenses; and are the people to be deceived in regard to this matter? I hold this to be a rule by which we should always be guided, that every man who is a representative of the people, should vote for every measure to economize the public expenditures without detriment to the public interest. I should like, now, to hear from the other side, the reasons why the number of senators and representatives should not be reduced.

Mr. FOSTER. I offer the following amendment to the amendment of the gentleman from Vigo:

"That the whole number of members composing the General Assembly, shall consist of 120; of which number 30 shall constitute the Senate, and 90 the House of Representatives."

Mr. EDMONSTON. I have but a few words to say in regard to the number of Senators and Representatives. I think, sir, if gentlemen will reflect a little, they cannot but come to the conclusion that, since we have adopted biennial sessions of the Legislature, every por-

tion of the State will be anxious for a fair representation. Every gentleman upon this floor is not situated in this respect like the gentleman from Vigo, who comes from a large and populous county, which is always sure to be entitled to a full representation. His condition is very unlike those coming from the smaller and sparsely settled counties, where you have to tie up four or five of them to make a representative district. The representative of one of these large and thinly settled districts cannot look so well to the wants and interests of the people of any county in his district in which he does not himself reside. I would be willing to diminish the present number of Senators, but not of the Representatives. It is also my opinion, that if you diminish the number of Representatives, you ought to increase the *per diem*, for no competent man would be found willing to traverse such a vast extent of territory as his canvassing might require of him, for the *per diem* now allowed.

The vote was then taken on Mr. FOSTER'S amendment, and it was rejected; and the question recurring upon the amendment of Mr. Cookerly—

Mr. BASCOM proposed the following amendment, which was read by the Secretary:

"That there shall be one Senator for every three thousand voters, and one Representative for every one thousand voters."

Mr. BASCOM. I am sure, sir, that no person representing two counties can do that justice to the interests of both, which its position requires of him. It is impossible. I know it is the case in my part of the State, where two or three counties are included in one representative district, that there is not the same interest felt for each of these counties in the legislature which every county should be entitled to. The Representative can not act for all so well as for the county in which he may happen to reside. He might find himself acting for the advancement of the interests of his own county, and to the detriment of important interests of other counties in his district at the same time. With respect to the economy of the argument, gentlemen might as well say, that we will take a select counsel of ten, to do up the business of our legislation, or give it all to your Governor—allow him to make the laws—and so save all the expense of legislation. I agree fully with the gentleman from Dubois, (Mr. Edmonston,) that every part of the State should have a full representation. There are the old counties of Dearborn, Wayne, Marion, and Vigo—they will be here, and their voice will be heard, under any ratio which can be devised; but the voice of a sparsely settled northern county will hardly ever be heard in these halls. Sir, we ask for a scale of apportionment by which the voice of every county shall be heard. There is great humbug in the pretension that a few men can better transact business, in a deliberative body,

than a larger number. A few wise men, it is proposed, shall assemble here—the Representatives of a few large counties—and very patronizingly they would agree to take a kind of supervisory care over all the smaller counties of the State. The larger counties will take the smaller counties under their wings and arrogate to themselves, and swallow up the whole of, the business of legislation. Sir, we have, every man, an interest in his own county, and we want to have every county represented. We, who live in the newly settled portions of the State, are unwilling to be deprived of our right to a representation here. We, also, claim that our voice shall be heard in making the laws. I care not for the reduction of the Senate, but I do think the larger branch of the Legislature should come as near to the people as possible; and I think that upon the ratio which I have suggested, in a very few years every county would be entitled to at least one Representative.

Mr. NAVE said: Mr. Chairman, I regard this as one of the most important propositions that can come before this Convention. It carries with it, and it involves deeply, the interests of the people of Indiana. It proposes to lessen the expense of legislation. Looking over the past history of the legislation of Indiana, we can come to no other conclusion than this: that the vast amount of legislation which has been imposed upon the people, under the present organization of the House of Representatives of one hundred, and of a Senate of fifty members, has proved a curse rather than a blessing. If the people of Indiana could now go back to the session of 1831, and dispense with all the legislation that has taken place since, it would be better for them—they would be better off without it than they are in the present condition of their public affairs, resulting from the legislation since that time. All, or nearly all, of our State legislation since that time, has only increased the difficulty in the minds of men of common understanding, about the administration of the law. Therefore, it becomes important for the Convention to inquire into this question and ascertain what has induced such a vast amount of legislation, without any good effect upon the interests of the people. If they find that it is in consequence of too large a number of Senators and Representatives, it is important that we should reduce their numbers so that, in future, we may have judicious and righteous laws, applicable to a straight-forward common sense administration of justice.

The proposition of the gentleman from Wells (Mr. Bascom) would give us nearly two hundred Representatives. He says that it is important that we should have every county in the State represented. Let us look at his argument. In my opinion, it has no force whatever. For, if two or three counties are taken together to form one representative district, I ask you, sir, if, up-



on looking over all this large territory for a man qualified properly to represent them, the people would not be more apt to get a proper man—honest, and capable, and faithful—to whose hands they might entrust the interests of the entire district, with the prospect of being better represented than if they were confined to a single county, in making their selection? This argument, then, falls to the ground.

Another argument for this reduction, is to be found in the fact, that if we have a smaller number of Representatives they will be able to do more business in less time. My opinion is that if there were but seventy delegates in this Convention, we could do the business before us in half the time that will now be required, with a hundred and fifty. Men's opinions are different upon different subjects, and whilst each man, respectively, contends for the interests of his constituents, if anything is done amongst such a complication of interests, it must be the result of a compromise, which is not often adjusted upon the most desirable foundations.

And the argument for this reduction is to be found in the fact that the larger the number of Representatives the greater will be the amount of legislation imposed upon the people, and the number of the laws being increased they, of course, become more difficult of understanding and administration among the measures of the people. I hope, sir, that our Legislature will be restricted to the passage of few laws, and those of a general character. I hope that we shall be able to dispense wholly with special legislation, and if so, then one man certainly, can much more satisfactorily represent a larger district.

Sir, I have some acquaintance with the people of Indiana, and there is no county of which I have any knowledge, but what is desirous that the number of our Senators and Representatives should be diminished. I am of the opinion of the gentleman from Vigo (Mr. COOKERLY) that seventy Representatives and thirty Senators would be altogether sufficient to answer the wants of the people for all time to come.

My friend on the left (Mr. Edmonston) has said that we could not find candidates willing to go to the trouble of canvassing a large district. Sir, there are too many men in our State who desire office, and it would be better to restrain this desire, than to offer inducements which would increase the number of candidates. But the gentleman says, if we decrease the number of Representatives it should be followed by an increase of their *per diem*. But I see no necessity, at all, for that, in order to fill these Halls with Representatives. I have never yet seen any lack of willingness to come up here as the people's Representative. Then this argument, also, falls to the ground.

There is nothing, sir, in the amendment of

the gentleman from Vigo, that we should not adopt as a feature of the new Constitution. The people would rejoice to see such a feature in the Constitution which is to be submitted for their approval. Then it seems to me that we should give this expression now, while we are in committee of the whole, so that the committees which may be affected by such an opinion here, may have this guide before them in preparing their propositions. In making these suggestions, I intend to offer no discourtesy to the mover of the resolution, (Mr. Pepper of Crawford,) nor to the gentleman on my right, (Mr. Bascom,) but rather to urge the importance of settling this question now, by giving an expression to the feeling of the majority in relation to it.

Mr. GRAHAM of Warrick said, Mr. CHAIRMAN:—The gentleman from Vigo (Mr. Cookerly) has called upon those who are opposed to his proposition, to come forward and give their reasons for refusing to vote for it. But I believe that, whenever a man proposes a change of established usages, it is incumbent upon him first to show his reasons for the change, instead of calling for reasons from those who may be opposed to it.

The gentleman from Vigo has affirmed that the principal object in calling this Convention was the consideration that we might economize and retrench the future expenses of the government, as though the people had not any such object in view as good government. But I understand the reasons for the call to have been placed upon quite a different ground. It was, that we might incorporate in the new Constitution the changes that time, experience and progress in the science of government, have demonstrated to be absolutely necessary to the future growth and prosperity of our State, and to secure to each of her citizens the full enjoyment and unrestrained exercise of his "natural, inherent, and unalienable rights." This, sir, was the principle; economy the incident.

The gentleman from Hendricks (Mr. Nave) affirms, that the people of the State have been long cursed with too many Representatives and Senators, and that they will hail with joy any provision for the reduction of their number. We have thus the bare unsupported assertion of the gentleman, and he intimates that it was the work of too many Representatives which plunged the State into debt. But how stands the fact? Was it really under the legislative hand of one hundred Representatives that the people have been plunged into debt; or was it not under the legislative supervision of seventy-five Representatives and thirty-six Senators? The latter appears to be the fact. Then the interests of the people seem not to have been so well guarded in this instance, with a smaller number of Representatives, as they might have been with a larger number. It is my opinion, if the larger number of Representa-

tives had been in this Hall at that time, the bill which plunged the State into debt, never would have been passed in the shape it was. But in this I may be mistaken.

Sir, do you seriously believe now, when our people are increasing in numbers daily, that we should set about decreasing the number of our Representatives? Sir, it would be making a retrograde movement. This is the only proposition for reform which has been presented here for which we are without a precedent in the action of other State Conventions. There is no constitution that has been recently adopted in which they have incorporated this kind of a reform with reference to the popular branch of the Legislature. Sir, this branch of the legislative power should be brought as near to the people as practicable, and whenever we can get it so near that it will most completely reflect the popular will, then we shall be no more affected by those fluctuations and changes in the law of which the gentleman speaks.

Sir, I affirm that the number of Representatives can have nothing to do with either the power or the disposition to pass either special or general laws. The change from seventy-five Representatives and thirty-three or thirty-four Senators, to the present number in the two branches of the Legislature was made, if I recollect aright, during the session of 1835-6. The power to change again has, of course, ever since resided in the same body; but it is a little remarkable that no petition from the people has ever yet been received by any member of all the Legislatures, since that time, to decrease the present number, and I take this fact as a sure indication that the people do not desire any diminution of the present number of Senators and Representatives.

With reference to this cry of economy, I have heard it often, and I know its potency with many; but for myself, and with respect to our duties here, I do not look with an eye single to expense; I look to results, and I would say, let all the results of the action of this body be as beneficial as possible, and whatever the necessary expense is, let us cheerfully pay it.

Mr. DUNN of Jefferson. If the amendment of the gentleman from Wells (Mr. Bascom) should prevail, one of the first duties that will devolve upon the Legislature, will be to provide for the erection of a new State House. The report of the Auditor of State shows that we have about one hundred and eighty-six thousand voters, which would give us, according to the gentleman's amendment, one hundred and eighty-six representatives and sixty-two Senators. It appears to me, Mr. Chairman, that the interests of the State, instead of requiring an increase, require a considerable reduction of the number of members of each branch of the General Assembly. One argument urged in favor of a numerous representation is that thereby the popular will can be more surely ascer-

tained and expressed. There would be more plausibility in this argument, if a provision was made for dividing counties into representative districts, so that every representative would have a separate constituency. Under the present apportionment many counties have two or three members of the House of Representatives, and the county of Wayne sometimes has four. These representatives, elected by the same constituency, almost invariably agree and vote alike upon all questions of importance. Why, then, could not one representative as well express the wishes of the people of his county as two, three, or four representatives? It is true that by reducing the ratio of representation it will be necessary in the more sparsely settled parts of the State, to unite two or more counties in the formation of representative districts. This is the case now in the northern part of the State. But that part of the State is rapidly increasing in population. Northern Indiana will soon control the legislation of the State, and I care not how soon, provided she obtains that control by the increase of her population.

Our representation must be based upon population, and not upon territory, and we should cheerfully submit to a temporary inconvenience for the sake of a permanent good. It is to be hoped that this Convention will devise some means of preventing, in the future, so much local legislation as we have heretofore had. Yet under any provision we may adopt, that does not unreasonably restrain the popular will, we will have much local legislation if we retain a very numerous body of legislators. Unite a larger number of interests in a representative district, and your legislation will become more general in its character. Of course there must be a reasonable limit to the reduction of the ratio of representation. The representation should be large enough to unite in the General Assembly, a knowledge of the wants, the grievances, and the interests of the people in every part of the State, and it ought to be no larger than is necessary for this purpose. It appears to me that the representation proposed by the gentleman from Vigo (Mr. Cookerly) is amply sufficient for this purpose. One hundred men, judiciously selected, from every part of the State, will certainly possess information of every want of the people that should be supplied by legislation, of every grievance that should be redressed, and of every interest that should be protected.

Moreover, if we reduce the number of our legislators, the responsibility devolved upon each legislator will be, to the same extent, increased. This increased responsibility will, at least, have two good effects—it will cause the people to be more careful whom they select as their law-makers, and it will cause the law-makers to be more careful and deliberate in their enactments. With a reduced representation, both



houses will, hereafter, be deliberative assemblies, and not what they have heretofore sometimes been, but little better than excited mobs. I believe, sir, that this Convention, if, instead of being composed of one hundred and fifty members, had but fifty, that we would much sooner accomplish the duty assigned to us, and that we would be able to present to the people, a Constitution more worthy of their acceptance than any we shall be able to agree upon, constituted as we are.

Mr. HARBOLT said, this question has interested me as much as any other, that has been before this body. I have the honor to represent as large a district as any in the State; and I shall vote against reducing the number of representatives. I think the present number small enough. I admit the fact just alleged, that the smaller the number of members, the less legislation. For, in such a case, the majority can much more easily and efficiently organize; and, having the power, they will just legislate for themselves and go home—and the minority must look out for themselves.

Mr. READ of Monroe. It ought to be recollected that we have a larger Senate than any other State in the Union. If you go to New York, Pennsylvania, or Ohio, you will find their Senates are all smaller than ours. New York has 32 senators; Pennsylvania has 36; and Ohio has 36. I have observed also, that, by the amended Constitution of Illinois, their Senate is made to consist of only 25 members. I believe we ought to have a smaller number of senators and representatives in this State: and I rather incline to the adoption of the amendment of the gentleman from Vigo, (Mr. Cookerly,) which proposes that the Senate shall consist of 30 members. With reference to the House of Representatives, whenever the power of local legislation shall be restrained, there will be no need for small districts, and a larger number of representatives. For, if the number should remain so large, then there would be but a small personal responsibility resting upon each member, where the number of representatives consists of two, or three, or four hundred, as in some of the Eastern States, the amount of the personal responsibility of each member must be very small. But, when you reduce the number to 60 or 70, as the gentleman from Vigo proposes, the personal responsibility will be much greater. We should not allow the number of the members of our legislative bodies to be reduced so low as to be exposed to that peculiar influence which might control a small number of men. But thirty is so large a number, that this peculiar influence would not be likely to sway them more than a larger body. I am in favor of reducing the number of senators from 36 to 28, and the number of representatives from 80 to 60.

Mr. PEPPER of Crawford said, having offered the original resolution, I deem it proper to

say a few words on the question now before the committee. I shall oppose the amendment of the gentleman from Wells, because that would make the representation altogether too large. I shall also oppose the amendment of the gentleman from Vigo, (Mr. Cookerly,) because that would reduce the number of Senators and Representatives below a proper medium.

The number proposed in the original resolution I think about right.

The argument of economy, so eloquently used by gentlemen on this floor, which I admit should be strictly observed at all times, has no great weight upon my mind, as they attempt to apply it to this question.

By a most decisive vote of the Convention it has been determined that the General Assembly shall be regularly convened but once in two years, giving the Governor power to call an extra session in cases of emergency. It is now further pretty generally understood that all local and special legislation, in this State, is to be prohibited by a constitutional provision; and that hereafter general laws only will be devised for the charter and regulation of all incorporated companies which heretofore have taken up much of the time of the Legislature and at great expense to the State.

Thus the abuses and much expense of legislation will be avoided without the necessity of restricting the representative principle.

But it was very correctly remarked by the gentleman from Warrick, (Mr. Graham,) that economy is not the only thing to be regarded in legislation—that it is not a primary, but only an incidental consideration, and far below that of a fair and full expression of the popular will when the whole people desire a voice in saying who shall make the laws that are to protect their lives, liberty, and property.

Another view has been taken of this subject, to which I attach some importance.

The people, who have at all times had the power to reduce the number of our Senators and Representatives, have never yet demanded such reduction; and members, coming up every year fresh from the people, have never yet considered it necessary.

Why, then, I ask, should we feel called upon at this time, when the State is increasing rapidly in wealth and population, to reduce the number of our representation below the standard which has been deliberately fixed by the people, and acquiesced in for so long a time? The original resolution proposes, also, that the representation of the popular branch of the Legislature shall never exceed one hundred members, and the Senate shall never exceed fifty members, leaving the right with the people at any time to reduce those numbers below that limit when it shall be thought necessary. This was the ground I took before my constituents; my opponent went for a reduction of represent-

ation, and in favor of fixing the number in the Constitution.

I would warn gentlemen against stifling the voice of small counties. It may be, the new Constitution will want all the votes it will be able to get and if thinly settled districts are to be virtually deprived from having any voice in the councils of the State, it may be the cause of rejecting it. I hope it will be the pleasure of the committee to adopt the resolution.

Mr. TAGUE. I shall favor the amendment of the gentleman from Vigo, for several reasons. First, because, in my opinion, this is one of the modes by which the public expenses are to be reduced, and the public burthens lightened. It will be found a very material annual reduction of State expenses to reduce the number of members of the Senate and House of Representatives, as proposed. It is true that Representatives come up here annually, and that men are always found who are willing to come. And so, if the number was five hundred, there would always be found enough to come up here and serve the State. But the question for the consideration of the Convention is, "Is it good policy to have a large representation?" For one, sir, I think it is not. If it is in order, I have an amendment which I should like to offer.

The PRESIDENT. It is not in order to move an amendment at this time, but the gentleman has a right to read it for information, if he chooses.

Mr. TAGUE. Then I will read it for the information of the Convention. Of course it will not suit the views of delegates from the strong and populous counties. I propose to amend so as to allow one Representative from each county in the State, and thirty Senators from the whole State. [Cries of "consent," "consent."] Now, if we make a good Constitution, it will remain the organic law of the State for many years—as the gentleman from Posey remarked yesterday, for a quarter or a half century. My object in offering the amendment, is in view of the fact, that in the course of eight or ten years those counties which are now the weak ones of the State, those which are now thinly populated, may be as strong and as populous as those which are regarded as the strong counties now. Then there would be still less objection to an apportionment of one Representative from each county in the State, and all must see the great advantages of such a system.

At the proper time I shall offer the amendment which I have just read.

Mr. SHERROD. Mr. PRESIDENT: I do not rise at this time for the purpose of making a speech. I simply desire, in a few words, to set myself right, as to my position with regard to the question now before the Convention, before the people of the State.

I am in favor of, and shall support, the amend-

ment offered by the gentleman from Vigo. I advocated that proposition before I came here, before the people of the district which I have the honor to represent.

Now, sir, let us inquire what is the great object for which this Convention was called? I do not —

The CHAIRMAN observed that the door-keepers were distributing documents, which created considerable "noise and confusion" in the chamber. It was against the rules, and he should enforce them by ordering the door-keeper to desist until gentlemen had finished debating.

Mr. SHERROD. I was asking what were the objects for the assembling of this Convention? I have never understood the object of the people in calling this body together, merely to economize, although it should have considerable weight. No, sir, we are sent here to frame the organic law of the State. To frame a Constitution for the people of the State, in accordance with the advanced and still progressive spirit of the age; in accordance with the well known wishes of the people; a Constitution that will be approved and ratified by the people; a Constitution, sir, which will enable Indiana, unfettered by unpopular restrictions, to rise in her strength and beauty, and take her place among the constellation of United States as a star of the first magnitude. [Applause.]

"History is philosophy teaching by example," and I ask, what has the past history of Indiana taught us? What are its significant lessons, that should now be examples to her delegates in Constitutional Convention assembled? Sir, if there ever was a State under the canopy of Heaven, cursed by too much legislation, it is the State of Indiana. [Cries of "consent, consent,"] This being an admitted fact, we must look carefully and earnestly about us for a remedy of the tendency to excessive legislation.

To be brief, as I do not desire to make a speech, I contend that the proposition now before the Convention to reduce the number of members of the Senate and House of Representatives, will not only greatly reduce the aggregate amount of annual State expenses, but it will have the effect to give tone and character to our legislative bodies. It will have the effect to bring up here the best men and the best talent in the State. The people would have, what they greatly desire, more *stability*, and less change and vacillating in their legislation.

There is a disposition among the people to cut off special legislation, and encourage only that which is general in its character.

Without extending my remarks, I will simply observe again, that I shall support the amendment of the gentleman from Vigo, believing that it will have the beneficial effects I have alluded to.

Mr. SHOUP asked, what would be the effect of calling for the previous question.

The CHAIRMAN remarked, that the pre-



vious question could not be demanded while the Convention was in committee of the whole.

Mr. SHOUP. My object is to bring this unnecessary discussion to a close. I would be glad to see this question settled and disposed of, for it is evident that no good can grow out of this discussion. Our minds are all made up, and it is not probable that a week's argument would change the action of a single member, relative to the present proposition. I would be the last man to suppress discussion or cut off debate, where it had a reasonable prospect of doing any good. But, sir, much time has been consumed already, and if the Convention proceeds to discuss at length every simple proposition thrown in here, and if every member must take up the time of the body for the avowed purpose of setting himself right and defining his position, we shall have so voluminous a journal that it will require a cart and yoke of oxen to transport it over the State. There is another way for gentlemen to set themselves right without consuming time. There are a large number here who are as anxious as other gentlemen, to have their position, upon important questions, correctly understood at home, but they are unwilling to take up time in making speeches, and they will not do it. They refrain from speaking because, in their modest opinion of themselves, they can do no good; but, sir, they will show their position by their votes.

I agree in opinion with the gentleman from Ripley (Mr. Smith). I am opposed to this practice of preparing speeches by hunting up books, newspapers, &c. &c. The people, sir, are prepared for action; they knew what they wanted done here before the election of delegates, and the delegates themselves know very well the wishes of their constituents upon all the changes desired in the old Constitution; they are few and simple. The people contemplated a change as to the frequency of legislative sessions—some wished triennial sessions. but the majority were in favor of biennial sessions. Some change was required with regard to the management of the school fund, and a change with regard to the position of the State toward banking institutions. All this it would be easy to settle in a few weeks, if not in a few days, provided there was less debating and more working.

As to the question now before the Convention, my own opinion is, that thirty Senators and sixty Representatives, or near that number, would better subserve the interests of the State than any other. The House might be made larger without very serious detriment, perhaps, to the character of the body. I would be willing to compromise the matter with those who differ with me, so that there should be one Representative from each county in the State, and thirty Senators from the whole State. But a small number will suit the people of the State, because they wish to economize the public ex-

penditures, and a difference of two hundred dollars per day, or of but one hundred dollars per day in the cost of legislation, would amount, in the course of years, to a vast aggregate. If we cut off local legislation and confine the Legislature to the passing of bills of a general character, there will still be less need of a large number of members of the House of Representatives.

But, sir, I do not desire to discuss the question, and I find I am running into the very habit which I have condemned.

Mr. SMITH of Ripley. Like the gentlemen who have preceded me, Mr. Chairman, "I do not rise to make a speech, but merely to set myself right." [A laugh.] The gentleman who addressed us last, thought it strange that this Convention was in a position where it could neither take the previous question, call the ayes and noes, or adjourn. Now, sir, I wish to inform gentlemen who do not seem to reflect upon the effect of the Convention resolving itself into a committee of the whole, that for the first time since our organization we are in the very position where all that is done and said, all the various propositions and amendments that are made, do not go upon the Journal. In my opinion we are now in the best position to get along with business. We are not building up an unwieldy journal, and although there may be considerable debate, it will be more apt to be to the point, and the sense of the Convention will be understood upon whatever comes up.

To the gentleman last on the floor, I wish to remark that the question now before us is one of the most important that we shall discuss during the session. And why? It is important to the people of Indiana that we should find and declare a just proportion between the number of Representatives and the represented body.

There seems to be a great variety of opinion among gentlemen, as to the proper number of members of either branch of the Legislature. Some consider that seventy members of the popular branch, and thirty members of the Senate, to be the proper and just proportion; others for larger combinations. For my own part, and I have reflected considerably on the subject, I think that one hundred members of the House of Representatives, and fifty Senators, is the best number we can devise—the number which we now have under the old Constitution. I think there are neither too many nor too few, but that a due proportion exists between the number of Representatives and the great body of the represented. The counties of the State are all very nearly of the same size, and where there are inequalities of population, emigration will very soon equalize the difference between the greater and the lesser. If we continue the present apportionment we shall have, in the course of twenty-five or thirty years, a Representative from nearly every county in the State, and all know how much this is to be desired. But should the idea

of the gentleman from Jefferson prevail, to reduce the number of members of the Legislature at least one-third, we might have better qualified and more talented men sent up here—the Legislature might, perhaps, be more dignified and able—but, sir, it would follow that all portions of the State, the whole people, would not be so well represented as now. I grant that the ability and talent of this Convention might be concentrated in the heads of a few men, instead of this respectable body of one hundred and fifty members; but, though the few might possess the talent and constitute a very brilliant body, they would not so accurately represent the views, and feelings, and wishes of the whole people of Indiana, as does this large and truly respectable body.

A single remark as to the opinion that large bodies of men have a tendency to protract Legislative or Convention sessions. I say that the reverse is true. I tell you that the very numbers and weight of this body will, if our labors are ever brought to a close, be the means of terminating the session. There are at least seventy Delegates on this floor, sir, who, if they had the disposition, could talk eternally. [Laughter.] Yes, sir, eternally! for I have had my conception of the power of endurance of speakers wonderfully enlarged since I came here. [Renewed laughter.] I say there are seventy men who could thus occupy the time of the Convention in making speeches, but they will not do it; who, knowing the wishes and will of the people, and knowing how little any debate here will change the final result, will content themselves by voting. These men, sir, will throw their weight upon you by and by, when they think you have talked enough. They will force the talking man into action by the demand for the previous question.

One gentleman has referred us to the Legislature of Massachusetts, where the Lower House has some five or six hundred members. But, sir, these men are only allowed two and three minute speeches—that length is all that is tolerated—and there is as much expedition in legislation as where the number of legislators is much smaller.

But the idea to be kept in view is this: there should be a fair proportion maintained between the constituent body and the number of Representatives. The Representatives should be diffused over all parts of the State. I believe that the proper mean is now established, and that it is best to adopt the number of one hundred for the House and fifty for the Senate. You might dispense with the Senate altogether if you thought proper. Greater men than I am have proposed but a single legislative branch. Benjamin Franklin was opposed to having any such body as a Senate in the legislative department of the Federal Government.

Mr. CHAPMAN. I desire, Mr. Chairman, to say a few words upon the question now pend-

ing; but I shall endeavor to be brief, not only to save gentlemen from annoyance, but because my business is not that of speech-making. I should not have said a word, but for an allusion to the county of Marion, which I, in part, represent. It has been supposed, sir, that the county of Marion, as well as other large counties, would probably be in favor of limited representation. This is a mistaken notion, I am sure. I think I am safe in saying that the people of Marion county will raise no objection to your sending up as many members of the General Assembly as you please. [Laughter.] This may possibly be regarded as a matter of interest, rather than principle, by some; but, for one, I do not thus contemplate it. As one citizen of Marion, and as a republican, I declare I am opposed to a small representation upon principle.

The gentleman from Ripley (Mr. Smith) has enumerated some of the advantages of a liberal representation; but, in my opinion, he failed to mention the chief of those advantages. I refer to the quality denominated HONESTY—yes, sir, HONESTY—a commodity, I am sorry to say, not as plentiful among politicians as it should be.

I agree generally, sir, with the gentleman from Warrick (Mr. Graham). If I correctly apprehended him, he maintained the old radical republican doctrines upon this important subject. I have, therefore, less to say in my own behalf than I might otherwise consider necessary. I will merely add my testimony to his, that I also believe that this State would not now be groaning under the present enormous debt—the people would not have been cursed with so many acts of improvident and corrupt “log-rolling” legislation, if the people had been represented in the General Assembly by twice the number which they could legally send.

I am the more opposed to the fixing of a small representative ratio in the Constitution, inasmuch as the Convention has already, by a sort of informal but imperative vote, decided to reduce the power of the people over the State Government at least *one half*, by declaring in favor of biennial sessions of the General Assembly. Sir, I cannot help expressing my utter astonishment, even now, at the tremendous vote by which that question was carried. Nor have I been much less astonished, at hearing many members of this honorable body, in conversation outside of the bar, admit freely, that in voting thus to *razee* the popular power, they had voted not only against their own convictions, but against the original principles of republicanism, and had no other excuse to offer than the fact that they voted in accordance with the wishes of their constituents, who desired to rid themselves of the evils of bad legislation.

No man is more conscious of those evils than myself; no man is more anxious to remove and eradicate them. But I can assure your people, sir, as I declared to mine, during the canvass, that biennial sessions are not only impotent as



a remedy, but will rather tend to increase the evil which we would avoid, by putting bad legislation beyond the reach of immediate correction.

The honorable and learned gentleman from Monroe, (Mr. Read,) has referred to the Senatorial bodies of Massachusetts and other eastern States, as an exemplar in favor of limited representation. But it appears to me that he overlooked some important features in their system. In Massachusetts, particularly, the Senatorial qualification is based upon *property*. I refer you, sir, not only to the Constitution of that State for confirmation of this fact, but to the speeches of Daniel Webster, who was a member of its last Constitutional Convention, and who labored successfully to perpetuate the property basis of the Senatorial body. But when you look to the constitution of the House of Representatives, the aspect of the subject is entirely changed. In no State are the people more fully represented—the popular branch being perhaps the largest in the world, comparatively, every town being entitled to a Representative for each two hundred and fifty polls, and being subject to a *fine* at the pleasure of the Legislature, if it fails to send up a Representation accordingly. In no State of the Union are the people better governed; in no State are the people better satisfied with their system of government.

Another thing, almost equally important, was also overlooked. All the eastern States maintain *annual* sessions. The people there, imbued as they are with those "pilgrim-father" principles which were the germ of our present political system, would revolt at a proposition to curtail their control over the laws, either by abrogating annual sessions, or by any great reduction in the number of their Representatives. They never yet have forgotten, that "in a multitude of council there is safety."

Another gentleman (Mr. Dunn of Jefferson) has argued, that if we make the number of Representatives small, the people will seek out and send up men of greater talents and ability. This may possibly be true, Mr. Chairman, but it strikes at the very vitals of republican government! Talk about the ability of a few men to legislate for the State; tell me that by having twenty-five men in one branch of the General Assembly and fifty in the other, we shall command the best talent and political ability in the State! Then why not institute a "Council of Ten"\* at once, with the Governor at its head?

I, sir, have seen enough, even in my short political experience, to convince me that the smaller the number of any legislative body, the easier is it to be controlled and managed by sinister influences. I have seen the political

and the financial affairs of the body politic controlled by a few men of undoubted personal ability. Perhaps a class of the same men would now desire to obtain a controlling influence over the vast commercial interests of the State! These gentlemen may well be in favor of a small representation, because they may thus the more easily direct its action in their own favor.

Sir, the people themselves are in error in this matter, and I, for one, will tell them so. I have known reputed "great men" who, no doubt, the people would have at one time trusted implicitly, and in whom I myself had great confidence. But did the people know their true character as well as I now do, they would agree with me, that such men would do more appropriate service in other than a legislative hall; they would be more fitly employed in the southern region of the State—in the hall at—— [laughter, and cries of "consent."] Talent and ability is one thing—integrity and honesty of purpose and design, is quite a different one.

Mr. Chairman, the philosophy of this matter may be reduced almost to a single sentence. Legislation is either a good or an evil, in the abstract. If it be an absolute evil, we had better abrogate the power to legislate altogether. Even if the evil predominates over the good, perhaps we should be justified in abrogating the legislative department. But I have no doubt that the good has far exceeded the bad, improvident and reckless as our legislation has undoubtedly been in times past.

It is not mere law-making that should be considered in settling this question. There are other things besides the absolute and direct good of legislation which are achieved by the assembling here of the Representatives of the people. Upon this point I refer gentlemen to some observations made by Grimke, in his book upon Free Institutions, who expresses my ideas better than I shall attempt to do for myself, though I am not indebted to him for my opinions.

Sir, political considerations are not alone involved in these assemblages of the people's Representatives. We are profited by the acquisition of additional knowledge, and the general interchange of sentiment, upon all subjects of public and private interest. Members of the General Assembly come up from all quarters of the State; they are improved by contact and consultation, and return to diffuse among their constituents, the stock of knowledge thus attained. This consideration alone, sir, is almost enough to determine the question, for this is, in the most enlarged sense, an assembly of the people, and touches all their material interests. The professional classes well appreciate advantages of this character. The clergy have their annual convocations, the medical profession their conventions and societies, and the lawyers are continually commingling together in their respective circuits. Thus are they strengthened by the intercommunication of ideas and

\* See the History of the Venitian Republic, for an account of the terrible tyranny of the "Council of Ten."

the results of experimental and practical knowledge. But the great laboring mass of men have no such re-unions, and the nearest approximation to them is the General Assembly, against which almost the entire weight of this Convention seems to be unrelentingly directed.

Sir, I confess that I have been utterly astounded at some of the expressions which have been directed against this popular department of the government. One gentleman has even declared that "to increase the number of Representatives would be FATAL to the prosperity of the State!" Sir, a doctrine so monstrous as this declaration implies, might well be preached in enslaved Hungary by the butcher Haynau, but I confess my inexpressible astonishment to hear it uttered in such a body, at such an era, and in such a country as our own. If that doctrine be true, sir, we should be ready to say with Pope:

"For forms of government let fools contest,  
That which is best administered is best."

Mr. Chairman, so important, fundamentally, do I regard these *retrograde* movements in reference to full and frequent representation of the people, and of their control over the laws, and through those laws the control of their officers, so anti-republican do these movements seem to me, in every aspect in which they can be viewed, that I assure you if we should do nothing worse than this, I should feel doubtful about giving my sanction, as an individual voter, to the new Constitution which we propose to submit to the people. My hope is that we shall introduce one redeeming feature, permitting the people speedily to amend any error which we may commit, and which experience may demonstrate to them.

Mr. Chairman, I have heretofore found it so difficult to get the floor that I feel inclined to keep it a few moments longer, while I briefly define my position upon the subject of legislation. We have heard a great deal of complaint about local legislation, and these complaints have brought us to most erroneous conclusions. But local legislation, or legislation for localities, is not the positive evil which it is generally supposed to be. Under our present system it is absolutely necessary, in order to promote the interest and answer the rightful demands of the people. I admit that this system is one of general inconvenience, but a remedy cannot be found for this comparative evil by divesting the people of the right to exercise the power, nor by refusing to pass such laws as they have a right to demand, for the promotion of their various interests. For instance, sir, a bridge is wanted across White River, in this county; our people are not alone interested, though they are chiefly so. Under your present system of legislation they must apply to the General Assembly to be allowed to build that bridge. Would it not be a denial of the exercise of their just rights to refuse to pass a local act to grant them permission to build such a bridge with

their own money? The time consumed by the General Assembly in passing such an act might be a comparative evil; but the refusal to pass it would inflict a positive evil upon the people interested.

According to my classification, sir, there are at least four distinct kinds of legislation, which have generally been confounded. I specify them thus: general legislation, local legislation, special legislation, and bad legislation. You cannot eradicate the evil principle in any of these, either by biennial sessions, or by the reduction of the representative ratio; but you may increase the evil, and render it more burdensome. You must apply a very different remedy from that which proposes a denial of the just rights of any portion of the people. It is comparatively easy to check bad and special legislation, by adopting Constitutional rules of restraint. But if you would retain the good now effected by local legislation, and which I say the people of every locality have a right to demand, something more than mere restriction, and something different, is absolutely necessary.

Sir, you must *re-organize your county governments*, and give the people the power to do their own local legislation! You must take away the necessity of local legislation by the General Assembly. You must do away with your present boards of three county commissioners, and make the local legislatures respectable and responsible; giving to each township at least one Representative in the county Legislature, and permitting the county board thus constituted to legislate upon all matters of local interest, under the control of general laws, which should apply to every county alike. Let the same relations exist between the counties and the State which exists between the State and the General Government; and so regulate your general statutes that they will operate upon these local bodies as the Constitution of the State regulates the action of the General Assembly.

I repeat, sir, again and again, that you cannot eradicate the evils of legislation by curtailing the power of the people to make their own laws, but by the institution of biennial sessions, nor by the reduction of Representatives. To arrive at a remedy, we must reform our *system*, as I have suggested; and in favor of it I have high authority to back my own judgment. Mr. Jefferson, as long ago as 1816, in his letter to Kercheval, urged a reform very similar, and I refer gentlemen to that letter for better information. If this Convention should only adopt the reforms there indicated, I should be well satisfied with the result of its labors. He proposed, as I propose, to leave all matters of local interest to the immediate action of the people of the several counties, thro' their county legislatures. Thus may you easily adjust your school system, your license question, by which we are annoyed even here, and thus may the people of every county settle all questions of local interest to themselves, as



they may see fit, and we shall be spared the evil of having questions of police and morals made the subject of partizan squabbles. Thus, and thus only, can you relieve the General Assembly from the necessity of legislating for localities, as well as for the general interests of the State.

Bad and special legislation require different remedies, as I have already said. I have been trying for several days, to introduce certain Constitutional rules upon this subject, but sitting so far back as I do [Mr. Chapman's seat is at the farthest point from the Speaker's chair.—*Reporter.*] I have not been able to catch the eye of the president for that purpose.

In support of my position, and as one evidence of the utility of annual instead of biennial sessions, I would refer to two bills which were hung up by the meeting of the last General Assembly, and in which, it is supposed, the State was interested to the amount of near forty thousand dollars. I mean the McGinley bill, the claim under which, I am told, the Supreme Court, eight years ago, decided to be of no validity either in law or equity, and of the Georgia land bill, under which three hundred thousand acres of land were sold for \$1,000. The present Governor saw fit to interpose against these acts, which he could hardly have done but for the action in regard to them at the last session; and they remain for the investigation and consideration of the next General Assembly. Similar instances might be easily multiplied, but I will not tire your patience.

I am aware, sir, that biennial sessions are urged upon us, by the example of several Southern States, which have adopted them. They may answer comparatively well for them, because their's is a stand-still position, compared with the free States, whose interests are constantly changing and progressing rapidly. I will submit testimony from one State in either section, to show that the system in question does not afford a remedy for the evils which you hope to derive from the adoption of the system in Indiana. I refer, for instance, to the action of the last session of the Alabama Legislature, whose sessions are biennial, and you will observe that they complain of evils precisely similar to those of which we complain. The Montgomery (Alabama) Gazette, commenting upon the action of the last session, says:

"ALABAMA LEGISLATURE.—It is the longest session of the Legislature on record—having lasted three months and one day. Upwards of four hundred acts have been passed, and out of this number there are only some dozen or two of a general nature, among the latter are the revenue law; the free banking law, an act incorporating the Southern bank at Mobile, an act allowing the bank at Mobile to issue three dollars in paper for one in specie on hand, an act appropriating sixty thousand dollars to re-build the capitol, an act re-organizing the county courts,

making them simply courts of probate, and abolishing the common law jurisdiction, and merging the office of Judge and Clerk into one, an act appropriating one half of the two per cent fund to the Selma and Tennessee railroad. Among the former are plank road and rail road charters innumerable, divorces, relief &c. &c.; about twenty thousand miles of plank road have been chartered. We trust this will not be the last of them.

The immense amount of local legislation will strike every one as a crying evil, that should be remedied. A great amount of money is spent in this way, that could be saved to the treasury, and applied to the payment of our public debt. All these local matters could, by some law, be left to the courts in the different counties with much more convenience to the public, than by the direct action of the Legislature.

The entire business of the session should be accomplished in four or five weeks at the furthest; but instead of this, over a fourth of a year is spent, mainly in legislating upon private matters, in which the great public can have no interest."

Allow me, Mr. Chairman, to read another extract from a letter, written by a former citizen of this State, now residing in Iowa.

MOUNT VERNON, LINN CO. IOWA.  
March 14, 1850. }

MESSRS. EDITORS:

As a native of Indiana, who though exiled for a season, yet hopes to end his days within her borders, I naturally feel interested in the discussions precedent to the formation of a new State Constitution.

Among other supposed reforms, already in controversy, I notice a proposition for *biennial sessions*, instead of annual sessions of the Legislature. There is in Indiana a popular prejudice in favor of a change of this sort, which I shared when I came here, but which I now think is not founded in considerations of propriety. The practical results of this system in the Constitution of Iowa, have not, as far as I have heard an expression of opinion, answered the expectations of its advocates. Take a few facts: I came here early in 1846, just in time to vote for the adoption of a new Constitution. Since then we have had a session every winter until last, and we narrowly escaped having one then, it having been found necessary to have a *called session* at one of the two constitutional intervals which have since occurred. With their present experience on the subject, I have no doubt the people of Iowa would decide, if the matter was before them for decision, in favor of short annual sessions of the Legislature, in preference to their present Constitutional provision for biennial sessions."

I have simply to add, sir, that having determined in favor of biennial sessions, I trust we shall not go further, and in another direction

reduce, in a still greater degree, the power of the people in the State Government, by reducing the number of members composing the House of Representatives.

Mr. STEVENSON. I have a few words to say on this question, and but very few. I am in favor of reducing the number of senators and representatives, and I wish to answer one argument that has been made here, and which has been repeated again and again; but which, in my opinion, is entirely without force. Allusion has been made, both by the gentleman from Warrick, and the gentleman from Monroe, to the system of internal improvement, and it has been argued that if, at the time that system was adopted, we had had a large rather than a small representative body, we would not have been cursed with that system. So far from that being the case, I think that if we had had a true apportionment, it would have made no difference in regard to that system, whether the representative body had been large or small. The internal improvement spirit was not a spirit which prevailed throughout the State, but was confined to a few counties, and I feel convinced that if we had had a representation in the Legislature, based upon numbers at the polls, that system would never have been carried into operation. Suppose that the Legislature, previous to that system being commenced, had been increased to double the number; what would have been the effect? Would you not have had as many, in proportion, in favor of the system as you had before? Unquestionably you would; and the argument, therefore, derived from this internal improvement system, in favor of enlarging the legislative body, it appears to me amounts to absolutely nothing at all.

Then, sir, it appears to me that the great question now to be disposed of, is, whether legislation can be done as well by a small body, consisting of from 70 to 75 members, as it can be by a body consisting of 100. That is the question. If we can ascertain that legislation can be as well done by the smaller number, every gentleman will undoubtedly be ready to reduce the number, on the score of economy. My own opinion on this subject is, that, so far as the interests of the State are concerned, they will be affected but very little either way, whether the House of Representatives shall consist of 75 members or 100 members, and still less do I consider that the interests of the State will be affected by the difference between the number of 70 and that of 75. I believe that you will have as good legislation from the number of 100 representatives, as you will from 75, and as good from the latter number as from the former; and, if that proposition be true, the whole question resolves itself into one of economy. Sir, the rights, the liberties, the interests of the people of Indiana, do not depend upon the question of whether we shall have in our legislative hall, 75 or 100 representatives. They depend more

upon the ballot box and upon the question of universal suffrage, and single representative districts, than upon the number of representatives. It depends upon universal suffrage; and, if all men are allowed to go to the ballot box, no matter whether the House of Representatives consists of 100 members or of 70, all men will be equally represented. We shall have nothing to fear, in that case, in regard to numbers. I do think that 75 would be a convenient number for this Hall—that they will do the business just as well as a larger number, and, I further think that this is a question which should be settled by the Convention, and settled *now*. It is a question, I admit, of some importance to the smaller counties, and it has been well alluded to by the gentleman from Jefferson. The difference in the size of the counties is not a great deal, and the difference between the relative numbers of their population will soon be very little. If, therefore, any inconvenience may be experienced, as the gentleman from Jefferson has said, it will only be temporary, and that the time will soon come when the southern counties will not have a greater population than the northern counties. There is more enterprise in the north than there is in the south, or than there is in the central, part of the State. Their enterprise, and their fertile soil, must soon place them, so far as numbers are concerned, upon an equality with other counties.

So far as this question is concerned, I should be governed considerably by the amount which will be saved to the State by a reduction of the number of senators and representatives.

In relation to the amendment offered by the gentleman from Wells, I would simply remark, that it is impossible to foresee how large a body of Senators and Representatives we should have in a short time, owing to the probability of our having a large increase of population. If we are to make a fixed number of inhabitants or voters the basis of representation, who can see to what extent that basis may be enlarged in a very short time? I repeat, that if the Convention is to take action on this question, I should be decidedly in favor of the number of seventy-five; and if the number is to be still further diminished, I would rather diminish it in the Senate than in the House of Representatives; and I believe this course would better suit the small counties. Were I to offer any amendment, I would prefer to have seventy-five members in the House of Representatives, and twenty-five in the Senate. I, however, am not particular; but, looking to the interests of the State, I believe that all the purposes of legislation can be accomplished fully as well by seventy as by a hundred Representatives. I trust that the committee will settle this question; and I see no reason why it may not be as well settled now as at any other time. We have already spent much time in this debate, and I think, with the view of settling this question at once,



we had better, if need be, occupy the day in the discussion of it than to take it up again.

Mr. SMITH of Scott. As I have not occupied much of the time of the Convention thus far, in the discussion of the questions which have been under consideration, I will now ask permission to trespass upon the attention of the committee for a few moments, while I offer a very few remarks on the subject under debate. This is a question of great importance, and one in which the whole people of the State are interested. I think, therefore, that it is one on which it is very desirable to have a full expression of opinion on the part of the members of the Convention. Different positions have been taken by delegates on this floor; and it seems to me, from the remarks that have been made by some of the gentlemen here, that they have looked, perhaps, rather to the mere object of gratifying their immediate constituents, than to the general interests of the State. I know it is too apt to be the case, that when a man presents himself before the people as a candidate for public favor, he will promise his constituents everything which may suit their wishes; and it appears to me that the idea of curtailing the expenses of the Legislature has, in some measure, had its origin in that feeling. "Economy" has, in many parts of the State, been made a great cry, in order to succeed in elections. I cannot but think, that when we come to the discussion of a great question like this, we should come to the very principle on which the general government is sustained. If we are to be governed by the principle of legislation, then we should come to that question, and to that alone. I do not suppose that there are many gentlemen here who would contend for the opinion that we should have a representation based upon extent of territory rather than upon numerical strength; but if we are to have a representative from each county, I do not know that that would be going too far. The true principle, however, on which representation should be based, is the numerical strength of the people—that every Representative should represent a certain number. If that were made the basis of apportionment, I think a Legislature so constituted would, more nearly than by any other mode, arrive at and represent the minds and wishes of the people. For what are legislators sent here? It is that they may represent the interests and wishes of the people, and not that a Representative should represent so much territory. The territory of the State will doubtless be properly attended to if the wishes of the people are represented.

Now, we have heard it remarked, that, on principles of economy, we should have large election districts. Precedents have been presented to us here; and my learned friend from Monroe has adduced the State of Massachusetts, with a Representative body of over five hundred members and a Senate not exceeding forty.

And what is the principle of which that is an illustration? It is that the interests of the people in the popular branch of the Legislature should be fully represented; and that, I think, is the principle that should govern us here. As to the Senatorial branch, I cannot see any necessity for making that very extensive; but the popular branch of the Legislature, in which the will of the people is to be expressed, it seems to me, should be so large as fairly to represent the will of the people, that that will may become the law of the land.

Now in regard to what should be the actual number of the House of Representatives, the only question is, whether a correct expression could be given to the will of the people, as well through the medium of seventy-five members as through that of a hundred. On that question, I give it as my opinion, that it could not; and, that I think the number of one hundred members is small enough—as small a number as the people of the State could well rely upon.

Reference has been made to the distress which the State has suffered in consequence of former legislation, but certainly no argument can be deducible from that to show that we ought to diminish the number of the people's representatives. It has been said that if you make the number smaller, you will have a greater concentration of talent. Let me ask who was it that propounded those very measures which have been complained of, but those who, at the time, were said to be the most talented men of the State. Was it the honest hard-working farmer who recommended these schemes of internal improvement which brought so much distress upon the country? Not at all; and if, by seeking to diminish the number of representatives, you are desirous of excluding them from the halls of legislation, for the purpose of introducing the "talent" of the State, I should be most decidedly opposed to it. These, it is true, are the men who never make speeches, but are always ready to give their votes, and that promptly, whenever an important question is to be decided; and they are, therefore, as capable of representing the will of the people as those who spend hours of the time of a legislative body in making speeches. They are in general the right men. They mingle with the people; they become acquainted with their wants; and, when a question comes to the vote, they understand the matter, and are as capable of expressing the will of the people, as those who claim to be the talented men, either in the popular or senatorial branch of the Legislature. Let us then give the people full representation here; let us give them small districts, so that when a law is to be placed upon your statute books, it may be the will of the whole people, and not of a mere section. I am in favor of the principle of representative government to its fullest extent, so that the people; and their different in-

terests, in every locality, may be fully represented. If you make this a question, depending upon territory of some fifty miles square, and diminish the number of representatives to some seventy or seventy-five, you will find that one voice cannot fairly represent such a locality. Hence, I am of opinion that the number, in the popular branch of the Legislature, should not be below one hundred, and that the districts should be so small that everything appertaining to their best interests may be fairly represented on this floor. You will then have a representative government that will truly represent the people's will; you will have a class of men who, if they are not able to make flaming speeches, will at all times be ready to give correct votes.

Mr. COOKERLY moved so to modify the amendment as to make the numbers seventy-five in the House of Representatives, and twenty-five in the Senate.

The modification was accepted by the mover of the amendment.

Mr. KILGORE remarked, that as this was a very important question, and as it was desirable to have the sentiments of the Convention fully elicited upon the subject, he would move that the committee now rise and report progress, and ask leave to sit again to-morrow.

The committee then rose and reported progress, and asked leave to sit again.

Leave was granted.

On motion, the Convention then adjourned until to-morrow morning at 9 o'clock.

#### THURSDAY, Oct. 31, 1850.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. JAMESON.

The journal of yesterday was read and approved.

Several petitions were presented.

Reports were made by various committees.

Resolutions were presented, and communications submitted. All of which were read and appropriately disposed of.

#### INQUIRY.

Mr. MORRISON of Marion said, he desired to inquire whether different committees could report upon the same subject matter, and, also, if it was to be understood as the sense of the Convention that each committee could report upon subjects not referred to them by the Convention? He had discovered in the report from the committee on the legislative department that that committee had reported upon matters which, by a vote of the Convention, had been referred to the executive committee. The last section of that report in particular embraced a subject that had been referred to the committee on the executive, which committee was about to make their report. He did not know that it

was at all necessary to multiply section upon section upon the same subject.

The PRESIDENT stated, that the several committees might have different branches of the same subject under consideration, and that they were not necessarily restricted to report only on those subjects specially referred to them. They might decide for themselves what subjects appropriately came under their consideration.

Mr. MORRISON of Marion. The last section of the report, just presented, relative to the veto power, was a subject that was specially referred to the committee on the executive.

Mr. CLARK of Tippecanoe remarked, that the Convention had a right to refer the same subject to different committees if they chose to do so. The committees were bound to report upon them, and then the Convention could decide between the reports, and adopt that which they considered the best.

#### ELECTION OF STATE OFFICERS.

The order of the day being the sections of the new Constitution, reported Oct. 25, by Mr. Read of Clark, chairman of the committee "on state officers other than executive and judiciary," was then taken up for consideration by the Convention, and read a second time.

The article reads as follows:

#### ARTICLE.—

SECTION —. A Secretary of State shall be chosen by the qualified electors, and be commissioned by the Governor for two years, or until a new Secretary be elected and qualified: *Provided*, That no person shall be eligible to the office of Secretary of State more than four years in any term of six years. He shall keep a fair register, and attest all the official acts and proceedings of the Governor; and shall, when required, lay the same, and all papers, minutes, and vouches relative thereto, before either House of the General Assembly, and shall perform such other duties as may be enjoined him by law.

SECTION. — There shall be chosen by the qualified electors, and commissioned by the Governor, a Treasurer and Auditor, whose powers and duties shall be prescribed by law, and who shall hold their office for two years and until their successors be elected and qualified: *Provided*, That no person shall be eligible to the office of Treasurer or Auditor more than four years in any term of six years.

Mr. SHOUP moved to amend the first section by striking out from the second line the word "two" and inserting the word "four." He said that it must be evident to the minds of all the members of the Convention that there would be very few gentlemen competent to discharge the duties of the office who would be willing to remove from a remote part of the State to occupy a situation here for only two years. Unless a longer period for remaining here, say four years, was fixed upon, the office would almost



necessarily have to be filled by residents of Indianapolis.

Mr. READ of Clark stated, that the committee on state officers took this view of the question. They considered that the people were desirous of having the terms of elections short, and they believed, also, that in the new Constitution provision would be made for biennial sessions, and that the Governor's tenure of office would be fixed at two years. He would suggest further to the gentleman from Franklin (Mr. Shoup) that in ninety-seven cases out of a hundred those individuals who held the office for two years would undoubtedly, if they discharged their duty faithfully during that period, be re-elected. The more frequently these elections came before the people the more faithfully would the incumbents of office administer their necessary duties.

Mr. HALL said that he hoped the motion of the gentleman from Franklin (Mr. Shoup) would prevail. He was in favor of the one term principle. At the proper time he would move to amend the article under consideration, so as to render the Secretary ineligible to hold the office for more than four years out of eight.

The doctrine of rotation in office had been discussed, to some extent, in that portion of the country which he had the honor, in part, to represent; and it received general favor from the people. When an officer is eligible to be re-elected, much of his time is often used to secure his re-election. This is not all: most officers have some patronage—some favors to bestow, or some lenity to grant—some more, some less—but whatever they have, it is all given to secure a re-election. This is all wrong—it is anti-republican. Let officers be elected for a short period—not long enough to cause them to forget the occupation they were pursuing when elected—and when their term of office shall have expired, they can return to their former business and pursue it. But if you keep a man in office for a great length of time, and then turn him out, he has been taught to depend on the perquisites of his office so long for a support, that he is rendered incapable of following any occupation whatever. He consequently becomes a mere drone in the body politic.

This is more especially applicable to the office of treasurer, and such offices as have the control of public funds. There is nothing more corrupting than money. The temptation to use public funds, or to allow special friends to use them, is strong—often too strong to be resisted. An oath, however strong it may be, is no guarantee that public funds will not be misapplied. The only safe remedy is, strict accountability, short term of office, and ineligibility.

Mr. OWEN remarked, that he should vote for the amendment of the gentleman from Franklin, (Mr. Shoup,) for reasons that had not yet been submitted.

He perceived that the committee's report on this question contained a clause not in the present Constitution, viz.: that the Secretary of State shall be eligible to the office of secretary not more than four years in one term of six years. I do not know, said Mr. O., the reasons which actuated the committee in inserting this provision, but I imagine they may have been, in part, that it is a common thing, and an undesirable thing, that an executive officer should take up a large portion of his time, toward the close of his term of service, in electioneering for a renewal of office, instead of attending to the duties of his office. They may have considered, that such a clause was presenting temptation to the public officers to squander their time. It was a notorious fact that many of the public officers did thus spend the latter portion of their terms of office, in electioneering for a renewal of them. If they made the length of the Secretary's term four years, and suffered the proviso to remain in the section as it then stood, there would then be no renewal of office until after the term of six years had expired, and of course no temptation to divert time which belongs to the public, to purposes of private advancement.

But it is said that if we pursue this policy of non-re-eligibility in regard to this office, we must do so also in regard to all others. That does not follow. I have seen no such proposal in regard to members of the Legislature. No such reasons occur, in their case. As members of a deliberative body, they serve but some weeks or months out of each year. They have time of their own to canvass after each session, to render account of their stewardship, and receive fresh instructions for the future. This is right and useful. Short terms, renewed as often as the people see fit to renew them, are appropriate in this case.

But we are speaking now of executive officers, not of legislative; of men whose whole time belongs to the State under which they are commissioned. And it may well be a question whether we ought to put such officers, at the close of each second year, in the position either to loose their chance of a re-election, or to devote time and thought—perhaps to travel all over the State—in order to put themselves on the same vantage ground as others who may seek to supplant and replace them.

Mr. FOSTER said, that the Convention had decided, by an almost unanimous vote, to have biennial session of the Legislature, and it was to be presumed that the committee on the tenure of office would fix the term of Representatives to two years, and that of Senators to four years. He did not know what the Convention would fix the term of office of the Lieut. Governor at: he presumed, however, at four years. Under these circumstances, the Auditor and Treasurer being equally important officers, he thought they should be elected for the same

time. He professed to be a democrat, and he desired to see a certain democratic principle established—one much talked about, though but seldom carried out—and that principle was rotation in office. It was a good democratic doctrine, but the worst of it was, it was seldom carried out. For one, he proposed that officers should be elected for a certain term of office, and after that term had expired, that they should then be ineligible for re-election; but to elect them but for two years, with a clause of re-election for another two years out of six, he was opposed to. He did not think that the term of office of the representatives and senators should be such that they should be ineligible, but he thought all administrative officers should be so. He should, therefore, vote for the amendment of the gentleman from Franklin (Mr. Shoup.)

Mr. BRACKEN observed, that he was in hopes the word "two" would not be stricken out and the word "four" inserted. It was an understood matter in the committee that the committee on executive officers were not to report terms of office of four years duration either for the governor or any of the State officers.

This was the more requisite if the principle of biennial sessions of the Legislature was to be carried out.

One of the reasons assigned by the gentleman from Marion (Mr. Morrison) why the Secretary of State should serve four years, was, that it was an office of importance, requiring much experience for the incumbent to perform his duties aright—but unfortunately before he was done he stated that there was no opportunity for mis-feasance, mal-feasance, or non-feasance in holding that office, and he (Mr. B.) thought that both statements could not be correct. If it was the fact that this officer was incapable of going wrong, where was the necessity of lengthening the term of office, and why not throw it back more frequently into the hands of the people? The gentleman from Monroe (Mr. Foster) had affirmed he was a democrat, and in favor of the democratic principle of rotation in office; then why not throw the election of these officers more frequently into the hands of the people, and then if they were worthy and capable, they could be re-elected?

Mr. FOSTER begged leave to correct the gentleman from Rush. In his remarks he had spoken of ineligibility to office and in favor of a fixed term of office, after which the candidate should be ineligible to re-election.

Mr. BRACKEN said, he understood the true democratic doctrine to be that the people were the sovereigns, and that they had a right to elect whoever they pleased, as often as they pleased, to do their business. If the officer performed his duty faithfully there was no reason why the people should be prohibited from rewarding him with a re-election; and if, on the contrary, he

did not perform his duty with fidelity, there was greater reason why, at the expiration of the two years' term, he should retire from his office. For this reason they had cut down the terms of service of the various officers to two years.

The gentleman from Franklin (Mr. Shoup) had stated in support of his amendment that if the term of this office was fixed at two years, those who resided about the Seat of Government only could or would endeavor to obtain it.

This idea was somewhat new to him. He had always thought, and he saw no reason now to change that opinion, that there were at least twenty candidates for every office to be filled, from every part of the State. There were plenty of men competent to fill this office if it were only to be held for two years, to be had from every portion of the State. If any gentleman could tell him of an office of profit in Indiana that had to go begging for the want of competent applicants to fill it, he would give the question up at once.

A MEMBER. President judges.

Mr. BRACKEN. Well, that is an instance, but even the office of president judge does not go begging in our part of the State. He thought at any rate that the judiciary was very well represented in the Convention. An office of no kind would go begging in this State, for the people thought it honor as well as profit to fill them. He was in favor of the shortest term of office, so that the incumbents could go back to the people for re-election, and if they had served faithfully there would not be much difficulty in getting re-elected.

The question being upon the adoption of the amendment of the gentleman from Franklin, (Mr. Shoup,) the yeas and nays were demanded, and, being ordered, were taken with the following result: yeas 76, nays 56.

Those voting in the affirmative were Messrs. Alexander, Badger, Barbour, Berry, Blythe, Borden, Bourne, Bowers, Bright, Bryant, Butler, Carr, Clark of Hamilton, Clark of Tippecanoe, Cole, Cookerly, Crawford, Crumbacker, Davis of Madison, Davis of Parke, Dunn of Perry, &c., Edmonston, Farrow, Foley, Foster, Garvin, Graham of Miami, Graham of Warrick, Gregg, Hall, Holliday, Harbolt, Helmer, Hendricks, Hitt, Hogin, Hovey, Howe, Huff, Jones, Kent, Kinley, Lockhart, Logan, May, Miller of Clinton, Miller of Gibson, Milroy, Mooney, Morgan, Morrison of Marion, Morrison of Washington, Murray, Nave, Newman, Nofsinger, Owen, Pepper of Crawford, Pettit, Read of Monroe, Ristine, Robinson, Schoonover, Shannon, Sherrod, Shoup, Sims, Snook, Spann, Steele, Stevenson, Terry, Watts, Work, Wunderlich, Mr. President—76.

Those voting in the negative were,

Messrs. Allen, Balingall, Bascom, Beach, Beeson, Biddle, Bracken, Carter, Chapman, Chenoweth, Coats, Colfax, Dick, Dobson, Duzan, Fisher, Frisbie, Gordon, Haddon, Hamilton, Har-



din, Hawkins, Helm, Holman, Johnson, Kendall of Warren, Kilgore, Maguire, March, Mather, Mathis, McClelland, McFarland, McLean, Miller of Fulton, Moore, Mower, Niles, Prather, Rariden, Read of Clarke, Smiley, Smith of Ripley, Smith of Scott, Tague, Tannehill, Thomas, Thornton, Trimble, Vanbenthusen, Walpole, Wheeler, Wiley, Wolfe, Yocum—56.

So the amendment was adopted.

The question recurring upon the adoption of the original amendment—

Mr. GRAHAM of Warrick moved to amend by striking out the word "six" on the fourth line, and inserting the word "eight."

Mr. HOVEY moved to amend the amendment offered by the gentleman from Warrick, by striking out all after the word "Provided," on the third and fourth lines.

The question being taken on the amendment of the gentleman from Posey (Mr. Hovey) to the amendment of the gentleman from Warrick, (Mr. Graham) it was not agreed to.

The question recurring upon the adoption of the amendment offered by the gentleman from Warrick (Mr. Graham) to the original amendment,

Mr. SHOUP moved to amend the amendment offered by the gentleman from Warrick, by striking out the word "four" on the fourth line and inserting the word "eight," and also by striking out the word "six" on the same line, and inserting the word "eight."

The question being taken on the amendment offered by the gentleman from Franklin (Mr. Shoup) to the amendment offered by the gentleman from Warrick, (Mr. Graham,)

It was not agreed to.

The question then recurring upon the adoption of the amendment offered by the gentleman from Warrick, (Mr. Graham,)

Mr. GRAHAM said, perhaps it is necessary for me to say a few words with reference to the amendment I have offered.

The section as amended makes the term of office of Secretary of State four years, instead of two, as reported by the committee; and for the purpose of carrying out the principle of rotation in office, I have offered my amendment. I propose, sir, that the Secretary of State shall only be eligible to the office four years, in any term of eight years. The amendment to my amendment, proposed to make him eligible eight years in any term of twelve years. In other words he may be elected for two succeeding terms of four years each. If this amendment prevails, it will be, in my opinion, equivalent, in a large majority of cases, to extending the tenure of this office to a term of eight years. I have as much confidence in the ability of the people to select their own officers, as any gentleman in this Convention, and cannot, for the life of me, come to the conclusion which some gentlemen have, that this restriction originates from a belief that

the people are incompetent to select their public agents.

It is true, sir, that the people, without the restriction, would have the power to elect any individual over the incumbent; but, sir, it is a power seldom exercised in those offices, the tenure of which is limited to two succeeding terms,

Those who have held the office for one term have a decided advantage over their competitors, for if they have discharged their duty, their election is almost certain. The ground taken by the incumbent and his friends is this: he has faithfully and honestly discharged the duties of his office, and can serve but one term more, therefore he should be re-elected. He and his friends urge that the selecting of any other over him would be a reflection upon his character as an individual, and his acts as an officer. Whenever that false issue is made before the people, the incumbent, if he has half discharged the duties of his office, is sure of his re-election. This is the case, sir, with sheriffs. They can serve but four years in six. And does not the doctrine now prevail that sheriffs have a pre-emption right to the second term? Yes, more, sir, that they have the right to select their successors. And that successor frequently, when his second term is about to expire, throws the winding up of his official business into the hands of the old sheriff, so that he will be his successor. By this pre-emption right to a second term, and the election of a deputy, the office of sheriff is frequently kept in two families for a great number of years. I wish, sir, to strike at the root of that false issue that is too frequently made before the people by office-holders. They ask the people to endorse their conduct as public officers, which, they say, can only be done by being re-elected. Such an issue I want to prevent. If they have faithfully and honestly discharged the duties of their offices, they have done nothing more than they were sworn to do.

I desire to have a fixed tenure of office. Then, if after the time of ineligibility has expired, the former incumbent desires to come again before the people, he can do so. And if his former services have been as beneficial to the people as he would have them believe, he will certainly succeed. In view, then, of breaking up this pre-emption right to re-election, and for the purpose of making all elections equal, I hope my amendment will prevail.

The question was then taken upon the amendment to the original amendment, offered by the gentleman from Warrick, (Mr. Graham,) and it was adopted.

Mr. MILROY moved to amend by adding after the word "electors," in the first line, the words, "of the State."

The question was taken upon the amendment, and it was not agreed to.

Mr. KENT moved to amend by striking out the word "and," in the 6th line, between the

words "same" and "all," and inserting the word "with."

The question was taken upon the amendment, and it was not agreed to.

Mr. PETTIT. I do not know but I shall come under the supervision of the smoothing iron committee, with reference to my words, phrases, &c., but I will propose the following amendment: Insert the word "upon," in the 8th line, between the word "enjoined" and the word "him," so that it will read, "and shall perform such other duties as shall be enjoined upon him by law."

The amendment was adopted by unanimous consent.

Mr. NEWMAN proposed to amend by striking out the fifth, sixth, and seventh lines, of the section, and the words "shall" and "other," in the eighth line, so that it will read, "He shall perform such duties as may be enjoined upon him by law."

The amendment was adopted.

Mr. NAVE proposed to amend by adding, at the end of the eighth line, these words, "but shall not receive any perquisites therefor."

Mr. DOBSON. That will be embraced in another section, fixing compensation.

Mr. NAVE withdrew his amendment.

And then the first section, as amended, was adopted by unanimous consent.

The second section was read by the Secretary, as follows:

SEC. —. There shall be chosen by the qualified electors, and commissioned by the Governor, a Treasurer and Auditor, whose powers and duties shall be prescribed by law, and who shall hold their office for two years and until their successors be elected and qualified: *Provided*, that no person shall be eligible to the office of Treasurer or Auditor more than four years in any term of six years.

Mr. CARR proposed to amend the section by striking out the word "two," in the third line, and inserting in lieu thereof, the word "four;" so that it will read, "who shall hold their office for four years."

Mr. PETTIT. I hope this amendment will prevail, in order that there may be uniformity in the term of all the executive officers. There can be but little doubt that the Convention will fix the Gubernatorial term of service at four years: the term of the Secretary of State has already been fixed at four years; and the Treasurer and Auditor, who have control of the monetary affairs of the State, are officers, in some sense, ministerial to the Governor; that is, they belong to the executive department, as well as the Secretary of State; and for this reason, it seems to me, they should all hold their offices for precisely the same length of time. They will be elected at the same time, entertaining similar sentiments and views, and they should go out at the same time. I think it is expedient to make the term as short as possible, without

reference to eligibility or ineligibility; for I am utterly opposed to the policy of conferring office until old age makes a man unfit for it. This rule of eligibility says: to the people, (in clap-trap style,) that they shall not choose whom they please to office: and they will not refuse a man his second election, because he has spent so much time electioneering, and because he has done his duty, and all that. On the other hand, if you make the officer ineligible, it will have a still worse effect. If you elect a man for two or four years, and say to him, you shall hold your office so long, but under any circumstances, however faithful and competent you may prove yourself to be, you shall not have the place again; this would have a tendency to produce a stupor, lethargy, negligence, and want of readiness to serve the people in his office, which ought not to be tolerated in any officer. Sir, it is humiliating to place a man in such a condition. Let gentlemen consider how it would operate upon their own minds, if they felt that their place in this Convention was the last favor they were to receive from their constituents. Who would not say that such a place is beneath the aspirations of an honorable and high-minded man!

Sir, I despise and spurn the principle. I maintain that you will have better officers by holding out the assurance that if their conduct shall undergo the proper scrutiny of time, their services shall be appreciated. Sir, if you prevent the eligibility of your officers, you take away their amiability, and stifle their better feelings, and you curtail the rights of the people. To such a principle I never will give my sanction. I don't know but, that with reference to judicial officers, I would say, that after a man has become exceedingly old, he should not be continued in the place of judge. I do not know but I would be willing to say, that the judges of the supreme court and of the circuit courts should not be elected after they had passed a certain age—say sixty years. Because, there is a time when men decay, as well as when they must be young. And since the time or the tenure of these offices is commonly of considerable length, I don't know but that it would be proper for the people to put such a check upon them. There is another extreme to which this rule applies. We say that a man shall not hold office until he is twenty-one, and that he shall not be a senator till he is twenty-five. I think, then, there might be just as much propriety in saying that a man shall not hold office after he arrives at a certain age, or after he shall have become a child again. Once a man, and twice a child, you know. While I would be willing to do this, I would place no restrictions upon the people. I would not damp the laudable ambition nor take away the spirit of accommodation in the officer, which he would naturally cultivate to induce the people to elect him again. The prospect of a re-election causes a



man to desire to be acceptable again to those who have confided in him, and this is often the greatest incentive to the faithful discharge of the proper functions and duties of his office.

Mr. DOBSON. I hope the amendment will not prevail. I voted against the same term when proposed for the Secretary of State. And because the Treasurer controls, annually, some eight hundred thousand dollars of the public money—which in four years amounts to nearly two millions—I am not willing that he should have so long a term as four years. Mr. President, we are only commencing to form a Constitution, under which the Legislature is to meet but once in two years; then it is plain that with the present amount of revenue, these officers will control nearly seventeen hundred thousand dollars in the term of two years; and by extending their term to four years, we shall put into their hands the control of upwards of three millions of dollars. When we make these calculations, it seems to me that the term of four years would be too long, and the temptation would be too great. I do not care what gentlemen say about being treated courteously by a public officer; I would throw around him all those guards which should most securely deliver him from temptation. It might be, perchance, that the Treasurer of State would come here poor; and it might be all right with him at home. But when he gets here, at the seat of Government, places himself in a good house, has money in his possession, and goes to the Governor's levees, he begins to think, and reflections something like these come over his mind in the midnight hour: "Why should I be without riches? I wish I had money. I was contented at home, but here I am not. I cannot give these splendid parties. I cannot ride in those splendid carriages." Let such a man go four years as Treasurer of State, and he may in this way get above what he can bear. Men are not infallible. But what would be the result of these midnight reflections? Will he steal the public money? No, sir, he is not going to steal. Gentlemen, I suppose, know what stealing is. We have all stolen a little in our lives, and have some knowledge of its practical workings. We all remember how it was in our mill-boy days; we would not get over the fence to steal an apple from the middle of the orchard which we had to pass by near the road. We would not do this at first, but only take a few near the way-side. But the second year we became confident enough to get over the fence, grab a few, and break. The third year we would go carefully over the whole orchard, perhaps. But the fourth year, if the old man came to see what we were about, we would stone him out of the orchard. Thus it was that the stealing propensity carries men on step by step. And so it might be with your Treasurer, with an official term of four years. He might not venture upon anything wrong for

the first, second, or third years; but in the fourth year, having two years of revenue in his hands without the supervision of the Legislature, he might venture upon a speculation, which he would have well matured in his mind. He might take two hundred, or three hundred thousand dollars, or even fifty thousand, of the public money, and entrust it to some cousin of his, to go into a little speculation. He don't intend to steal the public money by any means; but only to let his relative make a speculation, in which he will share pretty largely in the profits, and then he will put the money back into the Treasury. This is his serious and settled purpose and intention; but by some casualty of trade which could not be foreseen, the speculation proves a failure, the money is gone, his reputation is gone, and his securities are ruined.

With regard to the gentleman's notion of one term of service, and the ineligibility clause of the section under consideration, I would say to the gentleman from Tippecanoe, we are not going to disqualify a man for office. The section does not propose to disfranchise the officer, and condemn him to perpetual obscurity and retircacy. We are only going to say to him, if he shall make a good officer during the two or four years of his term, "Though you cannot continue in that office, sir, yet we can give you some other if you desire it." We do not propose to disqualify these officers at all for holding any other office. We do not, in this way, propose to disqualify a man for the office of Governor, or United States Senator, or any other place to which he may aspire. But we want these officers to discharge the public trusts confided to them, for our benefit as much as their own; and at the end of their term we want them to retire and give place to other men, who will look over and see that all is right. It is one of the most foolish things in the world to set a public officer to work to overhaul his own proceedings.

Sir, I have had a lesson on this subject in the case of our sheriff. The law makes a sheriff re-eligible, and in every case where a man succeeds and is elected for one term, he may be sure of the other term. This hardly ever fails. I might fearlessly ask any gentleman to point out a failure in any case where the incumbent has got half wit. If he gets the first term he goes in for the second. That is the rule. I never saw it fail but once; and then the officer had not sense enough to manage his own papers.

I do not want to restrain the people in the manner that the gentleman from Tippecanoe intimates. But in framing the organic law of the State, I understand that we are to adopt and establish principles by which every man in the State must be restrained more or less. I understand that we are to proceed in the affairs of government upon something like sys-

tem, otherwise why not say the people shall send up here as many senators and representatives as they please, and whoever they please, without limit or qualification? If we fix a rule for our government in one case, should not rules restrain us in every other case?

Mr. READ of Monroe. I have one or two reasons to present, going to show why I am in favor of short terms, and opposed to re-eligibility for both State and county officers. Where the State officers remain so long in office, there is danger that they will organize and keep up a kind of State regency; such was the case in the State of New York for a long period of time. The case is precisely the same with reference to county officers. There, where the term of office is extended in the same hands, there is danger that they will get up a kind of court-house influence. This is the reason why I am in favor of electing all officers for short periods of time, and preventing their re-eligibility. I have another objection to long terms, which applies especially to accounting and receiving officers. I believe such officers should not be continued long in their places, because one is intended to be a check upon the other. When the same persons are continued in these offices for a long time, they learn to place too much confidence in each other. In another State I have known some serious defalcations—one case in my mind was for about seven thousand dollars—and it is seldom the case, where two officers have been long continued in their places, that, even after their retirement, they are not constrained to put some considerable balance of money quietly into the treasury. For this reason, sir, I shall vote for the shorter term, especially for the offices of Treasurer and Auditor; and when we shall come to the consideration of the tenure of county officers, I shall vote in the same way.

Mr. TANNEHILL said, Mr. President, there is a fitness in all things. I have been listening for some time to what has been said concerning a man's holding office for a long term. Now, in order that the people may enjoy what is right and proper with reference to this thing, I would not be in favor of reducing this term of office to too short a time, nor of extending it to too long a time. But there is a medium which we ought to adopt. It is not consistent to adopt long terms of office and re-eligibility. I suppose no politician will deny that. The oftener the people exercise their sovereign power, the more safe and secure are they in their political interests, and the better contented they are. For example, if you remove the general elections two years apart—two years is a considerable length of time in which to give the people no opportunity to come together and consult with reference to their best interests, besides the disadvantage of changing from what it has been. My opinion in regard to the subject under consideration is, that short terms of office and

re-eligibility are consistent with republicanism; but I shall oppose long terms with re-eligibility. I do not consider that the demands of equity and justice could be secured to the people in this way. There is something to be considered with regard to the justice of this thing. Suppose, for example, that a man has a dozen sons; he educates them without partiality, and they are all prepared and qualified to fill the offices of government with credit. This work of the father is certainly an advantage to the whole community. No man will deny this. But now, if you have long terms of office, there is no encouragement for the parent so to prepare and qualify his sons. A person in office has it in his power to secure more friends, than a man out of office. This, I admit, is a fact; but if his term is short, and he has filled up the measure of the expectations of the people, why, let him be re-eligible. But, above all, let the people, at short periods, exercise their right of sovereignty, and then all will be safe. I should be sorry to see this Convention set the precedent of long terms and re-eligibility. I am sure it would not work well. It would be much better to say the term of office shall be for two years, and the officer shall be re-eligible. Then, if the officer has done well, and the people choose to do so, let them re-elect him; or if not, let them, as they have a right to do, place another man in his room. I have said that I considered long terms of office to be inconsistent with the principles of republicanism; and why? Because the people, being sovereign, ought to exercise their sovereign power as often as it may be necessary and prudent for them so to do. Why, then, attempt to deprive the people of the exercise of this right by establishing long official terms? You might as well say to a monarch on his throne, that he should dispense with the exercise of his sovereignty for so long a time. I presume that the people of Indiana never would have called this Convention upon the presumption that terms of office would be lengthened and re-eligibility destroyed by our action here.

I have but little to say, Mr. President. I am in bad health and cannot talk much. But these are my views, and this is the course which I think would be best calculated to advance the highest interests of the State. I think, also, that a word of caution might not be amiss at this time, against the temptation for gentlemen to go on and fix up their big salaries, and their long terms, thinking they, themselves, are going to hold these places: though I am not niggardly about salaries, I am for giving good salaries to all our officers. But I must insist upon having the terms of office short, and making the officers themselves re-eligible. These are my views.

Mr. SHOUP. I fully concur with the view taken by the gentleman from Tippecanoe, (Mr. Pettit,) that we should rather induce men to



accept of office and hold on to it, then hold them back. It strikes me that a two years' term is not long enough to induce a responsible man to take upon himself the duties of either of these offices. I hold the same views with reference to this, as I held with reference to the former section, that, if the term of these officers shall be fixed for two years, the effect will be that they will fall immediately into the hands of those who are located around the capital. It must be remembered that the people of this State will expect their candidate to canvass the district. Who then, sir, from any remote part of the State would go to the expense of canvassing for one of these offices, if he were to remain in it but two years? He could not afford it without an increase of the salary. I hope, sir, that the word "two" will be stricken out, and the word "four" inserted: that it will be the pleasure of the Convention ultimately to determine that the several State officers shall be retained for the term of four years.

Mr. HELM. I have favored rotation in office in theory and in practice, and I seem to be in advance of some democrats here, upon this subject; notwithstanding I believe it to be an article in their confession of faith. I hold, also, that offices are not created for the benefit, solely, of office-holders, but they are created for the benefit of the people. Gentlemen have seemed to look at the subject to-day, as though offices were created solely for the benefit of the office-holders. I sir, am in favor of frequent changes in office. It has been hinted by gentlemen on my left, and over the way, that office-holders by their position were enabled to exercise a large amount of political influence upon the balance of the community. This influence, sir, is felt in every county in the State. A court house influence has been spoken of, and I presume there is not a member upon this floor, who has not felt the power of an influence of that kind, who has not heard the cry of the court house clerks and other officials of the county, combining to put down those who are not office-holders! An influence of this kind has been brought to bear, perhaps, in every county of the State. This evil results to every community where men are suffered to hold office for a long time.

It has been argued here, sir, that if men were allowed to hold office for a longer term, there would be no inducement for the people to qualify themselves for office. And I hold, myself, that there would be found a larger number of qualified men, if the opportunities for obtaining office were made a little more frequent. What is the inducement for a young man to prepare himself for the duties of county or circuit court clerk, when he looks around him and finds these offices frequently filled by the same person for a term of twenty or thirty years? The practice of continual re-election to office, I am opposed altogether to.

Mr. READ of Clark. The view which I take

of this subject leads me to favor short terms of office and a strict accountability of officers. I confess that I had some doubts relative to the propriety of extending the term of office of Secretary of State, for reasons which have been already advanced. But as to the Auditor and the individual who holds the purse strings of the State, I have no doubt whatever. The present Constitution of the State fixes the term of these offices at three years; and now gentlemen seem to be disposed to extend it to four years. The committee was of a different opinion. We had no doubt (I repeat) upon the subject of the official term for the Treasurer and Auditor, their offices being intimately connected with each other. Gentlemen say, that by declaring these offices ineligible for a second or a third term, we almost disqualify them for holding any office whatever. But this is not the case. If a man is disqualified for one office, are there not a hundred other offices in the State to which he may look? There is not an individual in this Convention who can expect to hold a seat in another Constitutional Convention, but still they are all big with the desire of office—some for one thing and some for another. I have not a word to say, sir, against any of our present State officers. No man has a more exalted opinion than I have of the Auditor and Treasurer; but I am free to say that there are very many men who will ask for these offices for the sake of the stealings—the salary being only a secondary consideration. The stealings will be the great object with some men; then the question with me is, how shall we come at them? How shall we bring them to a final judgment? These examinations by legislative committees are all a perfect farce; I say this from experience. For these officers always have friends enough around them to help them out of any difficulty in which they may be involved. It is only when their successor comes in, that we can bring them effectually to judgment. And it was by this means; of short terms and strict accountability, that the committee thought to secure the interests of the State, which might be committed to the hands of these officers.

Mr. FOSTER. The principal thing which I have in view in extending the term of these offices, is, to make their incumbents ineligible; and it has been intimated by gentlemen that these officers can come into these places here for the purpose of making them stepping-stones into other offices. It has been intimated, also, that unless they are restricted to short terms, they will, perhaps, make too free use of the public money. I have but one remark to make with reference to this matter. There are men possessed of adroitness enough to conceal their dishonest purposes and square up things at the end of their first term, so as to secure to themselves a second term. I believe it will be conceded by all that no individual from Marion

county can be re-elected to one of these offices; and the result is, that the Auditor and Treasurer have sometimes to come from some other part of the State, and whether they be farmers, lawyers, or physicians, they must leave their business, of course, and come here to reside. Now, sir, I hold that when a man is in Rome he should do as Rome does; he should conform to the usages of society in the place where he resides. Well, his salary for two years would scarcely furnish his house decently; for the man who aspires to one of these offices should at least stand on a par with his fellow-citizens in this respect. It is plain, then, that unless the term were extended, the salary would offer to a well qualified man no considerable inducement to accept of either of these offices. There was another consideration which would prevent men from seeking these offices. It is expected that they will be made elective by the people; and in this State it is customary for every candidate for office, from the Governor down, to stump it before the people; these candidates, therefore, will have to go all over the State; a thing which would be attended with no little expense, and which any prudent man would hesitate long before he would take it upon himself. Heretofore, all these candidates had to do, has been to furnish a little wine and an oyster supper or two—things much more comfortable and agreeable to most men than going all over the State as a candidate. As has been remarked by the gentleman over the way, I, also, am in favor of rotation in office. I believe it is the democratic doctrine. I know it has been customary heretofore, upon the principle of re-eligibility, for these officers to hold on from term to term; but because a man is in office it is no reason he should be continued in it. I have no idea of giving to any man such an advantage, especially if the individual belongs to the class of men referred to by the gentleman from Owen, (Mr. Dobson,) and his trust should be one of as high a responsibility as that of the Auditor or Treasurer of State. Therefore I would be in favor of making these offices ineligible. The gentleman from Owen rather intimated that all men were guilty of stealing somewhat. His intimation brought to my mind what I once heard of an old Scotch parson. The old parson had a deacon or clerk by the name of Jemmy McFarland; and on one occasion the old man said to his people, "Ye are all my sheep now, and Jemmy McFarland is my wee dog to help keep the sheep in order." This being an important announcement in the estimation of the old parson, and desiring to enforce the idea, he raised his voice and repeated the words: "Ye are all my sheep now, and Jemmy McFarland is my wee dog to help keep the sheep in order." Upon this Jemmy roused himself, and looking up into the face of the parson, he replied: "I am nae mair a dog than you are, sir." "Hoot, awa' mon?" said

the parson, "I am speaking but in the way of a parable."

MR. DOBSON. In the remark I made, I did not allude to any officer; I alluded to men in general. With reference to our present Auditor and Treasurer, I believe them to be honest and faithful. There is no temptation, indeed, for them to be otherwise. Nevertheless; I would have a provision in the Constitution requiring a settlement with these officers every year. The instance in my mind occurred in middle Tennessee, where the county treasurer held his office during good behaviour. The individual to whom I alluded had kept the office of county treasurer for twenty years. The people had no right to examine a man's papers; and he was continually speculating upon the public money. And when the proper functionaries would call upon him to examine into the condition of his office, he would be informed of the time, and go over to his brother-in-law and get fifty thousand dollars. And then, when the committee would come and find twenty thousand dollars in the office, and inquire for the balance, he would say, "Here it is, in this box;" and all would be right. After they were gone, he would send back the box to his brother-in-law. In this way this man became rich, and it was also true that the county sustained no injury. But I also have another case of a county treasurer, falling into the same temptation, and not only broke himself up, but ruined all his connections. Therefore, I say, the further we keep ourselves from temptation, the better it will be for us. And now, when the Legislature is to meet only once in two years this temptation will be doubled, and those who make office-seeking a business are, generally, the most dishonest men in the country. The finances of the State of Indiana, so far as the expenses of the civil administration are concerned, have been, perhaps, as well managed as those of any other State. As for the finances applied to public improvements, they have not been under the control of the State officers, and therefore all the blame for their mismanagement must fall elsewhere.

MR. MAGUIRE. It strikes me, sir, that amongst the greatest evils that can befall a free people, are long terms of office and ineligibility. I am in favor of short terms, with the right to a re-election for a reasonable length of time, if the people choose to continue the incumbent in office. The prospect of a re-election always operates as a stimulus to a public officer to discharge his duties with fidelity, and produces a salutary influence upon his conduct and deportment. I voted against the proposition to make the term of the Secretary of State four years instead of two. I could see no good reason why that officer should be elected for a longer term than the Auditor of State. The Auditor has no public money in his hands. He is only an accounting officer, and there can be no rea-



son given in favor of a four year's term for the Secretary which would not apply with equal or greater force to the Auditor. My own impression is that it is proper to limit the terms of the Secretary, Auditor, and Treasurer to two years, and permit them to be re-elected at least once or twice if the people continue to confide in their honesty and capacity. It has been remarked that the condition of the accounts of the Auditor and Treasurer cannot be fully ascertained until they go out of office. Why, sir, their offices have been thoroughly examined annually by a committee of ways and means of the Legislature, appointed expressly for that purpose; and a competent committee can readily ascertain and report whether the business is correctly transacted, and whether the books and money on hand correspond with the official reports required to be made by those officers. Rotation in office is a correct doctrine—a doctrine of which I have long been an advocate—but it seems to me that its application, as a general thing, is more appropriately made by the people than by the stern provisions of a Constitution. It seems to me, sir, that any proposition which operates as a restriction upon the power of the people, should be regarded with great caution, and adopted, if at all, after very deliberate consideration.

Mr. CHANDLER. It has been argued that, on the part of an office-holder, the idea of re-eligibility inclines him to honesty and industry. This is a new doctrine to me. I never heard of it before, and it may be correct. But I know it is a saying in the country, that if you want to make a man dishonest, give him an office. My opinion with reference to the subject under consideration, has been well expressed by others. I think short official terms should be established, whether we have re-eligibility or not. I insist only upon short terms. My notion as to the term of the Secretary of State was, that he ought not to serve for so long a term as that which the Convention has agreed upon. Short terms of office offer certainly a better security against losses by defalcations. They are but little more expensive to the people, and if, as has been urged, these offices, with a short term, should be found burdensome to their incumbents, all I have to say is, that these gentlemen must know before-hand the salaries attached to these places; and there is little danger that such a state of things will ever arise, as to compel their acceptance of them.

Mr. CLARK of Tippecanoe. I think that the proper term for the office of State Treasurer, for the reasons already stated, ought to be limited to two years. But I see no reason why the term of the Auditor should not be fixed for four years. For this officer, as was truly stated by the gentleman from Marion, (Mr. Maguire,) has no supervisions of the public money. I think it proper and requisite that all officers, whether of the State or the county, holding

public money in their hands, should be called frequently to an account by terminating their official tenure. If we cannot be allowed a division of the question upon this amendment, I shall vote against striking out; for I would not extend the office of Treasurer beyond two years for the sake of extending the term of the Auditor.

Mr. HOVEY proposed to amend the amendment by providing, "that the Auditor shall hold his place for the term of four years, and the Treasurer for the term of two years."

The PRESIDENT decided that this amendment was not in order.

Mr. PEPPER of Crawford moved that the Convention adjourn.

The motion was not agreed to.

Mr. KILGORE proposed to amend the amendment by adding the following:

"And also striking out the word 'six' where it occurs in the sixth line, and inserting the word 'eight.'"

This proposition was rejected; and the question again recurring upon the amendment of Mr. Carr—striking out "two" and inserting "four"—

Mr. PRATHER proposed to amend the amendment by adding the words, "and that all the officers of State shall serve four years."

The PRESIDENT said the Chair could not entertain the motion. That was precisely the proposition that was pending now.

On motion by Mr. RARIDEN, the Convention adjourned until to-morrow morning at nine o'clock.

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FRIDAY, Nov. 1st.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. Cooper.

The journal of Thursday was read and approved.

Mr. OWEN gave notice that on to-morrow he would move to amend the rules of the Convention, so that on Saturday of each week resolutions should have precedence over the orders of the day.

TERM OF OFFICE OF SECRETARY OF STATE.

The Convention resumed the consideration of the unfinished business of yesterday, being the consideration of article 1, providing for the election of Secretary of State, Auditor, and Treasurer.

The PRESIDENT stated that the pending question when the Convention adjourned yesterday, was on the motion of the gentleman from Franklin (Mr. Shoup) to amend the first section by striking out "two" and inserting "four."

Mr. PRATHER moved to amend by striking out the words, "Auditor and other," where they occur in the section.

Mr. PRATHER said his object was, if this amendment was adopted, to offer another section making the Auditor's term of office to consist of four years.

The amendment was subsequently withdrawn.

Mr. CHAPMAN. Is it in order to offer an amendment at this stage of the proceedings?

The PRESIDENT said that an amendment would be in order.

Mr. CHAPMAN then offered the following:

"Strike out all after the word, 'provided,' and insert the words, 'that no person shall be eligible to the office of Treasurer more than two years in any term of four years; nor for the office of Auditor more than four years, in any term of six years.'"

Mr. C. remarked that the effect of his amendment would be to confine the Treasurer of State to one term in office, and he believed he had effected that object by changing the phraseology of the proviso.

The amendment was disagreed to.

The yeas and nays were demanded upon the amendment offered by the gentleman from Jackson, (Mr. Carr,) which is as follows:

"Strike out the word, 'two,' in the first line, and insert the word, 'four.'"

Mr. OWEN. A single word, Mr. President, before the yeas and nays are taken upon this question. I have an amendment in my hand which I propose to offer at the proper time. I know that it is not now in order, but it might influence the votes of some gentlemen, if they knew that an amendment of this character was to be offered as soon as in order. It is as follows:

To strike out all after the word *law*, in the third line, and all in the fourth line up to the word *qualified*, inclusive, and insert:

"And who shall hold their office for four years, and until their successors be elected and qualified: *Provided*, That the person elected as Treasurer at the first election under the amended Constitution shall hold his office for two years only."

I will explain its effect. The question now pending is upon the amendment to the section, proposing to strike out the word "two," where it occurs, and insert the word "four." Should that amendment prevail, the Treasurer of State and the Auditor of State would be no check upon each other as to the correct discharge of the duties of their respective offices. They will each hold office for four years; they will hold the office simultaneously, coming in together and going out together. I hold it to be a good principle, if men are to hold offices as checks upon each other, that they should not hold those offices simultaneously. I would, if I may be allowed the use of a very familiar phrase, "break joints" in the building of this department of the State government. The first Treasurer elected under the new Constitution

would, in accordance with the terms of my amendment, be elected for two years, so that his term of office would expire two years before the expiration of the Auditor's term. Subsequent Treasurers would be elected for four years, and thus the two officers would never hold office for the same four years.

I have heard of a case in Ohio, the circumstances of which the gentleman from Monroe (Mr. Read) knows much better than I do, in which there was a collusion between the Auditor and the Treasurer, and a large amount of the public money was embezzled. In this case, these two offices were held in conjunction and simultaneously, and the officers were thus enabled to cover up and conceal their defalcations until the final exposure.

If, instead of adopting the principle of making the tenure of these State offices for four years, without an exception, we will elect the first Treasurer to be chosen under the new Constitution for two years only, we shall avoid the difficulties I have pointed out. But if you make this an office to be held two years, or four years, without a provision like those I have read, a most undesirable result will follow. The Auditor of State and the Treasurer of State will come into their respective offices together; will hold them simultaneously for the same length of time, and will go out of office on the same day.

I do not desire to discuss the question of the policy of making these officers ineligible for a second term at this time. There are arguments for and against it; but, without expressing any opinion upon that point, I remark again, that, if we declare that these officers shall not be eligible for a second term, and then say that the holding of these offices (of Auditor and Treasurer) shall be for the same period, the result will be as I have described it, and as bad as though the offices were held for four years.

But I simply rose to say, that, if the amendment now pending does not prevail, I shall then offer the amendment I have read.

Mr. EDMONSTON. I highly approve of all that the gentleman from Posey (Mr. Owen) has said in regard to preventing the State Treasurer and State Auditor from holding their offices simultaneously; but I think we can gain the object he has in view by adding his amendment to the one now pending, in the shape of a proviso. I think the object can be attained in this way, and without the necessity of a motion to strike out and insert.

The yeas and nays being demanded, were taken, and resulted—yeas 42, nays 92—as follows:

YEAS.—Messrs. Alexander, Berry, Bourne, Bowers, Bryant, Butler, Carr, Clark of Hamilton, Cookerly, Crawford, Dunn of Jefferson, Dunn of Perry, Edmonston, Farrow, Foster, Gibson, Gregg, Hall, Harbolt, Helmer, Hitt, Hogen, Howe, Logan, Miller of Clinton, Miller of

Gibson, Milroy, Mooney, Morgan, Morrison of Marion, Morrison of Washington, Nave, Nofsinger, Pettit, Ristine, Robinson, Schoonover, Shoup, Steele, Terry, Watts, and Mr. President—42.

NAYS.—Messrs. Anthony, Badger, Balingall, Barbour, Bascom, Beach, Beard, Beeson, Bicknell, Biddle, Blythe, Borden, Carter, Chandler, Chapman, Chenoweth, Clark of Tippecanoe, Cole, Colfax, Crumbacker, Davis of Parke, Dick, Dobson, Duzan, Fisher, Foley, Frisbie, Garvin, Gootee, Gordon, Graham of Miami, Graham of Warrick, Haddon, Holliday, Hamilton, Hardin, Hawkins, Hendricks, Holman, Hovey, Huff, Johnson, Jones, Kent, Kendall of Wabash, Kendall of Warren, Kilgore, Kinley, Lockhart, Maguire, March, Mather, Mathis, May, McClelland, McFarland, McLean, Miller of Fulton, Moore, Mower, Murray, Newman, Niles, Owen, Pepper of Crawford, Prather, Rariden, Read of Clark, Read of Monroe, Shannon, Sherrod, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Tague, Tanehill, Thomas, Thornton, Todd, Trimbley, Vanbenthusen, Walpole, Wheeler, Wiley, Wolfe, Work, Wunderlich, Yocum, and Zenger—92.

So the amendment was lost.

Mr. DUNN of Jefferson offered an amendment, which was, in substance, to strike out from the section under consideration all between the word "law" and the word "provided," and insert:

"The Auditor for four years, and the Treasurer for two years."

Mr. MORRISON of Marion. The amendment just offered by the gentleman from Jefferson meets my views precisely. I am one of those who are willing that all officers should be held to the strictest responsibility; but, at the same time, I do not desire to impose an unreasonable amount of responsibility. If the Treasurer of State, who has the keeping of vast sums of the public money, is not kept in abundant check by his bond, by his reports, and by examinations into the affairs of his office by committees, I am willing that he should be "closed up" at the end of two years. But no such reason exists in the case of the Auditor of State. All the reasons which I adduced on yesterday in favor of my proposition to make the term of the office of Secretary of State longer, apply with stronger force to the office of State Auditor. He is to Indiana what the Secretary of the Treasury is to the United States—he is a cabinet officer, and chief of the exchequer. A higher order of qualifications are demanded for this than any other of the State offices. He must understand the amount and condition of all the resources of the State; and the apportionment of taxes. He must be fully acquainted with all the fiscal interests of the State in every particular. He should be thor-

oughly acquainted with political economy—should be thoroughly conversant with everything connected with revenue—all the statutes of the State having regard to the various funds of the State. There are various funds; the College Fund, the Wabash and Erie Canal Fund, the Surplus Revenue Fund, the Saline Fund, and others. In view of these varied and important qualifications, no man, I care not how good his general capacities may be, can step into the office of the Auditor, and, by intuition, understand all its duties. He must, to some extent, be educated to it. It is an office requiring of its incumbent great labor; and it is of the greatest consequence to the people that its duties be well and intelligently performed. Let this Convention well consider the subject before they decide to restrict the tenure of this office to two years. If there is one subject upon which the people are peculiarly sensitive, it is upon taxation; and yet the Auditor controls this matter, and virtually orders the amount to be levied, and the manner of its collection. It is as customary as it is proper for the committee of ways and means to call upon the Auditor for his estimates and opinions, and his recommendations are generally the basis, if not the substance, of their reports.

In addition to all this, I will remark that we are going to have a curious state of affairs with regard to the election of all these officers. It is understood that all these State officers are to be elected by the people. Now, if you make these elections so frequent, you certainly multiply the chances for electing bad and incompetent officers. What will the people of Jefferson county know about the character and qualifications of a candidate living in Laporte, or some other remote county! Unless he goes to the great expense of time and money to travel over all the State, the people will not know whether to vote for him or not. The result will be this: The annual conventions of both the political parties held at the capital of the State will pick out and nominate one man for Secretary of State, another for Auditor of State, &c., &c.; and these political conventions, sitting at the seat of government, will virtually appoint these State officers. The democracy of this change from Legislative elections to elections by the people at large, will, in this way, be lost in the name of the thing.

For these reasons, I shall vote to make the term of the Auditor's office four years.

Mr. WATTS said, there was another objection to short terms, over and above those which had been already urged, which would influence his vote. These offices were to be filled by a direct vote of the people, and, if the term of service were made so short as was now proposed, it would effectually preclude every poor man, however competent, from competing with his more wealthy neighbor, in canvassing the State. It was an expensive operation to canvass the

whole State, and no poor man, whatever his abilities might be, would risk, for so short a term of office, the expense that would inevitably be entailed upon him. That was one great objection with him. It would, in point of fact, result in nothing more than an election by a caucus, as had been suggested by his friend from Marion. A convention here would select the officers and offer them to the people for their votes; and the people would, in that way, be virtually disfranchised—would be prevented from exercising their democracy on this subject.

Mr. STEELE said, he could find no good reason why there should be any distinction in the time which the State officers might be called upon to serve. He knew of no good reason why the Secretary of State should serve four years, and the Auditor or Treasurer only two years. He had, on the previous day, voted for the continuance in office of the Secretary of State, for four years, and he could not for a moment think that any gentleman, whom the people might elect as Treasurer of the State of Indiana, in whose hands would be placed the whole control of the funds of the State, would prove a defaulter, or abuse the trust which the people thus reposed in him. On this point he differed with the gentleman from Owen, who, perhaps, had been unfortunate in his associations, and who seemed to have a dread of evil-minded men. But there were others who had not that dread; who had had honest associations, and who were, therefore, disposed to place more confidence in the general honesty of mankind. He could see no good reason, then, why the people should not elect a Treasurer for four years, as well as a Secretary of State, or any other officer. This officer was not only to be elected by the people, but he was to be bound in sureties for the faithful discharge of his trust; and they might depend upon it that some responsible man would always be recommended to the different counties, and that they would have ample security for all their funds. He begged to say that there was an objection to this section, which he regarded as of much greater weight than the mere tenure of office. He had voted on yesterday—and he regretted that vote very much—to render any man ineligible to serve a second term in succession, who had served four years. On reconsidering that vote, he had come to the conclusion—and it certainly was an honest conclusion with him—that, under our republican government, no individual ought to be rendered ineligible for any office for one moment. He begged to be allowed to make reference to the liberality of the law organizing this Convention, as an illustration of the position which he took. What did this law say? Why, that every individual in the State of Indiana, no matter what office he might hold, should be eligible to a seat on the floor of that Convention. And were they now, as members of the Convention—being a selection of the talent of the State—were

they now going to say that, when a man had served in office for the term of two or four years, he should thereupon be made ineligible to serve again? He could not for a moment think that any such illiberal spirit would prevail in that body. With the gentleman from Tippecanoe, he was clearly of opinion that such a restriction would tend to destroy the energy, the usefulness, and, perhaps too, the honesty of the man who might be called to serve in offices of State. He regarded it as decidedly anti-republican and oppressive in its character. He had no doubt that any difference of opinion which might exist amongst the members of that Convention was perfectly honest; but he must candidly tell them that he would rather to-day, that they should lay their hands upon his suffrage and deprive him of it, than to say that, after a man had served his country faithfully and honestly, and with ability, for four years in any office, he should, therefore, be rendered ineligible to serve his country for four years more. They should remember that they were framing a new Constitution, which was to be the organic law of the State, and that if this restriction was introduced, they could not repeal it next year, but that it must inevitably remain for many years to come; and, if they were at this time of day, to say to their fellow-citizens, who, like themselves, by the great Creator of nature, had been made free, that they should not be allowed to offer themselves as candidates for any office in their own gift—if they were not only thus to abridge the rights of individuals, but also to put a restriction upon the choice of the people, he should, from that moment, whether his time in this world might be long or short, ever regret that a vote had been cast in the ballot box, for the calling together of that body. He would rather be deprived of the right of suffrage at once, than of the right of offering his services for any office—not because he wanted office, but because this provision would operate as a two-fold restriction—a restriction upon the man who had faithfully and advantageously served his State, and also a restriction upon the choice of the people who would thereby be prohibited from exercising their free choice. [Applause].

With one more remark he would close, for he thought that fifteen minute speeches were long enough at any time. They had been told on yesterday by some gentleman, he did not remember who, that they were working for the benefit of the office seekers, and not for the people. In one sense that might be true, although so far as he was concerned he was decidedly for the people. The only way in which he could conceive that they were working for the office seekers was by attempting to put in this "ineligibility" restriction. So far as that was concerned they were decidedly working for the office seekers sending officers round to be filled in rotation without regard either to the qualifications of the candidate or the choice of

the people. The only object seemed to be to prevent a man who had well done his duty from ever doing it again, and to prevent the people from having him again as their servant. [Applause.] How absurd was the notion! Where was the man who had a good farm horse that would work well in his team, and plough his corn, and answer all his purposes steadily and faithfully, and without any tricks—where was the man having such a horse who would be ready to exchange him for one of which he knew nothing, which might work in his team or break his waggon, which might plough his corn or trample it down, which might carry him safely to see a friend or to find the doctor, or which might as probably break his neck? [Shouts of "good! good!" and great applause.] Where was the man that would make such an exchange? And, although he did not mean to say that men were no better than horses, he would say, and he would say it in the presence of that Convention, that with our free institutions no man could continue in office longer than for one term unless he were a meritorious officer. And were they willing to destroy the merits of the man in supporting such a provision as this, and to fasten him down so that the people could not reach him! God forbid that the Convention should attempt to muzzle the country in this manner. [Continued applause.] He supposed, nay he believed, he was in a minority upon this question. Be it so; he only regretted it the more. He would, however, say this much, that while life remained, if no other voice than his were lifted up in this matter, he would endeavor to show, and to have it engraven on the minds of the people as on a rock of adamant, that there was one man in this body who was unwilling that the people should be restricted in the choice of their servants. [Applause.]

He ought perhaps to apologise to the Convention for having trespassed upon their attention in alluding to a clause of the article other than that which was immediately under consideration, but it was part of the same article and was intimately connected with the subject now under discussion, and he hoped that the considerations he had thrown out would meet with the attention of the reflecting portion of that body.

Mr. HAMILTON, who spoke in so low a voice as scarcely to be audible to the reporter, was understood to say that he did not rise for the purpose of making a speech, having no idea that by any thing he could say on this subject he would be able to change the views of the Convention; but he wished to set himself right before his constituents on the question. He was of the opinion that it was of vastly more importance that the Auditor should be continued for a longer term in office than the Treasurer, inasmuch as the duties of the one differed widely from those of the other, and a thorough

knowledge of them were much more difficult of acquisition.

Inasmuch then, as the Auditor of Public Accounts was the proper accounting officer of the State, and inasmuch, also, as it would take a length of time for him to become thoroughly acquainted with the varied duties appertaining to the financial affairs of the State, it appeared to him that the term of his office should be extended to the period of four years. He should, therefore, vote for having the Auditor's term of office fixed at four years, instead of two years, and he hoped that the propriety of that course would fix itself upon the minds of the members of the Convention.

Mr. OWEN wished to say one word by way of explanation. When the amendment of the gentleman from Jefferson was first offered, he was inclined to vote for it, because it seemed to answer nearly the same purpose as that which he had a short time ago intimated he would offer to the consideration of the Convention. On a further consideration of the amendment, however, he found he could not give it his support. If this amendment were adopted the practical working of it would be that the Auditor and Treasurer would be elected, on the first election, at the same time—the Auditor for four years, and the Treasurer for two years—but the Treasurer being re-eligible for another term, and being at the Seat of Government, he would have a good opportunity of electioneering, and of having his name brought up as a candidate; and probably in nine cases out of ten he would be elected two additional years, and in that way would serve the same four years as the Auditor. There would not, therefore, be that check to prevent collusion which he proposed to effect by the amendment which he intended to offer. He preferred his own amendment, therefore, because while it would fix both offices at a term of four years, the same persons would not fill these offices simultaneously, and we should, by that means, have the full benefit of the check which the office of Auditor was designed to give.

Mr. DUNN of Jefferson. In reply to a suggestion from the gentleman from Posey (Mr. Owen) that my amendment might be acceptable to him if it contained certain restrictions upon the eligibility of the Auditor and Treasurer, I beg leave to say that I drew the amendment as it is, so that we might have a direct vote upon the question of the length of the terms of service of these officers, unconnected with the question of their re-eligibility. When we have settled the former question we can proceed to the consideration of the latter, and our votes upon the question of re-eligibility will, no doubt, depend in some degree upon the disposition that is made of this amendment. The discussions on this section indicate that those who are in favor of a two years' term are particularly anxious that the Treasurer of State

should hold his office for a short term. As there are reasons why the Treasurer should hold his office for only a short period, that do not exist as to the Auditor, I thought I might, perhaps, meet the views of both parties by the terms proposed in my amendment. The reasons urged by the gentleman from Marion, (Mr. Morrison,) and the gentleman from Allen, (Mr. Hamilton,) in favor of extending the Auditor's term of office to four years, appear to me to be such as ought to impress the mind of every member of the Convention. The duties of the Auditor are, in my opinion, more important than those of any other executive officer connected with the State Government. He has the guardianship of all the financial affairs of the State, and there is, perhaps, no State in the Union whose financial affairs are in so complicated a condition as ours. In addition to our ordinary revenue and disbursements, we have a number of trust funds, all of which require much attention, and certainly experience would be of great advantage in the administration of these important interests. We have large amounts loaned upon mortgages which are successively expiring and have to be renewed, or new loans made, and new mortgages taken. Upon the Auditor's judgment and fidelity will depend, to a considerable extent, the security of these funds, and his deficiency in either may involve the State in heavy losses. If his term is but two years, by the time he has become thoroughly conversant with all the financial affairs of the State his term of service expires, and the benefit of his experience is lost. But it is said he may be re-elected. True, he may, but that by no means follows as a matter of course, and if it does, I can then see no particular necessity for going through the form of an election. But, sir, my observation does not satisfy me that the faithful performance of official duty always secures a continuance in office. Very often party, in its blindness, disregards all the claims of merit and qualifications, and recklessly puts at hazard the highest interests of the State. As I said before, the same reasons do not exist in favor of giving to the Treasurer an official term of four years. He is charged with the safe-keeping of the public money. It is therefore of the first importance that he should be honest. But as he is not authorized to pay out any money except upon the warrant of the Auditor, he has but very little discretion to exercise. He is a mere disbursing agent. It does not require the same amount of information and familiarity with the finances of the State to enable a man properly to discharge the duties of a Treasurer as of an Auditor. If he is honest and a good accountant he may make a good Treasurer, but he may be both and yet make a very poor Auditor. If this section is adopted without amendment, I suppose we can find competent men—residents of this place—willing to fill them. But, I would ask, what competent man

from abroad would be willing to break up all his business connections and remove to this city for the honors and emoluments of either of these offices, for the term of two years, and the chance of a re-election to a second term? Will not the effect of shortening the term of service be either to fill all these offices with residents of this place, or with incompetent men from other parts of the State? We ought to endeavor to place all the citizens of the State on an equality in these matters, and also do all in our power to elevate the standard of official character so as to call to the aid of our embarrassed finances not only integrity, but the best abilities of the State.

Mr. MILLER of Fulton. I am disposed to vote against this amendment. Some days since a resolution of positive instruction, was introduced into this House, making it the duty of the appropriate committee to report a clause for the new Constitution, in favor of biennial sessions of the Legislature. It is also in contemplation to put a stop to local legislation as far as possible; to all this I say consent. It is also in contemplation to make further reform in the legislative department, by limiting the House of Representatives to seventy or eighty, and the Senate to some thirty or thirty-four.

In view of all this, sir, although I am not so certain how far I shall favor this last proposition, in my opinion, we shall have a pretty thorough reform in the legislative department. But how does it happen, I say, in view of all this, it is proposed to extend the present term of office; thus putting a greater distance between the people and their servants, while we will, by biennial sessions, lessen the power of the people to correct the abuses of State officers; you propose to place these officers at a still greater distance from the people than under the present system. This I believe to be bad policy. To abridge the powers of the people still more, a proposition is under consideration, and the report of the committee now under consideration, provides that no person shall be eligible to the office of Treasurer or Auditor more than four years in any term of six years. It is proposed to carry this principle to every office in the State. Well, sir, it appears to me a monstrous doctrine to incorporate in the Constitution, that the people shall not have the right to vote and confer office on any elector they may choose to elect. Now my doctrine is this: short terms of office, so that the office holder will be compelled to make short settlements with the people, and when he will not be far off, if the people wish to remove him. Nothing will tend, in my opinion, better to ensure the faithful performance of the duties of office, and especially would it be so, when the convening of the Legislature is less frequent; and now if we should adopt this doctrine of short tenure of office, and I hope we will, then certainly the incumbent should be re-eligible as often as the people

should elect to put him in nomination. Therefore I hope those members favoring these principles will assist in voting down every amendment, until we can have a vote direct on the motion to strike out "two" and insert "four;" after that we can dispose of the proviso. Perhaps it may be expedient to elect Auditors for four years, and to provide that no person shall be eligible to the office of Treasurer of State more than four years in any term of six years. I know it is argued that the Auditor's office is a very important one, and the Treasurer's a very tempting one; all true, sir, but the same can be said of many of the other offices. Therefore I think it is best to observe the same rule throughout.

Mr. FARROW observed, that he did not wish to do anything by his vote or action, in that Convention, that might be detrimental to the general interest of the State; but they must be satisfied that there were considerations in regard to this question which were far above the mere consideration of the length of time that an office should be held. They had already been informed that the duties to be performed by the officer holding the office now under consideration, were high and responsible; and if the period for which the office was to be held, was to be so shortened, as to prevent him from having an opportunity to make himself fully acquainted with its duties, they would be creating an office that would be comparatively useless. He was not particular about the re-eligibility of officers of any grade whatever, but it seemed to him, that the offices which they were now about to create under the new Constitution, should be equal in point of length of time for which they were to be held. The Secretary of State, the State Treasurer, and the Auditor, should be considered in no other light, by the Convention, than as a cabinet for the executive; and he was perfectly willing that the executive should have the benefit and use of his cabinet for the entire period for which he might be elected. He could not, like some other gentlemen, see any great danger to the interests of the State, by continuing men of this grade in office for four years. His own impression was, that if there were honest men in the State who could be secured to fill these offices, all the business confided to their care would be equally as secure during the term of four years as that of two years, because if a man went into office with a disposition to be dishonest, he could as easily accomplish his dishonest design, during a short term as he could during a long one. He thought upon the whole, it would be well to consider this matter very carefully, so as to ascertain whether the duties of the office of Auditor could be fairly understood and discharged, to the satisfaction of the people, by any man, in the short space of two years.

Mr. BASCOM did not wish to detain the Convention with any lengthened remarks, but

he desired to set himself right upon this question. He was most decidedly in favor of short tenures of office, and he could not conceive where was the great necessity that the persons elected to fill the office of Auditor, should occupy it for four years. He believed in a speedy and strict accountability to the people. When he came to that Convention with a view of reforming the Constitution, his wish was to give all power to the people as directly as was possible, and to let them decide as frequently as was requisite, on all matters in which their interests were affected.

From the arguments of some gentlemen, it would appear that the Auditor could not possibly learn to discharge the duties of his office in the short period of two years, and therefore it is concluded that he must be a man of high standing, that you must give him a full salary, and throw a robe of dignity over him, and make him a great man, and that, therefore, there would be no use in a poor man canvassing the State for such an office. Oh no! a poor man would not do, but you must have a man who can talk, and who is a good looking man, and who perhaps is as well qualified to fulfil the duties of the office as a hog. [Laughter.] He may be a very good looking man, and may make flowery speeches, but that will certainly not qualify him to discharge the important duties of an office of this character. The people want business men, not talkers—men who understand the business of the State, and if they found that they had elected a man who could not transact it in a manner both creditable to the State and to himself, then, they wanted an opportunity to send him forth at the earliest opportunity.

Again, if a man discharges the duties of the office to which he is elected, with satisfaction to the people, then I think the people ought not to be deprived of the privilege of re-electing him, and not as the amendment of the gentleman from Jefferson would have it; that the people should be deprived of his services. If they turned out a good and valuable public servant, it was their own lookout, their own loss. But he was far from being of opinion that the capability of rendering valuable services, was confined to a few individuals. There were thousands and thousands of people capable of discharging the duties of Auditor of the State. It had been urged that lawyers and other men of business, capable of undertaking this office, would not neglect their regular business to take this office for a short term. He thought there must be a great change in the people of Indiana, if it ever so happened that scores of candidates could not be found for any office, even if the term of it were only for one year. The ambition for performing public service was remarkably manifest, and showed itself even in the desire to fill offices which render no profit. There was hardly a vacancy in the office of coroner of a county, but a score of candidates could be found to fill

it. He knew that it went very much against the grain of office-holders to see the term of office reduced. He knew from experience that these were the men who were desirous of having long terms of office, but the people in his part of the State were decidedly opposed to it. They wanted a change, and he thought there were facts and arguments both, to show that a change was much required, especially in the period of the Auditor's and Treasurer's office. They might elect an Auditor or a Treasurer for three or four years, and when the time came round for a settlement of accounts, they could make perhaps a very fair and flattering statement for the time being, by which they could hocus pocus the people, but when the time ultimately came to weigh them in the balance, they would be found wanting. Then the corruption and the fraud would be made to appear. On the other hand, with short terms, and strict accountability, the state of affairs could be more frequently, and more stringently, examined, and then the people could choose the men they wanted. He was fully impressed that the people desired short terms of office. They desired this not only in regard to State offices, but it was a feeling extending itself in regard to all offices—even the lowest of a county or a township; and in these high offices there were more opportunities for fraud than in any others; and even this office required to be as strictly watched as any other office in the State. He hoped, therefore, that this amendment would not prevail. He would move to lay it upon the table.

Mr. STEELE observed, that he did not care a great deal how short gentlemen made the tenure of the office. They might make it for two or for four years, although, for his own part, he would prefer to have it fixed at four. He did not wish to charge any impurity of motive to any member or members of the Convention, but he could not but think that it was possible that gentlemen might be influenced more than they were aware of by political considerations. He, however, would go with gentlemen to make the term two years, provided that there should be no restriction as to eligibility for two subsequent terms.

Speaking of moral honesty and corruption, he would simply observe that he (Mr. Steele) had been elected three times to an office, the term of which continued seven years [applause]; and he had never suffered himself to be seduced nor did he ever intend to be. He declared solemnly, on that floor, that were they to give him all the funds of the State of Indiana at his disposal, he could report them to their biennial Legislature as he received them, and perform his duties faithfully and impartially. If, then, he could perform these duties faithfully and impartially—not that he sought at all to perform them—and after having thus performed them, secure the good feelings and the approbation of his fellow citizens—after thus paying every-

thing in full, and settling with the Indiana Legislature to their entire satisfaction, in the name of God why could he not come before the people next year for their suffrages? [Applause.]

Mr. LOCKHART moved to amend the amendment by striking out all after the word "law," in the third line, and insert the amendment as proposed by the gentleman from Jefferson.

Mr. THORNTON said, that as the discussion on this subject had been continued so long, and perhaps the Convention having its mind sufficiently made up, he would move to re-commit the article to the committee from which it was reported, with instructions that they should re-consider the subject, and report an article to this effect:

"That the Treasurer of State shall serve for one year, and the Secretary for two years, and the Auditor for four years; and to be re-eligible for a second term and no longer."

He took that ground upon this principle, that men that held public money should be called frequently to account. He did not believe that the Treasurer ought to continue in office for a longer period than one year. He believed, however, with some of his friends who had expressed an opinion upon the subject, that the Auditor of the State ought to continue in his office for a longer term than the others, on account of the arduous nature of his duties and the difficulty of becoming sufficiently acquainted with them. He was perfectly satisfied that the Treasurer should hold his office for a short term. Something had been said about the difficulty of calling officers to an account if the term were fixed for a year only, on account of there being a probability that the Convention would so order it that the Legislature should hold only biennial sessions. In that case it would perhaps be necessary to have some tribunal by which we could call officers to account, so as to avoid the difficulty.

He had voted, on the previous day, when the question was under consideration in regard to the term of office of the Secretary of State, for striking out the word "four" and inserting "two," and it may be said by some gentlemen that those who voted for "two" in the present case, are anxious to avoid the consequence of their having voted for "four" on yesterday. From what indications I now see, I think there are many gentlemen who voted for "four" on yesterday, who will vote for "two" in regard to this question.

Mr. HARDIN moved to lay both the amendments on the table.

• Mr. THORNTON suggested that his motion—the motion to re-commit—was a privileged motion, and had precedence of all others.

The CHAIR decided otherwise.

The question was then taken on the motion to lay the amendments on the table, and

It was decided in the negative.

Mr. READ of Monroe said, that he had been examining the amended Constitutions of the different States, and in almost all of them he found that it was provided that the Treasurer should be elected for only a single year, and the Comptroller of public accounts for but one or two years. It was so in the amended Constitution of Connecticut; and in the State of New York, the financial department of which was much larger than it was likely that of the State of Indiana would ever be, they had adopted this provision :

"That the Secretary of State, the Comptroller, the Treasurer, and the Attorney General shall be chosen at the general election, and shall hold their offices for two years." In the State of Illinois they have adopted the same principle—that of short terms—and also in the States of Wisconsin and Iowa. In the Southern States they have adopted the principle of longer terms. He believed, in reference to the office of Auditor, that it often happened that a man was as competent to perform its duties on his first entrance upon it as he was at any future time; and if he was not, and was a moderately intelligent man, this would stimulate him to more zeal in acquiring a knowledge of his duties. If he was a man of intellect he would look around and see what were the financial systems of other States, and adopt what he found good and reject that which was not good. He might perhaps be allowed to cite an example. There was a gentleman who was now a citizen of this State, who, in the early part of his life, had held the office of State Auditor in Ohio during the most difficult periods of the financial concerns of that State; and it was universally acknowledged that his first report was worth all the reports of all the Auditors of the State for twenty years preceding him.

A MEMBER. That's a fact.

Mr. READ. These great States then had not experienced any difficulty from the frequency of electing officers of this description. The only real cause of complaint had been of deficiencies at the seat of government, and the only way to remedy this was to create short terms of office. He had nothing further to say than that he hoped the Convention would adopt the report of the committee as it came from their hands.

The question was now taken on the motion to recommit the report, and it was decided in the negative.

The question then recurred on the amendment to the amendment offered by the gentleman from Jefferson,

Mr. BASCOM moved to lay the amendment and the amendment to the amendment on the table.

The motion was agreed to.

Mr. BORDEN moved to amend the resolution so as to provide that the Treasurer should

not be re-eligible, but that the Auditor should be re-eligible.

A MEMBER, whose name we could not ascertain, moved to lay the amendment on the table.

The motion was not agreed to.

Mr. HOVEY moved to amend by striking out all after the word "provided."

Mr. KENT moved to lay that amendment on the table.

Which was decided in the affirmative.

Mr. BORDEN had only one remark to make in relation to his amendment, and it was that a distinction would be made between the Auditor and the Treasurer—the latter going out at the end of two years—a settlement would be inevitable at that time. He would make that alteration on the ground, that in proportion to the duties to be performed, the office of Treasurer was more lucrative than that of any other, and there were always men who would be ready to take it, even with that limitation. It would then stand thus : the Secretary of State would be elected for four years, and would not be re-eligible; the Auditor would serve for two years, and would be re-eligible for two years more, and the Treasurer would serve for two years and would not be re-eligible.

The yeas and nays being demanded and ordered on this amendment, they were taken with the following result:

AYES.—Messrs. Alexander, Anthony, Badger, Balingall, Bascom, Borden, Bowers, Butler, Chapman, Clark of Hamilton, Colfax, Cookerly, Crawford, Crumbacker, Dick, Dobson, Dunn of Perry, &c., Edmonston, Foley, Gordon, Graham of Miami, Graham of Warrick, Gregg, Hall, Holliday, Hamilton, Hawkins, Hendricks, Huff, Johnson, Kent, Kendall of Wabash, Kendall of Warren, Kilgore, March, Mather, McClelland, McFarland, Mowrer, Murray, Newman, Owen, Ristine, Sherrod, Smiley, Spann, Tague, Watts, Wiley, Work, and Wonderlich—51.

NOES.—Messrs. Barbour, Beach, Beard, Beeson, Berry, Bicknell, Biddle, Blythe, Bourne, Bryant, Carr, Carter, Chandler, Chenoweth, Clark of Tippecanoe, Cole, Davis of Madison, Davis of Parke, Dunn of Jefferson, Duzan, Farrow, Fisher, Foster, Frisbie, Garvin, Gibson, Haddon, Harbott, Hardin, Helmer, Hitt, Hogin, Holman, Hovey, Howe, Jones, Kinley, Lockhart, Logan, Maguire, Mathis, May, McLean, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Moore, Morgan, Morrison of Washington, Nave, Nofsinger, Pepper of Crawford, Pettit, Prather, Rariden, Read of Clark, Read of Monroe, Robinson, Schoonover, Shannon, Shoup, Sims, Snook, Smith of Ripley, Smith of Scott, Steele, Tannehill, Terry, Thomas, Thornton, Todd, Trimby, Vanbenthussen, Walpole, Wheeler, Wolfe, Yocum, and Zenor—79.

So the amendment was not agreed to.

Mr. RARIDEN. To test the sense of the Convention, I move to strike out from the sec-

tion under consideration, all after the word "provided."

The PRESIDENT. Will the gentleman from Wayne send up his amendment in writing?

Mr. RARIDEN. I have no amendment to offer, I merely move to strike out. I am aware, sir, that there are objections both ways in regard to this matter, and that good reasons can be assigned for restricting the term of office to two years, and, on the other hand, for extending it to four years. I have endeavored to look carefully over the subject, and to form the best judgment I could. I desire to see frequent elections—I want to see the people frequently called upon to review the actions of their servants, and yet I feel desirous that they should be untrammelled by party bonds, and I also have fears that if the elections are too frequent, party Conventions at the capital will appoint our State officers. But, sir, I am not prepared to assume the ground that the mere possession of office necessarily corrupts a man; nor do I believe that offices should be made the reward of political or party services. Now the disposition to impose the restrictions attempted to be placed in this section grows out of one of these two considerations; either the fear that office will corrupt the officer, or else, as old General Smyth used to say, in olden times, or else because it will double the chances of obtaining office.

Mr. PETTIT (in his seat). That is the case.

Mr. RARIDEN. My friend from Tippecanoe says that is the case, and I doubt not that he speaks *ex cathedra*. Now, sir, I am not willing to cultivate a thirst for office. In my humble opinion, the worst symptom you can see among the young men of a county, is an avidity to get office, a desire to live at the public expense. It is an unmanly trait. The result of leaning too much on the strong arm of the State, is to unfit a man for the stern duties of life, to unnerve him for the slow, and quiet, and toilsome steps by which men reach wealth and social distinction. Above all things, I dislike to see this disposition in community to abandon the ordinary pursuits of life, for the chase, the ignoble chase after office and salaries; to see men leaving their farms, their workshops, and their professions, to seek for places in an overcrowded public service. I should be induced to oppose frequent elections upon that ground, alone.

There is one thing mentioned by the gentleman from Marion (Mr. Morrison) in which I heartily concur with him. If the elections are held as frequently as proposed, the State officers will mostly be appointed by the annual conventions of that party which happens to be in power, and the people will not be generally acquainted with their candidates. But if the term of office is for four years. It will induce the candidate to travel into every county in the State, and make himself well acquainted with

the masses of the people. But it is not a general rule that the best man for an electioneering campaign makes the best officer. It is not true that the greatest stump speaker, and the most popular canvasser would make the most competent Auditor of State. I am willing enough to see candidates for Congress, and for State offices go around among the people and discuss the questions of the day. It increases their urbanity and improves their manners, sir. [A laugh.] But above all it impresses them with the presence and power of the people. But if you fix the term of these offices for two years, the candidates will not make the tour of the State, they will not go before the people, but party will settle down into a complicated, but regular machinery, which will control the selection and election of State officers. Party, for the sake of strengthening itself, and gratify its leading men, will make rotation in office one of its principles.

Mr. President, there is another benefit to result from the frequency of these elections, although I don't know but that it is malicious in me to contemplate it with so much pleasure; the frequency of elections will produce jealousies and discord among those politicians who consider that their services to their party have entitled them to office. Say what you will, and as much as you will, about patriotism and all that, when a man considers that his services have entitled him to office, he will not, when another is appointed in his place, rejoice that the State has found better men to fill the office, but he will be very apt to lead off his friends and make a little party of his own. The result will be the frequent re-construction and consequent purification of party. When a man or set of men come to the conclusion that they are not well treated, and considered by the dominant clique of their party, that their services are not so well rewarded as they should be, they will join together in a war upon that dominant clique which has controlled their Conventions, and if the "bolters" be strong enough, and wise enough, they will soon become the controlling power in the party, and from the necessity of carrying out the reforms they promised in the event of their obtaining power, parties will be purified at the same time they are re-organized. Party abuses always result thus, or in what gamblers would call "a cut and shuffle." But for my own part, when a man gets into office, and fulfils its duties well and honestly, (and sir, the punctual fulfilment of his duties is the only way he can sustain himself,) I am not in favor of ostracizing him because he has once been in office, or because he is too popular. These are the thoughts sir, which have suggested themselves to me in this connection. I am not disposed to disfranchise a man because he has been in office two, four, or six years.

A word upon another thing which occurs to my mind. However much we may talk about

democracy and whiggery, the truth is, that in every dominant party there are a few men in whom whigs and democrats respectively have confidence, men upon whom the party rely; and, sir, these men are, for the time being, as absolute in their power as the Autocrat of Russia. They are the distributors of office, the almoners of power, and the oracles of creed and principle. I have been long enough in public life to know that. When Martin Van Buren was President, I know that he was as absolute in his power as the monarch on his throne. When he declared that a principle or a policy was democratic, it was so; his party had such implicit confidence in him, and his influence was so potent, that no one dared express dissent from what he had said. So with General Jackson. And, sir, I am frank to say, that if Henry Clay had been elected President it would have been the same in the Whig party. There never was a man in any party in whom so much confidence was reposed, or in whose hands power would have been more absolute. And so it will be, though in a lesser degree, in the State. Through the power and discipline of party, it will go out from this City who is to be your next Auditor, what man the dominant party are to support for Secretary, and who for Treasurer; and show me the man, whig or democrat, who will stand up and refuse to vote for the nominee of his party. The people throughout the State are not prepared to judge of the qualifications of the candidates, but they say they have confidence in the head men of their respective parties, at Indianapolis, and they are confident they would not present an unworthy candidate for their support. Make your elections so that the State officers are to be elected every two years, and you will see that some men, not generally among the people and in remote parts of the State, but politicians near the Seat of Government, will break out of the party traces, and if they do not succeed in constituting themselves the centre and governing influence in their party, they will be sure to effect a reform among the "Regency," to use a New York phrase which all my Democratic friends understand.

I do not believe that it is best to make your officers ineligible for a re-election. I do not believe in all that is said about the corruption of every man who has held office. I do not believe in the corrupting influence of money upon the public mind. I do not regard nor respect the charge that it is easy to corrupt the people with dinners and festivals. It is a libel upon the virtue of the people. I have not yet lost confidence in my fellow men so as to believe them so easily corrupted. It is not so easy a thing for a man holding office to secure his re-election as has been represented. The effect of rendering your officers ineligible for a second term, will be to encourage the pursuit of office; and the pursuit of office for the sake of the sal-

ary or the honor, is, in my opinion, most disreputable. I consider the farmer behind his plough in a nobler position than your State Treasurer behind his desk.

Mr. WOLFE. It appears to me that we have been tied up here long enough, and I shall not detain the Convention with any remarks at length.

I observed that we had been "tied up" here about long enough. It is not a common thing with nautical men, in a seafaring life, to "tie up" in fair weather. The present time, in my opinion, is too propitious for action upon the subjects before us to be wasted in fruitless debates. I think we had better take this report just as it came from the committee who prepared it; that will probably be found the best as well as the most expeditious mode of settling the matter and getting ready to proceed to the mass of other business as yet untouched by the Convention. All the amendments which the ingenuity of this numerous and able body could suggest have been proposed to this section, and yet it is no nearer meeting the views of gentlemen, nor is it any nearer its final adoption, than when it was brought in from the committee. I hope that the vote taken yesterday, by which the term of office of the Secretary of State was changed from two to four years, will be reconsidered. I hope that the Convention will reconsider the matter, and make the tenure of that office for two years also. We shall then progress in our business as we should do. There appears to be a prevalent disposition to gain honor by proposing and debating new propositions; it is my opinion that many desire to get a reputation in that way, but I tell them they will get more honor by expediting business and getting speedily through with the work we were sent here to perform, than by making all the speeches that can be sent out.

Mr. SMITH of Ripley moved to adjourn, but withdrew his motion at the request of

Mr. ZENOR, who said he had a proposition which he should like to submit before the Convention adjourned. He moved to re-commit the section under consideration, with instructions.

The Convention refused to re-commit.

Mr. BARBOUR. I had prepared a motion to re-commit this section, myself, for the purpose of allowing the committee to report as to the tenure of these offices in separate sections. In this way I believe the Convention could quickly dispose of the report. Take the majority of the motions and propositions to amend this section, and there is in each one some one thing of which members would approve, although they may not be disposed to adopt the proposition as a whole. Some are in favor of making the term of the office of State Treasurer four years while others would have it but two years, and some who are in favor of a short term for Treasurer are for a longer term for the other officers. Now, I think that if these propositions

were in different sections a majority would be found prepared to adopt each.

Mr. SMITH of Ripley. I hope the question will not be pressed at this time. We are now settling one of the most important principles in the new Constitution. I would remark to the gentleman from Wayne (Mr. Rariden) that there is more of "politics" in this section than in any other that may be incorporated in the new Constitution, and it is mixed up with a fundamental principle; it is a question which should be decided only after mature reflection and a careful consideration of all the points involved. The settlement of this question involves the political weal or woe of the people of Indiana for, perhaps, a half century to come. In order that time may be had for a fuller consideration of the subject, I again move that the Convention adjourn; which motion was agreed to, and

The Convention adjourned until nine o'clock to-morrow morning.

GRAND JURY SYSTEM.

(The following speech of Col. TAYLOR of Laporte, delivered on Thursday the 24th ult., was unavoidably omitted in the proper place.—

Mr. TAYLOR said—

Mr. PRESIDENT: Having been invited by some gentlemen to stand a little further back, I acquiesce; for it is not for ourselves, but for our auditors that we speak. I hope the Convention will hear what I have to say; I claim this attention not for myself, but for the subject to which I propose to allude. We are assembled here for the purpose of discussing all subjects in connection with the new Constitution, and I am grateful to my honorable friend from Tippecanoe (Mr. Pettit) for presenting this proposition for our consideration, for it has spread a new light upon the political horizon of our State. It contains a principle which, if it shall meet with approbation in this Convention, will add much to secure rights to our constituents which they justly claim at our hands. I look upon this new *project* as containing a principle far in advance of the old system of Grand Juries, which gentlemen have been at so much pains to eulogize.

Mr. President, this is emphatically an age of reform, and in saying this I pay a great compliment to the people of this generation; and, sir, this is a new question, directly affecting the interests of individuals and of the State, and intimately connected with the advancing spirit of this age. In connection with this subject, we have had the history of England, of France, of Scotland, and of almost all the nations of the earth, arrayed before the Convention; and I am obliged to gentlemen for having presented to us such a fine display of their historical information. They have, at every step, evolved

new light upon the subject; and I am desirous to obtain all the light I can. I know that our constituents at home will bear with us if we take time for these investigations; and although we may be tedious in debate, I hope that we shall be led to wise and just conclusions.

Sir, this institution has reigned over us, in the State of Indiana, for more than thirty years—ever since its first organization as a State. It is one we borrowed from the old world. Yet this is no argument or reason why the enlightened people of our State may not alter or amend it. Should we not use the lights derived from the experience of past ages, which we possess, for the purpose of advancing in the present? I should hope so; and especially that the light we have should be now applied to this institution; for I regard it as very nearly the only one which has escaped the acute investigations of our times; although it is manifest that it has been made the instrument of more oppression than any other institution in our Government. It has been asserted by some gentleman in this debate, that it would be better to endure a bad system, if it were not absolutely intolerable, than to resort to change. This may be so; but it is my judgment that we have lived under this oppressive system of Grand Juries too many years already; and, therefore, I am anxious that the Convention shall go into a fair and full investigation of the subject, and try it by its merits, and I trust that the friends of the new system will be able to convince their opponents that they are supporting an inferior system, altogether incompatible with our free institutions. The friends of the resolution do not wish to carry it merely because it is new, but because the measure itself is meritorious. The present system of Grand Juries has been long tried, and, as I think, its usefulness has fallen far short of what was anticipated by its friends; and there are more people now suffering from the oppression of this institution than from that of any other one institution under which we live. In proof of this, I would remark here, that the odium which attaches itself to a man's character when indicted for crime, can never be removed. It is as clear as the noon-day sun that no man can eradicate it from his escutcheon, but it will follow him to his grave.

From the amount of light before us, and that which is being developed by the arguments of gentlemen upon this subject, the Convention cannot be at a loss for a sufficient justification for making any alteration or amendment, or even abolishing the system.

I, for one, am prepared to abolish the system; because, by the secret character of Grand Jury proceedings, they operate injuriously upon the character of our people. They act in secret, like the midnight assassin, upon the character of their fellow citizens. They meet to hear an *ex parte* trial, where the citizen has no chance

to defend himself; he cannot be heard; he is not called upon for the purpose; and it is his worst enemy who generally goes and reports against him, charging him with a high offense against the laws. This is one feature of the system which, above all others, should be stricken off. And it seems strange to me, that a people like ours, with all the experience of history upon this subject before them, and now before this Convention, should suffer this institution to continue to settle its blight and mildew upon us, staining with an indelible blot the fair fame of our people. If we, ourselves, may have been so fortunate as to have escaped its power, that is no reason why we should not lay hands upon it and uproot it from our midst. It has affected our most faithful friends. The honest and the upright of our fellow citizens have often fallen victims to its power; for this reason it ought to be removed and cast out as a public evil. Where is the comparison between a public and honorable mode of criminal examinations and a secret, clandestine, and bacchanalian mode?

Sir, the people are moving in this matter, and I am gratified that they are. I was glad, this morning, to see a petition presented praying for the removal of this institution from our criminal code. I have no reverence for this institution on account of its antiquity. No oppressive system can obtain any reverence from me on account of its "being hoary with antiquity." No, sir, I would hurl it from the statute book as far as I might have the power to do it.

What, sir, do the friends of the new measure propose to this Convention, as a substitute for the old one? I confess that this is a question which has not been well matured, even by its advocates. Heretofore, we have been looking more to the monster, than to the substitute. But, in due time, if we can carry this measure, I feel authorized to say to the Convention, that we will present a new and better mode of criminal examinations; both for the protection of character on the one hand, and for the punishment of crime on the other. It would be a bad compliment to the good sense of the citizens of Indiana, to confess that, if we were without this Grand Jury system, we have not the capacity to originate a system, the operation of which would be more conducive to the ends of justice and mercy, than the operation of the present Grand Jury system. Sir, I hold that we can do it. I claim, not for myself, but for the people of Indiana, and for this Convention, talents equal to any emergency which may arise, requiring the protection of our citizens in all their interests and relations; and I am confident that we can substitute, in the place of Grand Juries, a system which will, in its practical workings, meet with approbation and success. Sir, I wish to abandon the secret feature of the Grand Jury system, and place it in the power of the citizen, when he is accused of crime, to come into court,

openly, and have a high-minded and honorable trial, face to face with his accuser; so that, if he be guilty, he may be condemned; and, if he be innocent, there shall rest no blighting stigma upon his character. Under the old system, this mildew of suspicion remains upon the character of every man who has had the misfortune to be indicted, no matter how innocent he may be. Who ever heard of a single case of a man being presented to a Grand Jury, and a bill found against him, that did not carry conviction to the mind, that there must have been some reason for his indictment? I never had a man pointed out to me, as having been indicted by the Grand Jury for a high crime, that I did not at once imagine that I saw something in his countenance which seemed to indicate him as a criminal—a man whom I would always feel disposed to shun; and I believe this feeling to be common to every man. It is not so great a public injury, that the felon should escape, as that an honest man should be destroyed in his reputation by the operation of a civil institution. Sir, with a high-minded individual, the idea that he is suspected of a high crime against the laws, is worse than death. All honorable men estimate their character to be of more value than their life; for character lives from age to age, which is not the case with our perishing existence. When we shall be buried in the grave, that will have no more terrors for us; but we do wish to leave to our families and descendants, the inheritance of a good name. But this can never be done where a man becomes the subject of that indelible impression of criminality, which, under the law, the Grand Jury may now cast upon him. Such an unfortunate individual can never even sleep in peace, so far as his character is concerned. The fact will witness against him, and last as long as time and history endure, that a bill of indictment for a high crime, had been once found against him. Let me suppose the case of a member of this Convention becoming the subject of such a stigma, and removing to another state, where he might again become a candidate for the legislature, and where, it might be, he would meet with one of his former acquaintances upon the political arena, who would tell the people that, "in the state where this man formerly belonged, the Grand Jury of his county once found a bill of indictment against him for false swearing." After such an announcement, although he might be as pure and innocent as any one of us, would it be possible for him to be regarded as fit to represent an honorable and high-minded people? They certainly would reject his pretensions, if for no other cause than this.

We propose a system, then, under which both parties shall come up openly before the tribunal, to be composed of three, four, or five justices of the peace, taken from different townships in the county, as suggested by my honorable friend from Laporte (Mr. Niles). Under this system,

if a man is suspected of any high crime against the statutes of the State, he will be arraigned before such tribunal, where he will have the right to question and cross-examine witnesses, and, if he should be acquitted, the whole proceedings being open to the public, it would not affect him in his reputation, any more than if he were sued for a sum of money which he did not owe. No honorable, high-minded citizen could be injured under such a system. There would be no bill found, unless upon clear evidence of guilt. But, on the contrary, how is it under the old system? Why, how often is it the case that females are brought reluctantly, to give testimony before Grand Juries? When the gentleman from Monroe, (Mr. Foster,) who last addressed the Convention, made his reference to the gentler sex, I thought he was coming over to this side of the question. I supposed he was going to come out and say that no lady in this free country, should ever be arraigned before a Grand Jury by any mere slanderer, and her fair fame taken away from her. I was astonished to hear that gentleman, after this allusion, come out in support of an institution so well calculated for the purposes of malice, and so often made the instrument of destroying the fair fame of the gentler sex. Sir, our higher virtues are more frequently made the subject of envy, than our weaker virtues; and it is not unfrequently the wish of a bad spirit, to attempt to destroy the fairest reputation, in order that his own may be elevated thereby; and, in this way, the reputation of many a lady has been destroyed, who had previously always maintained the purest character, and the highest position in society. And these Grand Juries offer the most acceptable facilities to an envious mind, to go in and swear that such a lady had taken a false oath; or that she had been guilty of petit larceny, and so cause a bill to be found against her, which must effectually destroy her reputation for the remainder of her life.

For these reasons, Mr. President, I am most anxious that we should not be in haste about the determination of this question; but that we should consider the time well spent, which shall be occupied in this debate. Sir, let me say to you, that the proposition now before the Convention embraces a new political movement—a movement which will be carried out, sooner or later, so that we shall yet live under a different institution from that of the Grand Jury system—an institution where there will be less danger to be apprehended from the machinations of the slanderer; and an institution which will go much further to protect the character—nay, the life—of the citizen. For, what is life without character? No individual can contentedly exist without character. Without character, life becomes a burthen to them. For myself, Mr. President, rather than have a bill found against me by a Grand Jury—I say it with deliberation, in the presence of this honorable body—I would

greatly prefer death. No, sir, give me the right of a public examination, in preference to a Grand Jury, or any other secret institution that has power to cast the curse of an infamous crime upon me, without any foundation in truth whatever.

Mr. President, I do not intend to detain the Convention but a few minutes longer upon this subject. I rose merely to ask for it the careful attention of this body. They are all men of reflection, no doubt; and as my very honorable friend from Cass, (Mr. Biddle,) on yesterday, asked the attention of the thinking and reflecting members, because he was himself penetrated with the deep importance of this subject, so, now, do I ask the attention of gentlemen, and for the same reason. We have no clap-net here; and I do believe, if gentlemen will but give the subject their full and unbiased consideration, that they will see light springing up in the place of darkness; that they will find the proposition to improve upon more mature reflection, and that they will be constrained to say that there is more justice in this proposed change, and a greater approximation to the equilibrium of right and justice, than has ever been discovered in the old institution, which has blighted the character of thousands. I do not censure gentlemen for parting reluctantly with the old system. They should not lay it aside without reflection. But, upon this subject, we do not want history; we want only our own deliberate and practical reflections, to enable us to sound the death knell of such an old and mischievous institution, and rear a better one upon its ruins.

If the Grand Jury system was really as good and desirable as gentlemen seem to think it is, I should be very reluctant to oppose it; but the only reason which they advance for continuing it, is its antiquity—because they have long known it. Our proposition, on the contrary, being new, has to contend with the prejudices that cling and cluster around old things; and I feel gratified that it has received as much attention as it has. Although this is a new proposition, yet, sir, looking at it in the light of justice and reason, we think we can see in it everything requisite to protect the rights of the citizen and secure the interests of the State; and should this body fail to adopt it into the organic law—although “no prophet, nor the son of a prophet”—I will venture to predict, that, before thirty years shall elapse, the people of other States in this Union, as well as those of this, will have destroyed this feudal monster of oppression, and reared in its stead something similar to what we now propose.

By way of showing the ground for this prediction, I beg leave to make a statement which I know to be true. Some eighteen years ago, I had the honor of a seat in a deliberative body, not like this, but a State Legislature; and in that body I mooted the question of the election

of judges directly by the people; and I remember very well, that, for so doing, the democratic party thought it an insane experiment, and treated it with ridicule. They all said of me: "That young man wants to subvert all the established usages of society, and turn everything upside down." But what has been the result? Dowe not see that our party, almost like one man, are in favor of the election of all judicial officers; and not only so, but that many of the States of the Union have adopted it as a principle in their Constitutions. And is it not more than probable that this Convention will adopt it? Well, as I was saying, when I first mooted this question, it did not receive one-tenth part of the amount of attention which has been awarded to the proposition now under consideration; and why? Because it had not half the merit in it; for it does not matter very much how a court is organized and carried on, but it does matter a great deal whether we maintain an institution which, in its very nature, is calculated to cast reproach upon the character of the citizens of the country; and that is the reason why we see our honest and fair-minded yeomanry instructing their delegates and petitioning this body upon this subject, and why we see so many gentlemen here, who will not be found advocating so odious a measure as our present system. I tell you, sir, our Grand Jury system would have been changed years ago, had it not been for a general impression which pervaded the minds of men, that it was a principle required by the Constitution of the United States. It is not entirely a new question; it was suggested to me by my constituents at home. They came to me frequently, saying: "If you can do it, we would like to have the Grand Jury system abolished; but many, while they earnestly desired this remodeling, supposed that the Constitution of the United States had placed an insuperable barrier to any change. And I thought so, too; for I had read in that instrument that a man should not be put in jeopardy except upon indictment or presentment. But as soon as I learned that it applied only to the practice in the federal courts, I arrayed myself in opposition to Grand Juries, and I am well assured, also, that I am on the side of justice; but this is not saying that others have not as much right to think for themselves as I have. They think, no doubt, that we are trying to uproot the foundations of government; but they are laboring under a very great deception, for we are only trying to bring about a reform, and bring out a better system for the administration of criminal law. And if our State will only take the lead in this reform, it will not only help to sustain our present lofty position in the confederacy, but the principle will go forth to our sister States, attracting attention everywhere, adding to the reforms of the age a reform that will honor us as its advocates and originators; and for ourselves, we shall throw off the yoke of an

ancient dynasty, and establish a new system of criminal punishment that will be a sure relief against the evils of crime, bringing a speedy retribution upon the guilty, and a triumphant and complete exculpation of the innocent. In conclusion, I trust, sir, that the measure under consideration will pass. It may not be the most perfect substitute that can be adopted, yet, time will point out its imperfections, and experience will complete it. And, in my humble judgment, it will be the harbinger of a purer and more advanced civilization, and strengthen, as we progress, the confidence of the citizen in the protective power of the law—to secure life, liberty, happiness, and, let me add, character.

SATURDAY, Nov. 2, 1850.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. ISENSEE.

The journal of yesterday was read and approved.

PROPOSITIONS TO AMEND.

Mr. OWEN, from the committee on the rights and privileges of the inhabitants of the State, made a report.

Mr. FOSTER, from the committee on the elective franchise and apportionment of representation, also submitted a report.

They were read a first time and passed to a second reading to-morrow.

RESOLUTIONS TO HAVE PRECEDENCE ON SATURDAY.

Mr. OWEN, in pursuance of notice given on yesterday, moved the following amendment of the rules:

"So to amend the rule regulating the order of business as that, on Saturday of each week, resolutions shall take precedence of the orders of the day."

The question upon the adoption of the amendment to the rules having been announced by the Chair,

Mr. OWEN said, he believed that the resolution which was adopted for the change of the rules generally, introduced by the gentleman on his right, (Mr. Stevenson,) was one of the most fortunate, with reference to the advancement of business, which could be devised, if the Convention were to have business coming in, in advance of the orders of the day. On the other hand, it was always found convenient in Congress, and other deliberative bodies where he had had experience, that there should be some chance to introduce resolutions, not only resolutions of a special and imperative character, but resolutions of inquiry, and miscellaneous propositions. For, if they were to continue without this opportunity, there would be continually motions made to suspend the rules,

which would necessarily induce a great consumption of time, and a vast accumulation of useless matter upon the journal. It was his object to strike a mean betwixt the gentleman's rule, and this lack of opportunity to introduce resolutions.

Mr. FARROW moved to postpone the further consideration of this proposition till this day four weeks. He thought the Convention would have enough to occupy their attention in the meantime.

Mr. BORDEN said, there were many gentlemen here who were under obligations to their constituents to present matter by way of resolution. He thought it was due to their constituents that this opportunity should be given. But it seemed to him that, for the present, they might, well enough, devote to the introduction of resolutions, one further day in the week. He thought two days in the week would not be too much time to devote to this object.

Mr. FARROW'S motion was rejected.

Mr. CLARK of Tippecanoe moved to postpone the subject until this day week.

The motion to postpone was not agreed to. And the question being taken on Mr. Owen's resolution, it was adopted without a division.

STATE OFFICERS.

The PRESIDENT announced the consideration of the second section of the article reported from the committee on state officers other than the executive and judiciary, on Friday the 25th of October, by the chairman (Mr. Read of Monroe); the question being upon the adoption of the amendment of Mr. Rariden, striking out the proviso, which is in the following words:

"*Provided*, That no person shall be eligible to the office of Treasurer or Auditor more than four years in any term of six years."

Mr. SMITH of Ripley said, he had remarked on last evening, that the proposition of the gentleman from Wayne was very important, because he considered the section as it now stands embraced every important principle. But, upon looking around over the House to-day, he discovered a great many vacant seats; a great many members were absent on leave, and there being a very thin House, he did not desire to discuss the question at this time, unless it become absolutely necessary that it should be discussed, and if the question was to be taken definitely upon the subject, he thought it necessary that something further should be said. But to test the sense of the House in regard to a postponement of a further consideration of the question in its present shape, he would move to lay the amendment of the gentleman from Wayne upon the table, and ask the yeas and nays upon the question.

The yeas and nays were ordered, and, being taken, the Secretary reported—yeas 63, nays 56, as follows;

YEAS.—Messrs. Bascom, Berry, Borden,

Bowers, Butler, Carter, Chandler, Clark of Tippecanoe, Cookerly, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Edmonston, Foley, Gootee, Graham of Miami, Graham of Warrick, Haddon, Holliday, Hamilton, Harbolt, Hardin, Hendricks, Hitt, Hogin, Holman, Huff, Johnson, Jones, Kent, Kendall of Wabash, March, Mathis, May, McClelland, Miller of Clinton, Milroy, Mooney, Moore, Mowrer, Nofsinger, Owen, Pepper of Crawford, Prather, Read of Clark, Read of Monroe, Robinson, Shannon, Sherrod, Sims, Smiley, Snook, Smith of Ripley, Tague, Tannehill, Todd, Trembly, Vanbenthusen, Wolf, Wonderlich, Yocum, and Zenor.—63.

NAYS.—Messrs. Alexander, Anthony, Badger, Balingall, Barbour, Beach, Beard, Beeson, Biddle, Blythe, Bourne, Bryant, Chapman, Chenoweth, Clark of Hamilton, Crawford, Crumbacker, Davis of Madison, Duzan, Farrow, Fisher, Foster, Frisbie, Garvin, Gibson, Hawkins, Helmer, Hovey, Kendall of Warren, Kilgore, Kindley, Lookhart, Maguire, Mather, McFarland, McLean, Miller of Fulton, Miller of Gibson, Morgan, Murray, Nave, Newman, Niles, Pettit, Rariden, Ristine, Shoup, Steele, Terry, Thomas, Thornton, Walpole, Watts, Wheeler, Wiley, and Mr. President.—56.

So the amendment was laid upon the table, and the question recurred upon ordering the section to be engrossed for the third reading.

Mr. TERRY proposed the following amendment: strike out of second section, all relating to Auditor of State, and insert the following:

"There shall be chosen, by the qualified voters of the State, and commissioned by the Governor, an Auditor of State, whose powers and duties shall be prescribed by law, and who shall hold his office for a term of four years, and until his successor shall be elected and qualified."

Mr. T. said, I have offered this amendment for the purpose of testing the sense of the Convention, between the four years and the two years term. It seems to me a strange thing, Mr. President, that gentlemen, professing a great devotion to the popular interests, should take the position assumed here by some, after contending so strenuously for short terms of office, and a strict accountability of officers. Allow me to remark, sir, that this effort for short terms and strict accountability, has been making ever since the organization of this government. But it would seem, from the zeal manifested here upon this subject, that all these attempts have met with a most signal failure. Gentlemen assert that the people are not permitted to exercise their sovereign will, and then come up here and coolly propose to restrict that sovereign will. Sir, is this democracy? It may be, in the modern sense of the term, but it is not republicanism. For here, in the second section of the first article of our present Constitution, it is declared, "That all power is inherent in the people; and all free governments are founded on their authority, and instituted for their peace,

safety, and happiness. For the advancement of these ends, they have, at all times, an unalienable and indefeasible right to alter or reform their government, in such manner as they may think proper." Here is the text upon which our government is founded, and upon which all the Constitutions of every State in the Union are predicated. And an attempt is now made, by those who profess to be the special friends of popular government, to restrict the power of the people in the exercise of their most important attribute of sovereignty. Sir, do the people demand this at our hands? All the authority which we have here in this body, is, to propose such reforms in the organic law of the State, as public opinion seems to require, and, if public opinion has required us to impose this restriction upon the sovereignty of the people, then these gentlemen are correct. But the argument that officers should be restricted to short terms and made re-eligible, is too flimsy a disguise to cover up the purpose of securing power and influence in the hands of all the office-holders in the State, and enabling them to say to others—gentlemen, stand back this time; your turn will come next. We all agree that the expression of the popular will should be full and free and without restraint; but adopt the principle of re-eligibility proposed in this report, and all the offices in the State will be disposed of by party organization, and the power of the machinery of party will completely suppress the will of the people.

Mr. SMITH of Ripley, said:

Mr. PRESIDENT: I did not intend to say anything upon this subject, but since the gentleman (Mr. Terry) has renewed this proposition—brought up the old proposition identically, which the Convention has two or three times decided against; that is, the perpetual re-eligibility of officers; I desire to say a word with reference to the whole matter.

I do not know the politics of the gentleman last upon the floor, nor am I careful to inquire; but he threw out the idea that there must be some party machinery connected with the rotation in office, and the same gentleman proposed that perpetual re-eligibility should be adopted. Let us look at this proposition a little, and see what it is, or rather what might be the effects of it. Let us inquire into the proposition and strip it of all disguises. What does the gentleman desire? He moved that the Auditor alone shall be made re-eligible forever; surely then he would desire that all the State officers should be made re-eligible. Now, let us look at this in a party point of view. Suppose all the State officers—the Governor, Auditor, Treasurer, Secretary of State, and Judges of the Supreme Court, were to be made re-eligible, and located at the seat of Government; I ask gentlemen, if this would not bring to bear a most powerful influence upon the politics of the State? What is the doctrine of re-eligibil-

ity, but to give into the hands of office-holders the power to perpetuate themselves in place forever, if power and party influence could effect that object? They have got the patronage and the influence of office in their hands, and what else should they do, but to keep themselves perpetually in place? Sir, it is to prevent a state of things of this kind, and to break it up completely, that I shall go against the doctrine of re-eligibility. Whenever you can break up this organized clique of office-holders, you will break down this party machinery, which the gentleman's (Mr. Terry's) proposition, seems to me, to be designed to build up at this central point. It seems to me, that this proposition is exactly calculated to build up a kind of political *hierarchy*, which shall perpetuate itself in power and make a most indelible impress upon the future politics of the State, and because I am opposed to such a result, I am in favor of the principle of rotation in office, so, that no person shall hold office longer than a term of two or four years in any term of six or eight years.

Sir, is this disfranchisement? If gentlemen think this to be disfranchisement, let them stay out of office. A plenty of men, well qualified, will always be found ready and willing to accept of office upon the terms which may be proposed in the Constitution. I am exceedingly desirous that this principle should be impressed upon the Constitution, so that it shall be distinctly understood as extending to every ramification of office in the State—even to the judiciary itself. I would not have them hold on to their places by perpetual tenure, for I hold this doctrine to be true, that there are as good men out of office as there are in office.

It occurs to me, as I pass along, that I should notice a remark made by my respected friend from Tippecanoe, (Mr. Pettit,) since I have the gentleman's obligation that I shall have a hearing from him whenever I speak, conferred as a mere matter of compliment, I suppose. I regretted to see that gentleman leading in the direction which he did, for, of course, I thought that he should have taken the real democratic side of this question. But, instead of that, he got up and denounced that side of the question in terms of great strength and vehemence; he derided and denounced the doctrine of putting any man out of office who was qualified for the place and desired to retain it.

Mr. PETTIT interposing, and Mr. S. giving way, said: I desire to correct the gentleman. He has misapprehended me entirely; I never uttered the sentiment here, or elsewhere, that a man should stay in office forever. I am in favor of short terms of office. I desire that all officers should be, as often as practicable, remitted to the people for re-election. But while I am in favor of short terms, I am utterly disposed to oppose the doctrine of re-eligibility. If a man discharges the duties of his office to the satisfaction of the people, there is no reason in the

in the world why he should not be re-elected, if the people desire that he should be.

Mr. SMITH (resuming.) I thank the gentleman for his explanation. But I repeat my impression, that he spoke in very strong terms of denunciation against laying any limitation upon the right to hold office. On the contrary, I must maintain that it is our right to set those limitations. But, as I was saying, the gentleman denounced this doctrine strongly and eloquently, that his words passed over the house like a shock of electricity; and I felt that this, my cherished doctrine, was all gone by the board. But when I looked at the gentleman's reason, what was it? Why, he affirmed that if you let a man take office for but a single term, it would make him cross; that he would not act the gentleman while in office, but would be rude and repulsive. Well, if this were to be the case—if we were to put a man of this kind in office, this would be one of the best reasons why we should turn him out as soon as possible; for there are gentlemen by nature, who would be, or who ought to be, thankful for the privilege of holding office for but a single term. I would prevent any other description of persons from coming into office, if it were in my power.

But, Mr. President, this rotation in office is not a new idea. We rotate our Governor, and we rotate our Sheriffs. We say to the best men in the State, you shall not be eligible to the most responsible office, until you are thirty years old. A man must have attained the age of thirty years before he is eligible for the office of United States Senator. And I would inquire of those gentlemen who are in favor of this principle of holding office continually—this perpetual eligibility—if there has, ever been any fault found with this doctrine of rotation, wherever it has been adopted! Why do you rotate your Governors? They have less influence upon the politics of your State than your Treasurers, because they have less money to handle, and less immediate communication with the people; and so it is with your Auditor and Secretary of State, though their salaries and emoluments of office are not near so high. Why not rotate these? And as a gentleman near me suggests, why not rotate the President of the United States—that highest and most important officer in the Union? Why not rotate your Secretary of State, your Treasurer, and Auditor, why not rotate every man in the State who holds a highly responsible office? I would remark that public opinion has rotated the President of the United States, although the Constitution of the United States does not; the illustrious example of Washington done that which the Convention neglected to do. And I would inquire whether any man in the United States, dare to ask for a re-election to a third term of this office? No sir: public opinion would scout at such a pretension, and where we have rotated Governors, Sheriffs, and Presidents, the doctrine

has been more heartily approved than anything respecting official tenure, which has ever yet been introduced in any of our republican constitutions.

Mr. President, I have heard this argument urged. It frequently happens that a one armed man gets into the office of county clerk, or county auditor, who is well qualified for his place—why turn out such a man as this? He may have held his place for five or seven years, and it may have made him rich, is that any good reason for turning him out? No, surely not. But I will give you a good reason: here is one one armed man in office, and there are perhaps a hundred one armed men out of office; this is a good reason for rotation in such a case, and allowing some other one armed man, who is poor, well qualified to take the place and hold it until he has secured for himself and family something to subsist upon as well as the other, and then allow some other one armed or one legged man to take it, if he is qualified and deserving. This argument thus falls to the ground.

Well, sir, my friend on the right (Mr. Steele) has an argument which is this—and it was well put and well said; he is opposed to turning the old horse out of the plough, and he says: Would you turn out the old horse, and take the young one? I answer, yes, I would turn out the old horse—[several voices, "consent!"] turn him out—not to die, but take care of him; and why not turn him out? It is due to the young men that they have the opportunity of early training; the weight and responsibility of the State will soon be upon them, and the old should be turned out, if they do not give way. For this reason I would rotate them out, but my friend says this would be disfranchisement; this would be muzzling the people, for he believes, I suppose, in the old Jewish maxim, "you shall not muzzle the ox that treadeth out the corn."

Mr. President, I do not understand the proposition as disfranchising the people, nor in any proper sense muzzling the office-holder or the people.

But now, sir, with reference to this principle of rotation in office, (and it is a great and fundamental proposition, which we should carefully attend to,) I hold if there has been any one thing more plainly and intensely reflected by the popular will upon this body than another; which has come to us as the light comes to us from the great solar centre, the people, it is this, that we should declare that all officers shall be elected by the people; that we shall establish short tenures of office, and the principle of rotation in office, by the fundamental law of the land. I consider this to be emphatically the doctrine of the people. Now let us inquire, Mr. President, whether this doctrine is not most consistent with the laws of justice, as exemplified in family economy. Let us inquire whether this principle may not be traced up to

the highest and most purified sources of domestic order. Let us inquire what man having three sons to assist him in the business of his farm, and who should say to the one, "My son, you must attend to the stable for this week;" and to another, "You must attend to the woodshed, and look after that department of labor for this week;" and to the third, "You must go into the parlor and entertain company for this week;" and to the latter he should add, "you shall put on a white cravat and qualify yourself to entertain company upon these conditions: if you don't cut the furniture, nor tear the carpet, and if you keep your face clean, you shall stay in the parlor next week." It is assumed that the three sons are equally well qualified to fill either of these places; well, the next week comes round, and it appears that the young man in the parlor has complied with the conditions imposed upon him—has performed very well—has kept his face clean—has not cut the furniture—has not torn the carpet. And thereupon, the father, ascertaining that all is right, makes the same conditions for the next week, and the next, and so on; and the lad complying strictly, continues at his pleasant, easy, and honorable post, while the other boys are condemned to the duties of degradation and drudgery. What would you say of a father who would manage his sons in this way? in a manner so un-parental and unjust? Why, you would say, he is an unfeeling man; that he should permit all of his sons to have an equal opportunity of meeting, entertaining, and enjoying the society of his company; he should not, in such a way, make one of his sons a gentleman and the balance boors.

But, sir, we point you to an illustration of this principle, derived from a higher power than this. I will go to a different department in domestic life. I will call upon the ladies to aid me in this argument. I will ask gentlemen to look to the economy of any highly respected and talented lady of our State—and I glory in the State where I reside, because truth allows me to remark here that in this country poverty is no disparagement—that it is no disparagement to any lady in this State, that, with her daughters, she should perform all the duties pertaining to the family establishment, taking personal care of all household interests from the kitchen to the garret,—I would direct the attention of gentlemen to this higher and purer source, that they might learn a lesson of such a lady in her domestic policy, if you will allow me to use the term. There is a lady, educated and wealthy, who resides in this State; this housewife and matron has two daughters who are equally well qualified to assist her in the discharge of all the business of the house. On Monday morning she says to her oldest daughter, "my daughter, you will, this week, go into the parlor, where you will take your needlework and entertain company; and your younger

sister will aid me in the other business of the house—cooking for the family, &c." This arrangement goes on very agreeably; and the next week, coming round, she says to the elder sister, "your younger sister, for this week, will take her lessons, go into the parlor, and attend to the honors of the house, and you will go with me and assist me with the domestic affairs of the family." Under this system of arrangement every thing goes on smoothly, quietly, and gently. Everything being done up right, upon this most obvious principle of fairness and equality, no complaint is ever heard against the domestic arrangements of this most estimable matron—all sharing alike in the labors and honors of the household, and all equally respected and respectable. This state of things could not be maintained under any other system, and this is precisely the principle which I wish to impress upon all the offices of the State. If office is easy and honorable let all have an opportunity to enjoy it; if burdensome, let it not be imposed forever. I have said before that I believe there are as good men out of office as there are amongst the office-holders, and I desire to extend to all, as far as possible, the opportunity of participating in these favors of the people. I am utterly opposed to the principle which makes it possible for office-holders to perpetuate themselves in their places. I would run an open seam through their tenure of office from the highest to the lowest. Why, sir, when a man has once got into a profitable and honorable position he will have his friends around him, and will be able to make others by the blandness and courtesy of his manners, and also, as far as the power of his official influence will permit him to go, to that extent he will operate upon the public mind, for the purpose of retaining his office. I do hope, sir, that this principle of short terms and rotation in office may be impressed upon the new Constitution and established as a fundamental provision of the organic law of the State.

Mr. STEELE. I wish to occupy a few minutes in replying to the member from Ripley, (Mr. Smith,) who has just taken his seat. That gentleman has had the honor of a seat in Congress, and has had the advantage of more political experience, and has filled more important offices, than the humble member who now occupies the floor. But, sir, notwithstanding all that difference, notwithstanding that I am willing to "knock under" to him on the score of ability, I really do feel like trying to make a reply to what he has just said. I want to notice his illustration in regard to the owner of the old horse [laughter] desiring, and it being to his interest, to turn him out after a life spent in his service. He said it was to the interest of the farmer to turn out an old horse and take in a young one who could work faster; and he argued from this, that we should turn out old officers and take in new ones every two or

four years. He used this illustration to make his position stronger, that we should make these State officers ineligible after one or two terms in office. He would appear to represent the people in the similitude of the owner of the horse, and the officers in the similitude of the old horse. But, sir, notwithstanding his similitude, if he was a farmer, and was trying to get a load of corn from his field with a young colt who was unused to the harness, and not broken to pull through the miry places and up the hill, I think he would be glad to take out the young colt and put in the good old horse [much laughter] who was steady and used to a heavy draught up hill. Yes, sir, he would take him for the sake of getting his corn to the crib for the support of his family. I will take the gentleman's own similitude and remark upon it. He has alluded to the women. Now, I will suppose that he takes that delicate portion of his family—the best part of creation—his wife and daughter into his wagon; but will he put in his young colt who may take fright and run, or may balk and stop in the middle of his journey, and would he put his lady and family at the rear end of a young colt? [Roars of laughter.] No, sir, I have too much respect for the gentleman from Ripley—I have so much confidence in his carefulness and his regard for his family—that I know he would send off for the old horse. [Continued merriment.] But he went further; he remarked, when he was using the similitude of the ox, if a farmer would keep an old ox to plow his corn, after he had got old and blind? Does the gentleman [turning sharply round to Mr. Smith] mean to say that at this moment I am blind? [Laughter over all the chamber]

Mr. SMITH. I had no reference to the gentleman from Wabash at all: I was trying to show the necessity the owner was under of turning his ox out to pasture, after he got old and so blind that when he plowed with him the ox would go weaving and staggering through the furrow, treading down the corn on both sides. [Laughter.] I have more respect for my friend from Wabash than to allude to him in that manner.

Mr. STEELE. Mr. President, the gentleman has explained what he intended to say. Well, I will still take him on his similitude of the ox. [Great laughter.] I would ask him if he hadn't better have the steady old ox than a young steer, not half broken? [More laughter.] And moreover, to carry out the similitude, it is well known by every farmer—and I am proud to say there are many farmers in the Convention—that a young horse is never used until he has been broken in by being worked with the old horse. Every man who expects to hold an office should be well learned by the old officer before he is allowed to hold office himself. Are there not young men learning to fill office at this Clerk's desk? These very young men are under tuition now that will fit them to

hold other offices by-and-by. They may be employed in the next Legislature the better for having served here. Must they be choked down and muzzled hereafter because they have held an office here. I tell my friend from Ripley that the Scripture says: "Muzzle NOT the ox that treadeth out the corn." [Laughter.] But I am coming to the point now; and I will illustrate it as strongly as my friend from Ripley illustrated his argument. I will use a mechanical figure. I have had a good deal of experience in life. I have followed a good many trades and means of living, and among other things, I have been a mechanic, and I shall, therefore, be allowed to illustrate my meaning in this way. Now here is the Capitol, a very fine and elegant building. It was built for the State, and the mechanic employed did his duty faithfully. He performed his contract with the State in a workmanlike and creditable manner, and he expected it would be a recommendation to him when he wanted to build other edifices. He worked hard that he might have the name of building the best edifice in the State. But, if you carry out the policy argued for by the gentleman from Ripley and others, you would not allow him to build another house. Here is your Insane Asylum to be built—and, sir, the finest building I have seen is the Insane Asylum—but you won't let this good architect, who has proved himself a good one, build the other State building, because he has built one; and so you would turn a good mechanic out of employment. This would be on the same principle that you would say the people shan't elect an officer to the same place twice, no matter how well he has served the public when he was in office.

I will make another remark in regard to the sovereignty of the country. I agree with the gentleman in all that he says about the sovereignty of the people. But I thought that the sovereign of a country could distribute the offices as he thought best? I thought the people could make a man President for one term, or two, just as they thought best, and that they could keep a man in office two years or ten years, if they thought he was faithful and discharged his duties well. But it is proposed to restrain this sovereign from exercising his judgment in the selection of his officers; it is proposed to forbid him from keeping a man in office longer than two or four years. Now I am for leaving this matter with the sovereign who is the people in this country. I wish to let the people keep a man in office just as long as they see fit. I will not muzzle them. Suppose we go to the highest authority? Suppose we look to the high court of Heaven! The gentleman will learn, if he looks there, that the angels were once driven out of Heaven for asking for rotation in office. [Much laughter.] What was the difficulty in that Heavenly kingdom that created all things? We understand that

some of the angels aspired to fill the highest place? They wanted to oust the great Creator, and for this crime they were cast down.

The gentleman said my doctrines were of a Jewish character. Sir, do you recollect Nicodemus? Was he a Jew? What was his language to the Saviour, and what was Christ himself crucified for? He was put to death because he had rendered the greatest and most important services to the people gratuitously. Now this is the reverse of my doctrine. I would honor men and keep them always in the public service when their character was so exalted. Then my doctrine is any thing but Jewish, sir.

Sir, your humble servant has held office, and the people did not see fit to turn him out for the long period of twenty-one years. Although I held office for so long a time, yet I am now poor, for what I have received has been distributed to those around me.

Now, sir, I have taken up some time, and I am sorry it has not been more profitably employed, but on the present occasion I could not pass over the remarks of the gentleman from Ripley. This is a very important subject, and I hope gentlemen will pause before they conclude to trammel the people in the selection of their officers. Let us not say you shall not keep a good public servant, but you shall turn him out and take in a new one. Let the old and tried servants keep their places just as long as it is the people's will. It is not our place to tie up their hands. Our country has been prosperous under the old system, and we should let it remain. I hold to the good old rule, and so help me God, I always will, "Do unto others as you would have others do to you," or, as I might say, Mr. President, do unto others as they have done to you. I was long kept in office by people who placed confidence in me, and now that I am old and going into the grave I will not make an iron rule that others shall not be kept in office as often as the people choose to re-elect them.

Mr. NILES. Mr. President: Though I am yet hardly able, in justice to myself, to be upon this floor, I desire to submit a few remarks in reply to the gentleman from Ripley (Mr. Smith). I feel that questions of vital interest, affecting the theory if not the operations of free government, are involved in this debate. And, sir, I am fully satisfied that the gentleman's remarks—his entire argument and the entire position assumed—are founded upon two essential errors, which, incorporate them often as you may in Constitutions, will still be radically unsound.

There are two kinds of provisions which we make in Constitutions. In reference to the one class, I will go as far as those who go farthest. They consist in declarations of palpable truths—propositions which underlie all human rights, and which cannot be violated without doing violence to every dictate of sound reason

and every principle of genuine benevolence. By the enunciation of these, we seek more effectually to protect those personal rights which are implied in the right to life, liberty, and the pursuit of happiness, and which is the paramount object for which governments are formed.

Then, sir, there is another class of provisions which relate to the people in their aggregate capacity, and what they may do, either directly or through the intervention of agents. I go as far as any one for prescribing within narrow limits the powers of the people's agents. But in what the people do directly and without the intervention of agents, I go for the widest liberty.

Our governments are founded upon an entirely different principle from that of the monarchies of the old world. The order of things is entirely reversed. Theirs is a false system, founded upon a false philosophy—the idea that all power is derived from one man. Ours, beyond all controversy, is the true doctrine—that *all power is in the people*, and that all government results from their voluntary choice. The further, then, they deviate in practice from the theory of their governments, the better; while, as ours is unquestionable truth, the more closely we adhere to our theory, the better, in the end, our system will work.

Then, sir, I apprehend that the gentleman's remarks involve these two errors: first, that offices are created for the benefit of office-holders, or at least that idea is implied in his argument. The other is, that it is not safe wholly to trust the people, in the management of what is peculiarly and exclusively their own business. Upon these two points I am at issue with him, and with all others who occupy the same ground. And I hope, indeed, sir, that two such principles will not be engrafted upon the Constitution. Both are radically wrong, and no assertion of them can make them right.

In the first place, manifestly, offices are in no way designed for the benefit of the office holders. The gentleman talks about "a one-armed man," and why turn him out? He says, "because there are a dozen other one-armed men who need the office just as much." I could give a better reason. If he be an incompetent officer, and the people see fit to turn him out, let him go; but if he be the man whom the people, of all others, desire to retain, let them have the power to do it. The proposition may be familiarly illustrated. The office holder is an agent for the people. In incorporating a railroad company, with what propriety could you provide that the company—having the right to employ agents for limited periods—should have no power of re-appointment? I go as far as any man for short terms and frequent accountability. I would not place the officer, for a long period, beyond the reach of the people, but I do not go for limiting the people in what

is peculiarly their own business. I would throw upon them the whole responsibility of its being well or badly done. I would not limit them as to this power of re-appointment more than I would an incorporated company; I would leave it all to the people. We well may, as according to the theory of our government, we should, trust the people in what is peculiarly their own business; and the more they are trusted, except where we would guard paramount personal rights, the more worthy they will prove of being trusted, as beyond all question, the best discipline for freemen is the exercise of the rights of freemen. They will purchase wisdom by experience.

But the gentleman, as he said, holds to rotation in office, and speaks of the example of the Presidency of the United States—"that no man would dare to be a candidate after a second term." Admit it; and I submit, sir, in all earnestness, whether it was not far better that that rule of action should be, as it has been, settled by the people themselves, than to have had it fixed upon them by the Convention which sat in Philadelphia. I might add that the *one term* principle is almost settled, and soon will be. It is only another illustration of the truth that we not only should, but may with safety, trust the people in the management of their own business.

In regard to judges, I agree with the gentleman, that we should not fasten them as permanent fixtures upon the country. They should be elected for reasonably short periods, but subject to re-election. I think it unfortunate that the judges of the Supreme Court of the United States are not elected by the people. But I submit it whether, if Chief Justice Marshall or Mr. Justice Story were now living, and if the election of judges of that court were left to them, you would think it wise that the people should not have the power to elevate, for a second term, to that high office, either of those illustrious men! And in answering that question, which must come home to the sound reason of every member upon this floor, do you not settle the whole question now under debate?

At the risk of being tedious, (several voices: no, go on, go on,) I will allude to another point. I regard this as an important matter, involving great principles which I do not wish to see perverted in the instrument to go from under our hands. The gentleman has asked, and all such illustrations are calculated to have their weight, "how we should regard the conduct of a farmer who, having three sons, should assign to one a permanent place as a gentleman in his parlor, to another the business of cutting wood, and to the third the work of the farm and the position of a clown?" Now, sir, I would say, impose no restrictions upon the assignment of places and professions—leave it all to the judgment and paternal affection of that father. Let him have the power to do as

upon mature reflection, with a full knowledge of the several capacities and tendencies of his sons, may seem best, and while one son may be suited for a profession and another for agricultural labor, do not, by any means, compel the farmer to enter a profession, and thereby pervert the natural order of things.

I say, in conclusion, it is my deliberate judgment, that in all such matters, as whom they shall elect to office, you cannot trust the people too far. It is emphatically their own business—it comes in conflict with no man's personal rights, for no man holds a title to office. If he be a pauper or deprived of a limb, let the charities of the State support him, if need be, but let it be remembered forever that no man holds a title to office. Let no principle of "rotation in office" be fixed in the Constitution—let the people fix it. The government is for the good of the people, the officers are held for the benefit of the people, and when the people continue one man in office, or elect another to fill his place, they violate no man's private rights. Therefore, I say, emphatically, this is peculiarly the people's business, and let us *trust the people*, for the more they are trusted in what is their own business, the more worthy they will be of confidence.

Mr. SMITH of Ripley. I think I understand my friend upon my left (Mr. Niles) as representing me to be opposed to the re-eligibility of office-holders. He is mistaken. I have no objection whatever to the re-eligibility of officers, but I want to limit their terms, and bring them to frequent accountability by having frequent elections, so that, if the people desire it, they shall be rotation in office.

Mr. RARIDEN said: My principal object in asking for the floor, was to offer my mediation between the two members who stand opposed to each other upon this question. I think it very proper that I should be the person to mediate between them, for they are both ex-members of Congress, and so am I; and I am therefore, perhaps, better prepared to decide which of them has advanced farthest on the line of progression. [A voice—"we will hear you."] Well, sir, I go with the gentleman from Tippecanoe (Mr. Pettit) upon this ground, because he has faithfully read the history of the progress of men's minds upon this subject. I take it for granted that the gentleman from Ripley (Mr. Smith) is very little in advance of men as we have seen them thirty-four years prior to this time. What was the doctrine of 1816? It was that the election of these officers should not be confided to the people. The men of that day adhered to the old theory, that the people were not capable of making these selections. Such was the importance of the functions of these offices that it was not considered safe to confide their election to the people. This was the foundation of the provision upon this subject in our present Constitution. This

was the reason why these elections were retained in the hands of the legislative body. But now time has progressed, and men's minds have progressed to the point where the gentleman from Tippecanoe, myself, and a few others have been constrained to entertain the idea that it is safe to confide these elections to the people. The gentleman from Ripley admits that the people may be trusted a little in this matter, but for fear they will do wrong he wants to put such limitations upon their power, that if they do wrong in these elections the wrong shall not hurt them much, and if they do right, why, it is no business of ours. This theory rests exactly upon the point where it has been placed by the gentleman from Laporte, (Mr. Niles,) and it can be entertained only by those who cherish the idea that offices are conferred merely for the sake of the men, and that the shorter the tenures of our offices, the more are our chances and the chances of our friends increased for obtaining them. This, Mr. President, is radically an erroneous theory. The selections to office are made with a view to the interests of the people; not with a view to the interests of the individuals selected; but they are selected because they have capacity, integrity, and fidelity—this is the supposition, at the time, whether right or wrong.

Now, if it be right to trust the people with the power to select their own officers, is it not also right to take away all restraints upon the exercise of this power? Why, sir, it would be an outrage to continue such a restraint. Who suffers if they make a wrong selection? It is their own error, and they bear the burden of it.

These inferior offices have no analogy to the office of President of the United States, whose hand is filled with patronage which might be used for the purposes of corruption. If it were allowable to say that the American people could be at all corrupted, there would be a manifest impropriety in continuing this office for a long time. But as for the Auditor and Treasurer, whose business is watched year after year—who are held accountable in the strictest manner—there can be no necessity to shorten their term and render them ineligible.

This argument, in one or two things, is very radical. Either it embraces the idea that the possession of office is a means of making party capital, or else a means of corrupting men—upon the supposition that our fellow-citizens may be corrupted by the inducements which they may be able to hold out—both of which ideas, in my judgment, are radically erroneous. I ask the gentleman (Mr. Smith of Ripley) to consider that we have progressed from the time when, in 1816, it was assumed that the people were incapable of selecting their own officers. We are all now in favor of trusting them with making these selections. And a few gentlemen, with myself, entertain the idea that they may be trusted in this matter, without re-

striction, again and again; and if they see proper to continue the same individual in office year after year, in consideration of the faithful discharge of his official duties, and his complete fulfillment of public expectation, that it is not at all improper for them to do so. It is merely leaving in the hands of the people the power of awarding meritorious services.

On the other hand, the course pursued by the gentleman from Ripley results in what is called ostracism. He proceeds upon the idea, that, when a man becomes so popular that everybody confides in him, he becomes a dangerous citizen; in fact, there is no danger to be apprehended.

I am not particular, sir, about the tenure of these offices. I admit that there would be great inconvenience to have these elections every two years, and it would greatly cheapen the offices themselves, rendering them less desirable and important than though these elections were to take place every four years. Nevertheless, I want the people to hold these elections just as often as they see proper. If gentlemen say, that, after a man has served two terms, he shall be disqualified, I cannot go with them. I am not willing to assume the ground, that the officer who has served one or two terms has obtained such an ascendancy over the minds of men that no one can stand any chance against him.

But there is another consideration. I do not wish to cultivate a thirst for office in this State. The man who sets himself up to live by public employment, has but very slight claims to my support. The individual who sets himself up to cater for the taste and opinions of every man, if he is not very free from the common frailties of men, will be sure to lose his character for that little gem which I esteem very highly, which is sometimes called candor and fairness; he will assume too much of the habit of a species of double dealing—a way of becoming all things to all men. I have not much reverence for these everlasting office-seekers—those very characters which I suppose the gentleman (Mr. Smith of Ripley) has been alluding to. I sympathize not with such characters; and politically I raise my hand against them. In so doing, I think I would be acting as a republican. Nevertheless, whenever the majority here shall decide against me, I will rest satisfied that they are right, and I am wrong in some sense. Privately, I will think and speak what I please; but publicly I will say, *vox populi vox dei*.

MR. OWEN. MR. PRESIDENT: I have arisen chiefly for the purpose of recommending to the Convention to look back toward the point from which we started. What is the question? Could any man tell who had been listening to this discussion for two or three days past? Such a man would certainly come to the conclusion, that the matter under discussion was, whether any officer of the State should be re-eligible,

after having served one, or at most, two terms. But no such question as that is before us. We are deciding the question whether the Auditor and Treasurer of State, shall be elected and remain together here for a longer term than four years. Now, all my votes upon this subject have been decided upon the conviction, that it is wiser and better that these two officers—the one holding the purse of the State; and the other, the officer who draws upon that purse for every disbursement—should not remain together for a longer term than four years. I have voted in this way, because I think men ought not to be led into temptation. This is a principle to which we often advert in our prayers; and it is a true principle in regard to the regulation of the conduct of men. I have not that bad opinion of mankind which many profess. I do not believe in human depravity, in the sense of which many understand that phrase, but I say there are temptations to which men ought not to be exposed; and to which, if they are, some will surely fall. For this reason, I desire to see inserted in the Constitution a restriction to the effect that no two officers, with such intimate relations in the discharge of their respective duties, coming here together, at the seat of government, should be permitted to remain together longer than four years. In my judgment, that would be a wise restriction.

With reference to the reasons that have been given by the gentleman from Laporte, (Mr. Niles,) and the gentleman from Wayne, on my left, (Mr. Rariden,) why we ought to make no such restrictions, I have a few words to say. I have taken down the words of the gentleman from Laporte; and, speaking of this restriction, he says, "it is urged by those who are not willing to trust the people with the management of their own affairs." The words of the gentleman from Wayne, were: "if it be right to trust the election of officers to the people at all, it is certainly right and proper to take all restraints from them." If this be so, we had better go home at once; for our whole object in sitting here, as I understand it, is to propose a Constitution which shall restrain the power of the people themselves, as well as restrain the legislative power.

Mr. RARIDEN (interposing). Will the gentleman allow me to correct him?

Mr. OWEN. I shall be most happy to be corrected, if I am wrong.

Mr. RARIDEN. We differ only about the design, or the intention of Constitutional restraint upon the people. I contend that it is simply the intention of the Constitution to restrain the representatives of the people; and that all the rights of the people, as defined in the Constitution, are left with themselves; and, that Constitutional restraints have reference only to the legislative power.

Mr. OWEN (resuming). To get definitely at this matter, let us take up some one of the

provisions of the first article of our present Constitution—it matters little which—and examine its character and effects. The first that strikes my eye, is the section touching imprisonment for debt.

"The person of a debtor, where there is not strong presumption of fraud, shall not be continued in prison after delivering up his estate for the benefit of his creditor."

Now, is this a restriction on the Legislature alone, or on the people also? Suppose the people think it best that a debtor *shall* be continued in prison after he has surrendered his estate. Can they instruct their representatives in the State Legislature to pass a law to that effect? and then, perhaps, next year, to repeal it if it no longer suit them? Clearly not. When they consented to adopt the Constitution, they abandoned their right to pass any such law.

Let us try another section. "The Legislature shall not grant any title of nobility." A very unnecessary provision, truly; but imagine the case, that the people should desire to grant to some idolized favorite, a patent of nobility, can they require of their Legislature to decree its issue? They cannot. While the Constitution remains unamended, neither the Legislature nor the people can do this thing.

Mr. RARIDEN. I beg pardon for interrupting the gentleman from Posey, but I desire distinctly to understand whether he means to say, that the article of the Constitution which restricts the Legislature from creating titles of nobility, is a restraint upon the rights of the people or a restraint upon the Legislature?

Mr. OWEN. So long as this Constitution is the organic law of the land, it is clearly and undeniably a restriction upon the rights of the people.

If this be not the case, what is the object of a Constitution? If it does not effect this, what does it effect? In a Constitution, the people agree to impose certain restraints upon themselves. In a calm moment, they decide upon certain general and permanent rules of action, from which, in their annual law-making, they will not depart, just as a good man restrains and governs himself by the dictates of moral principle.

But now, sir, to revert to the immediate matter on hand, the terms of Auditor and Treasurer. The gentleman from Wayne (Mr. Rariden) said, on a previous occasion, when speaking of the election of these officers, as now proposed, by the people, that that election would, in fact, be governed by a caucus nomination, here at the seat of government; that those who are sometimes called wire-workers would make themselves busy here, and place before the people the rival aspirants. Say that this be true, then the gentleman has furnished the strongest argument against his own position. If a caucus vote determine the candidates for these offices, then the non-re-eligibility clause which

we are now discussing, resolves itself into this, that the people are forbidding a continued nomination of the same individual by a caucus at Indianapolis. It is the people, in effect, saying to that caucus, "twice you may nominate the same individual, but the third time you may not do it." That, if the gentleman's premises be correct, is the substantial effect of the constitutional restriction he opposes.

I am not speaking here to the question of non-re-eligibility in elections generally. That will come up by and by. I confine my remarks to the case of Auditor and Treasurer; and so far, I approve the principle as wise and prudent.

Mr. WOLFE. Mr. President, the first question for us to ask ourselves at the present time is, what have we come up here for? We came here, sir, to organize a government. To that government properly belong three departments, the executive, the judicial, and the legislative. We are also here to provide for important reforms, one of which is to throw all the elections directly to the people, except the election of United States Senator, which the Constitution of the United States provides shall be made by the Legislature. It has been objected to this proposition to render office holders ineligible for re-election, that we were limiting the rights of the people. Now, when we prescribe limitations to the terms of office, it is the office holders we limit, not the people. For my own part, I am in favor of restricting a man from being eligible to office after two terms. I hold to the old adage, "short settlements make long friends." I believe fully in that. The people are almost unanimous in taking this view of the subject. The people desire, whether a man shall stay in office one or two terms, at the end of four years, if the officer shall have served so long, they desire that a new man should come into his office and examine his books and accounts, to see that every thing is right and proper. When a merchant or a railroad company employs clerks and agents, they always have access to the books and papers to satisfy themselves that their business is correctly and honestly conducted. But the people cannot come up in a body to the capital to look into the accounts of their servants. Therefore, they send up one of their number to fill the office—to examine as it is his duty the condition of the public interests in that quarter, and if there be any thing wrong, to report the same to the people. The new officer can have no interests in common with the old incumbent; on the contrary, it is to his interest to make all proper investigation and corrections where any are needed. If he succeeds in ferreting out and exposing corruption and fraud in the former administration of his office, the people will have confidence in him. Hence it is to the interest of the new officer to guard the rights of the people. To render an officer ineligible to more than one

re-election, is not fettering the will of the people, because, after the expiration of four years, when he becomes ineligible to re-election for that particular office, he has the right to serve the public in any other capacity in which he may be chosen. For my own part, I would like to limit the tenure of the office of Governor to two years, also. I would have all the State officers elected but for two years, and then ineligible for re-election, but to "lay out" for two years and give time and convenient opportunity for a thorough examination of all their doings while in office. I presume that every delegate in this chamber knows the will of his people upon this subject. Then let us act accordingly, and act promptly. Why talk about restraining the people? I tell you they want their officers restrained, and that is all this section proposes.

The general desire is to get competent men in all our offices, and gentlemen tell us that those who have been long in office are most likely to be competent men. We have men in training for every office in the country, from the office of coroner or justice of the peace up to that of president of the United States. And here in Indiana, where we have a million inhabitants, can we not get competent and proper men to do all the business of the people? Sir, we have thousands of upright men who are competent to fill every office in the State, and there is therefore no necessity for cavil against short terms on the ground of turning out competent and getting in incompetent officers. Where is the safeguard of the people? It is in requiring of all her officers a frequent accountability. I would even go so far as to fix the per diem allowance of members of the Legislature, and the salaries of all the State officers. I know that many of the people are in favor of that being done in the Constitution.

I have noticed in the debate this morning that there appears to be a difficulty in understanding whether offices should be regarded as for the benefit of the office-holders, or for the sole benefit of the people. I take it as a clear and undeniable proposition, that offices never were designed for the benefit of the office-holder. My opinion and view of the matter is, that it is one of the necessary evils of society, that we have to have offices and salaries, and office-holders. But offices should be held for the benefit of the people solely, and in re-organizing the government we should so fix the terms of office, the condition of eligibility and re-eligibility, and the amount of salary, as to render this evil as small a one as possible. But, sir, it is a doctrine that I, for one, have yet to learn, that offices were ever designed to be held for the benefit of the office-holder. Therefore, in examining this question, I do not look at that point, I do not stop to inquire whether ineligibility will benefit or hurt the office-holder. I do not care how it affects him; the question for me is, how will the interests of the people

be best secured? Will this measure guard their interests and protect their rights? We should thoroughly purge the legislative department; the people expect this of us. They expect us to take away from the Legislature the power of impeachment, and the power to grant divorces, and so to organize that department of the State government that it shall no longer be a mere law enacting and law repealing body. Now, let us do all these things that the people want and expect we will do. Every man knows very accurately what the people want, and we will not give any new light as to the wishes and opinions of his constituents by the debate here. All the arguments used here on the various questions that have been up, have changed few minds. We had the Grand Jury question up for a week, and all that debate has not changed a single mind. [Several voices—"That's a mistake;" "I was changed."] Well, I did not know that a single mind had been changed. I am glad if the debate effected good. But we have reasonable duties to perform here, and I wish to urge their speedy performance. I am glad to see the good spirit which has thus far characterized all our discussions. Let us go on as expeditiously as possible, and get through with the consideration of these questions, upon which there is a division of sentiment and opinion.

I am in favor of the section as reported by the committee, and shall vote against every amendment. It is time that the question was settled.

Mr. HENDRICKS. The debate has taken a wide range already. For the present, I move to lay the amendment on the table.

Mr. NAVE. I have heard complaints made upon this floor against too much speech-making, and of gentlemen occupying the time of the Convention unnecessarily; but when I see a question under consideration of so important a character as the present one, I cannot, for one, remain still in my place, or refrain from expressing my entire disapprobation of the proviso contained in this section. It is a proviso, sir, that will destroy a fundamental and indubitable right of the people of this State. It directly proposes to deprive the people of that right which, as American freemen, we have ever held to be secured and guaranteed to us, as well by the provisions of our glorious Declaration of Independence, as by the present existing organic laws of the State of Indiana.

In answer to the remarks of the gentleman from Posey, (Mr. Owen,) I will state, sir, that he proposes to incorporate into the bill of rights, by his amendment, a provision that, in my humble judgment, will secure all that could be desired by the people of Indiana in future.

I will read the amendment.

"We declare that all power is inherent in the people, and that all free governments are, and of right ought to be, founded on their au-

thority, and instituted for their peace, safety, and happiness. For the advancement of these ends the people have at all times an inalienable right to alter and reform their government."

I will contrast the proposed amendment of the gentleman from Posey (Mr. Owen) to the declaration of rights, which properly declares that all power is inherent in the people, so far as to their self-government, but no farther, and that they have absolute power and control over their own representatives and all officers of State. Now, I ask, does the proposition under consideration compare in principle with the one proposed to the bill of rights by the gentleman from Posey (Mr. Owen); the one recognizes all power to govern in the people, and the proposition under consideration positively denies that power as belonging, naturally, to the people, by both depriving them of the right of conferring, by their suffrage, office a second term upon the same person, and in declaring that a faithful public officer, although he may have discharged every duty imposed upon him with honesty and fidelity to the public, yet he shall not offer himself as a candidate for re-election to the same office, thus depriving them of a natural inalienable right which they have inherited from their forefathers, who acquired it for them when they, by the lavish expenditure of their blood and treasure, obtained the liberty of this republic. You restrict the citizen of this State by this proviso, from exercising a natural and inalienable right that should never be taken from him. I ask in all seriousness if this proviso is not in opposition to the fundamental organic law of the country? And yet it is proposed to impose this restriction upon American freemen.

It appears to me, sir, then, that the principle proposed in the declaration of rights, which I have referred to, of this State, is in direct contradiction to the terms of the amendment now under consideration, which provide for depriving the citizen of the right to vote for an incumbent who may have served faithfully for two terms, for a third or more terms. For that reason I am opposed to the entire section. Gentlemen may boast much of their rights as freemen of this republic, but I have only to say by the present section under consideration, you restrict the right of suffrage by preventing the people from voting for those whom they prefer if they have already held office; thus thereby sapping at the very foundation of the rights of the American citizen.

Mr. CLARK of Tippecanoe. I desire, sir, before the vote is taken upon this question to make a word of explanation. I stated the other day that I was willing to extend the term of the Auditor to four years, but during the progress of this debate I have changed my views on that point, and I desire now to state briefly the reasons. But I will first say a few words on the principle involved in this question.

- The gentlemen who advocate the perpetual re-eligibility of these officers insist that it is an unnecessary restraint on the power of the people to choose whomsoever they may prefer to be their officers. They say it implies a suspicion of the wisdom and capacity of the people; that, in fact, it is a denial of the right and capacity of the people to govern themselves. They ask are we afraid to trust the people? I answer we are not. The people, at least their representatives, in their original and primary capacity, exercise the high and solemn power of prescribing and fixing limits to the powers of the government. The question now is not how far we will trust the people, but how much authority we will grant to those officers with whom we, the people, entrust the powers of government? How long will the people part with their power? How long shall the officer hold it before he returns it to those from whom he derives it?

I understand, sir, that all free governments have limited powers, and the tenure of office is at least not perpetual. Now, sir, as I am somewhat old fashioned, I will follow the gentleman from Ripley, as my Democratic leader on this subject, as he is said to be a little *old* in his opinions, advocating doctrines that were supposed to be true some twenty years since. I have no sympathy with those progressives whose reforms lead from republicanism towards despotism. Now, sir, it is an old fashioned maxim that power has a tendency to draw to itself additional power, to entrench itself by every means possible. To counteract this, the terms of office (for the officers possess the power of the government,) in republics are made short. The people frequently resume that power which they had parted with, and in important offices, the officer rendered ineligible, that he may not usurp power, and control or defy the people.

Gentlemen say this prohibition of re-eligibility is a new edition of the Athenian ostracism, which banished citizens who had become too powerful. The Athenians resorted to this contrivance because the powers of their government were not properly balanced; and the authority of their great officers was not sufficiently limited and defined. The powerful citizens often usurped the whole power of the government, and established themselves permanently in office. Hence they were suspicious and oftentimes unjust to their great men. But at Rome, in the age of the republic, the powers of the government were better balanced, and the election of consuls, and most other officers, were annual. Far greater confidence was granted by the people to their great officers. But when the people of Rome invested the decemvirate with indefinite authority, and unlimited tenure, for the mere purpose of presenting a code or revision of the laws, they attempted to usurp the whole power of the State. Hence, I apprehend the proverb may have been

derived that "where annual elections end, tyranny begins."

Allow me to say with reference to this question of the Auditor, that it is possible our system of banking may be changed, and new duties assigned to that officer in connection with our monied institutions, and thus his power greatly increased. And the same reasons which require that the tenure of office of the Treasurer of State, should have some definite limit and termination, may with equal force be applied to this officer. I shall, therefore, vote that the Auditor's term of office shall be the same as that of the Treasurer.

MR. GIBSON said, MR. PRESIDENT:—We have just witnessed an exhibition, which I hope not to see repeated on this floor. While an amendment was under discussion, involving a highly important principle, and at a moment when members were endeavoring to obtain the floor for the purpose of participating in the debate, one of the opponents of that amendment, who had the good fortune to catch the eye of the President, moved to lay the amendment on the table, and that motion was sustained by the vote of the Convention. This, sir, is applying the gag to debate, and that in the most odious form. I repeat, sir, that I hope, that, as it was the first, it will be the last exhibition of the kind we shall be called upon to witness.

If upon any subject upon which it shall become our duty to act, but a single member of this body should differ in opinion from myself, I, for one, am willing to listen to him, until he has exhausted all arguments that he may wish to offer.

An example was afforded the other day in the debate on negro suffrage. The gentleman from Steuben (Mr. May) had the moral courage, though standing alone in his opinions, boldly to advocate the extension of suffrage to the negro race. Upon that question he and I are as widely separated as heaven is from hell; yet, sir, I would have been the last man, by vote or act of mine to abridge in the slightest degree any remarks he might wish to make upon the question. And that, sir, is in my opinion, the spirit which should actuate this body, in the discharge of the high trust committed to their keeping.

I would, sir, especially deprecate any attempt to force a vote upon the question of ineligibility, at this time, when nearly one-third of the members of this body are absent. It is one, perhaps, of no great practical importance; but involving, as I conceive it does, the very principle which lies at the foundation of our government, and upon which rests the whole structure, the right and capability of the people to govern themselves; it derives from that fact an importance, which demands our most careful deliberation. It is a question no less than this; are the people of Indiana capable of selecting, at the ballot-box, the officers necessary to carry on the

government; are they to be trusted in the unrestrained exercise of this power; or do they need the restraining hand of this Convention to prevent its abuse. Were the fathers of the republic right, when they announced to the world that man was capable of self-government! or are we to believe the monarchists of Europe, when they tell us that the experiment of republicanism must sooner or later fail, and that the masses are not to be entrusted with power!

This sir, is the true question involved in the section under discussion; and those who advocate the proviso, differ only from the monarchists of the old world in the length to which they would carry the principle, and not in the principle itself—The one is not willing to trust the people at all—the other is willing to repose half confidence in them.

With regard to the length of the term for which these officers are to be elected, it is a question of minor importance, and one in which I feel but little interest. It is the principle contained in the proviso, which I desire to combat; and I would here remark, that I agree with the gentleman from Ripley, (Mr. Smith,) that if it is proper in principle to apply this proviso to one office, it is proper to apply it to all; out, I believe sir, I agree with him in nothing else.

That gentleman has entered into a labored argument tending to show the propriety of rotation in office; an argument that would have been admirable on the stump, and directed against an opponent who had, perhaps, grown gray in office. It is a principle about which, perhaps, there is but little difference in opinion, either in this body or among the people at large; but gentlemen seem to forget the difference between the people's being influenced in their votes by such a principle, and having it thrust upon them as an inexorable rule to which no exception should be allowed, and from which, under no circumstances are they to be allowed to depart.

A MEMBER, (offering a book,) read what Mr. Jefferson says.

MR. GIBSON. I would rather know first, which side of the question he is on. I yield to no man, sir, in reverence of the mighty minds, of the past, those

"Dead but sceptred sovereigns
That still rule our spirits from their urns."

But neither the authority of Jefferson, or any other man, has weight enough with me, to carry with it a provision as monstrous in principle as I conceive this to be.

As I was remarking, sir, the true issue to be determined, is not the propriety of rotation in office, as a political principle, for about that there is but little difference of opinion; but whether that, which has heretofore had no greater force, than what its own merit entitled it to have, shall now be raised to the dignity of a Constitutional principle; whether we shall so hedge the voter

round with restraints, that half the freedom of elections will be lost, to insure the triumph of an isolated political principle, having no proper connection with organic law!

Shall we go home, sir, to our constituents, and tell them, that coming here pledged, as we did, to extend elections by the people to all offices—pledged to take from the Legislature the elections which it now has, and give them to the people; that after declaiming from every rostrum in our respective counties, about the right and the capability of the people to elect their own officers, shall we, I say, tell them that after all this, the very first section of the new Constitution which we adopted, contained a restriction upon the elective franchise.

That while we took from the Legislature the power of electing a Secretary of State, Treasurer, and Auditor, we conferred it with a grudging hand upon the people. That we placed restrictions upon them that had never been thought necessary or proper, when the election was in the hands of the legislature. What other construction could be put upon such a provision, than that we believed the masses were less to be trusted than the Legislature?

But let us look for a moment at the practical effect of this principle when we shall come to apply it to the election of not merely these, but all other officers in the State—you say in effect to the people of a county, you may elect your own clerk, or sheriff, or auditor; but for fear that you may not be capable of acting with due judgment in this matter, we impose this restriction upon you: that you may elect any other man than the one whom a majority desire, and whom you know to be qualified. That man you shall not elect, but among all others you are free to choose. I repeat it, sir, that the whole, and only effect of this proviso is to prevent the election of the men whom the majority of the State or a county may desire; because, if a candidate is not the choice of a majority, he will, of course, be beaten at the polls, and this proviso has no effect on him one way or the other. He is just as sure of being turned out of office without the proviso as with it. It is only the officer whom the people would re-elect, that is to be turned out of office by it. It is as I said before, saying in so many words to the people, that the man whom the majority desire is the man, and the only man for whom you are prohibited to vote.

Sir, if this is not a restriction of the right of suffrage, I am unable to understand the meaning of language, and, if it is, then sir, we shall be false to our pledges to the people if we adopt it; for, upon no other subject, perhaps, has so much been said upon the stump, by delegates during the past summer, as upon the capacity of the people to elect their own officers. And now, sir, when we come to carry out the principles we there advocated, gentlemen shrink back in doubt, and ask, is this safe, can we trust

these elections in the hands of the masses without any restraint? Must we not guard the people against themselves. For one, sir, I have no fears on the subject. I have never known an incompetent officer re-elected by the people, but have known such, beaten with a party majority in their favor, and party discipline to sustain them.

The gentleman from Posey, (Mr. Owen,) to whose remarks I always listen with the greatest deference, has endeavored to show that all Constitutional restraints are but so many curbs upon the will of the masses, and that there is no real difference between restraints upon the power of the executive and legislative departments, and restraint upon the people themselves. The argument was ingenious, but not even the ingenuity of the gentleman can sustain a proposition so obviously wrong. There is, sir, a difference, plain and palpable. To carry on the operations of government, and frame the laws under which the citizens of a State are to live, Legislative bodies are necessary. To restrain the action of those bodies within their proper sphere, the people in their sovereign capacity, embody in a written Constitution, the restrictions necessary and proper for that purpose.

But the case is widely different, when that same people undertake to impose restraints upon themselves.

In the one instance, it is the master dictating to his servants the limits within which they are to act; in the other, it would be that same master imposing shackles upon his own free action.

I will go, as far perhaps, as any other member in tying up the hands of the Legislature; in defining clearly and distinctly, the limits of their power; but, when gentlemen propose to place shackles upon the elective franchise, in the primary elections of the people; to establish a censor over the ballot box; to say, in short, to the masses, those elections which we take from the legislature, we give into your hands, but we cannot wholly trust you; you are so liable to be corrupted by patronage, so easily misled, that you will not change your officers sufficiently often, if we do not force you to do so. I say, sir, when such a principle as this is proposed to be made part of the organic law; I cannot in any shape or form sustain it.

The gentleman from Ripley (Mr. Smith) is fond of reasoning from analogy, and has presented us two, as he deems them, analogous cases—one drawn from the stable, the other from the drawing-room.

I must confess his sketch of domestic felicity was happily drawn; it lacked but one feature to make the analogy perfect, and that is, resemblance to the question before us. If the gentleman had carried his picture a little further, if he had told us, that the mother doubting her own stability of purpose in the management of

her daughters, had procured the legislature to pass a special law, requiring her at all times, under all circumstances, foreseen or unforeseen, to adhere to the line of conduct she had marked out, then sir, the analogy would have been perfect, and he is welcome to all the force his argument can derive from such an example.

I have before said, that the principle of rotation in office, as a principle for the guidance of political parties, is a good one; and receives almost unanimous assent.

Gentlemen ask, why then not adopt it? In return, I would ask them, why not engraft upon the Constitution all other political maxims which may receive the assent of the majority?

A large majority of this body belong to the democratic party; they would assent to the proposition, that it is desirable that our future governors should be democrats; but is any gentleman prepared to say, that he, would make democracy a constitutional qualification for the office; that he would chalk out a political creed to which every aspirant for office should subscribe. There is no one argument that has been offered on behalf of the proviso under consideration, that would not apply with equal force for the adoption of such a provision.

Let us try it, and see whether I am right or not. First, I will say as the friends of this proviso say of it; that the principles of the democratic party are the true basis of republicanism. Right, says the majority.

Therefore, it is desirable and every way proper that the officers of the State, should be members of that party. All right, again will be responded by the democratic majority.

But the people in their elections do not always follow this rule; they sometimes elect whigs.

Too true, indeed, would be the response.

Therefore, if the principle is a good one—but the people will not always keep it in remembrance—let us by constitutional provision, force them to observe it. There, sir, is the whole strength of the argument in favor of ineligibility on account of previous incumbency, and I ask in all fairness, is it not just as good in the case put by me, as in the one now under consideration.

We are told sir, that when a man once gets into office, it is very difficult to get him out again, that he will use, and use successfully his position and patronage, to secure a re-election.

To get rid of this evil, gentlemen must go one step further; they must say not merely that the Auditor, or other officer shall not be re-elected to the office he held, but they must class him with the felons of the land, and say he shall not be eligible to any office whatever.

Cannot the Treasurer of State, use the same influences to procure his election to the office of Auditor, or Secretary of State, that he would use to secure his re-election as Treasurer, and

would they not be as potent in one case as another?

If the people are the unsafe guardians of power, which the arguments of gentlemen assume them to be; if it is really necessary to guard them against their own blindness, let us at least, do it effectually. Let us leave open no avenue through which designing politicians can lead them astray. I think, however, gentlemen would pause long before they would take such a step, though their own arguments lead naturally to its adoption.

Sir, the agitation of this question comes not from the masses of the people themselves. It is not in the nature of man, voluntarily to abridge his own rights and privileges. They do not distrust themselves, nor do the advocates of this measure really distrust them. This question, sir, had its origin among a class of small beer politicians in the State, whose only hope of office, rests upon the exclusion of all better men, by rendering them ineligible; who think if they can only keep the wheel in motion, their turn will surely come after awhile; who expect to get into office as some men get on juries, by hanging around the court-house until the regular pannel is exhausted, and they are taken from necessity, not choice.

Against the proviso in question, as applied to the offices under consideration, and wherever it may be attempted to be made part of the Constitution, and whatever form it may assume, I shall be at all times ready to record my vote.

Mr. WALPOLE. The provision to the section now under consideration, which provides that the Auditor and Treasurer of State shall not serve more than four years in any term of six years, has been violently assailed by the gentleman from Clark, (Mr. Gibson,) and others. Various amendments have been proposed, to change its character. Entertaining the views I do, and feeling myself called upon to assign my reasons for sustaining the provision, I shall do so in a few words. Our government, in all its departments, is elective. Elections are the source and fountain of its life—its perpetuity depends upon their purity, and we should guard it with care. The elective franchise is, therefore, the greatest and proudest privilege of the citizen, and I will go as far as any member to protect its purity. But, I ask, how maintain it? It is to be maintained by keeping the ballot box pure from the approach of corrupting influences; and this is to be effected by keeping it free from the patronage which public officers command, and too frequently apply to attain their object. Let not the patronage of office be brought in conflict with the freedom of elections, is my object and desire.

The Auditor and Treasurer of this State have always an immense amount of public funds at their disposal, and thus an immense patronage (if such it may be called) which they may use to perpetuate themselves in office. They have

now under their control and management, near a million of dollars of trust funds. These funds are loaned at the discretion of those officers, upon mortgages, with the power to call the fund in or extend the time of payment. They have immense discretionary power over these funds: they are loaned to many hundred citizens of the State, and to such citizens as these officers may select from the thousand applicants that desire accommodations.

And, sir, upon the winding up of our State Bank, there will be near one million more added to the credit of the State, and, no doubt, will be put under the control of these officers, to be managed as other trust funds are managed. To this you may add near three-quarters of a million of dollars every year of State revenue, and, should the system of free banking, as now proposed, (and I have little doubt will be adopted,) which contemplates banking upon U. States and Indiana stocks, and money; all to be deposited with these officers; we may reasonably suppose that there will be five million more. In a word, these officers will, in the form of revenue, trust funds, and bank security, command the management and control of at least from eight to ten millions of dollars, and every year increasing, without check or restraint. And, as you contemplate, by your new Constitution that you will have biennial sessions of the Legislature, the consequence will be the concentration and centering of an immense and irresistible influence and power in their hands—a power I fear too strong for the freedom of elections.

This immense power in the hands of two men bent upon retaining power, would be felt from the centre to the circumference of your State; it would be an element used to continue the dominant party in power, be it either whig or democrat.

It is to guard and protect the elective franchise against temptation to corruption—to maintain the purity of elections that shall govern my vote.

It is provided in that portion of your Constitution which is known as "the bill of rights," that all "elections shall be free and equal." Will your elections be free and equal when a private citizen is opposed by a public officer—an incumbent—backed by the immense treasures and power I have alluded to so imperfectly? No, sir, but to guard against it let us carry out that patriotic declaration that there shall be equality in elections.

I know I am not taxing your credulity too high, when I ask you to credit me in my firm belief, that men may and will use place, and power, as appliances upon the ballot box.

You are familiar with the duties, as well as the powers of your county Auditor's and Treasurer; they act in a circumscribed circle, in comparison with your State officers. Yet their duties are not unlike; they have trust funds at their

command, and under their control, but not one hundredth part that your State Auditor and Treasurer manages.

Yet they understand the secret of accommodations. They are not unmindful that money is power, and true to themselves, if not to duty, they never fail to use their position and power, for their self or party advancement. Few, if any instances have occurred of a county Auditor being displaced. If any such instances have occurred, I do not know of them.

I have always thought we have conferred too much discretion on the officers of State and counties over our large trust funds; our system, is a borrowed system; a system concocted by politicians—not statesmen—their purposes not to secure your Treasurers, but to use them for party purposes, persons and party have used, and will continue to use them, as long as money may be found useful in elections.

Our system is called a system for collecting and disbursing the public revenue—while it apparently does this, it is a system to perpetuate power.

Your State Auditor and Treasurer will always be the head of one or the other of the political parties, the county Auditor and Treasurer of their party, and their adjuncts, and the money and trust funds of the people will be used as the *bane* to the purity of elections.

Then there will be no security against this combination unless you render the head ineligible after the second term, and I fear this will not altogether effect the purpose I hope for.

MONDAY MORNING, Nov. 4, 1850.

The convention met, and was opened by prayer by the Rev. Mr. Babb.—Journal read and approved.—

GRAND JURY SYSTEM.

The convention then proceeded under a special order to the consideration of Mr. Pettit's resolution for abolishing the grand jury system:

Mr. WALPOLE rose and said:

Mr. PRESIDENT, I move the resolution and proposed amendments be committed to a select committee with instructions to report upon the following points: First, are presentments and indictments in judicial proceedings according to the course of common law: Secondly, if so, to abrogate the grand jury system would not the same violate the second article of the compact of the 13th July 1787 which guaranties the benefit of judicial proceedings according to the course of common law, to the inhabitants of this State: Thirdly, is not said compact confirmed by the federal constitution and binding upon the people and the State.

I have no wish, nor shall I at this time debate the policy of the original question.

My purpose is to settle a question which I think, is paramount to that of policy—that is the

question of power, in this convention to incorporate a provision abolishing the long and well settled principle of the common law, which requires that no one shall be called to answer to a charge for crime except upon presentment and indictment.

It occurs to me, after reading the compact referred to, that to say the least, that our power is doubtful and deserves the careful examination and deliberation of this body, and so far as I am concerned, I will not as a representative of the people in this body exercise a doubtful authority, nor do I think it the part of *wisdom* for this body to do *otherwise*. That the question is encompassed in doubt none will have the temerity to controvert. If, however, the question after receiving that consideration which I think it should command, is settled on the side of power; I and those that think as I do, will feel free to meet the proposition as one exempt from constitutional objection and will then meet it as one purely of expediency.

My motion and the points of inquiry that I have propounded, fully, distinctly indicates the ground of denial to the exercise of the power—but that the convention may better understand me and without at all going into a discussion of the motion I have made, I desire to lay before the convention briefly the *hypothesis* leaving the conclusion for the committee to report.

The ordinance of the 13th July 1787 as is well known to the members of this convention, was adopted prior to the adoption of the federal constitution; a portion of the ordinance was subject to amendment and repeal, a portion of it however, to employ its own emphatic words, "shall be considered articles of compact between the original states and the people and states in said territory and forever remain unalterable unless by common consent."

The second article of the ordinance, being of that portion of the same which is declared to be a compact, among other wise and patriotic provisions, provides that "judicial proceedings shall be according to the course of common law and that these and other provisions of the compact shall never without the consent of the original states and the people and states of the territory," (meaning the states of the territory north west of the river Ohio.) and forever remain unalterable, unless by common consent.

This compact has been confirmed by the federal constitution. If I am not mistaken when I say that the compact is ratified by the federal constitution, then I venture little in hazarding the opinion that the power of this convention over the question is a doubtful power.

If the compact is confirmed by the federal constitution, are we not concluded? The congress of the United States by its act of the 19th April 1816 regarded as a free open question as to validity of the compact upon the original states and the people and the states of the territory, by the act last referred to they authorized

the inhabitants of the Indiana territory to form a constitution for a state government, by enjoining that the constitution of the state should not be repugnant to the articles of compact of the 13th July 1787.

The framers of the present constitution regarded the compact as obligatory upon the people and the state and the present constitution embraces every right provided for in that compact. It is worth the few moments' time of gentlemen to read the ordinance, the federal constitution confirming it, the act of congress authorizing the forming of the state constitution, all of which may be found in the volume containing the revised laws of the state for 1843. Without further remarks I will repeat my instructions.

1st Are presentments and indictments in judicial proceedings according to the course of common law? This question all will answer in the affirmative and that they can as common law, emanate from no other power than from a grand jury.

2d If so, to abrogate the grand jury system will it not violate the second article of the compact of the 13th July 1787, as guaranties the benefit of judicial proceedings according to the course of common law, to the inhabitants of this state.

3d Is not said compact confirmed by the federal compact and binding upon the people and the state?

The consideration of the motion of the gentleman from Hancock (Mr. Walpole) for the present, was passed by.

Mr. TERRY, of Davis having the floor on the main question proceeded at length in opposition to the original proposition offered by Mr. Pettit. To enable Mr. T. to revise his speech its publication at his request is delayed.

Mr. READ of Monroe. I desire, Mr. President, at this stage of the proceeding to submit a few remarks upon the very grave proposition introduced into this Convention by my friend, the gentleman from Tippecanoe.

For the first time in any American Constitutional Convention, or in any law-making body having power over the subject, in any country of the world where the common law prevails, is it now, and in this body, proposed to abolish the Grand Jury system.

Other parts of the common law, in the progress of opinion, have been changed or modified; other parts have been stricken down and swept away by the tide of improvement. But that principle which requires that no person shall be put upon his trial—shall be held even to answer publicly to an accusation for a capital or otherwise infamous crime—until men of his own vicinage—his neighbors—shall, upon their oaths, declare that the circumstances showing guilt are such that he ought so to answer, has stood as one of the great land-marks in modern free governments. It has become embodied as a principle in the Constitution of

the United States, and of nearly every State. Not only do these Constitutions declare that no man shall be *convicted* of any crime but by a jury of good and lawful men, but in that tender regard for human freedom which constitute their very essence, they declare that no man shall even be *put to trial* upon a criminal charge without the intervention and sanction of a jury of such men.

Why, sir, in the humane design of the law to throw over every man a broad and impenetrable shield, so that he may by day go abroad without fear of the machinations of private malice or political persecution, and by night lie down in security, what more could it do? Here is a double defence; here is an outer and an inner wall of protection. Not in a single American State have these walls, either the one or the other, been broken down. I venture, sir, not in a country or colony where the common law—our own common law—is known, or where the Anglo-Saxon race dwells. In regard to London, to which reference has been made, an examination of the facts will show that in that great receptacle of crime, where there is constantly a world's convention of rogues, so far as abolished, it has been as to smaller offences, not as to capital crimes, and for the purpose of giving the police magistracy more summary power in such cases.

Not only has the Grand Jury gone with every Anglo-Saxon colony, whether to Australia or to New Zealand, to California or to Minnesota, but it has overcome national prejudice, and by its own intrinsic excellence been introduced into rival systems of jurisprudence. The jury of inquiry—the Grand Jury—was, by the Constitution of 1830, adopted in France as a new bulwark of safety to the French citizen. Strange that while the sons of freedom elsewhere should be struggling for this very institution, we should be here debating whether we shall not give it up!

Mr. President, I pause—I hesitate. I would as soon walk boldly forward, leaning upon the arm of that gentleman (pointing to Mr. Pettit) as upon that of any other in the Convention. No man has a brawnier arm, whether for attack or for defence; no one a bolder heart or steadier step, or a more right onward purpose. I like his company—nay, sir, I like his lead. I shall not, I trust, in our work have occasion to part with him often. Indeed, sir, I know that in my humble way I shall, for the most part, be with him.

But when I am asked to lay the axe to the brave old oak which has so long sheltered a race of freemen, I again say I pause. If it has any growing defect let the proper remedy be applied, but cut it not down, spare it, I pray.

Mr. President, far back in a remote age there originated two legal systems, the one or the other of which, or the two combined, even at this day hold the empire of the whole civilized

world. One of these systems is known as the civil law. It had its origin among the Romans, and was perfected at a period of the highest civilization. It descends to us as the offspring of philosophy and science. This system is adopted in its principles and mode of procedure in certain courts of our own country; it is the basis of the judicial policy of all continental Europe, and is recognized and appealed to even in some Mahomedan countries. This system, eminently wise and just, as it is acknowledged to be in all that relates to matters of contract and the mere private relations of men, makes no provision for the security of political rights. It has no juries, it has no *habeas corpus*, it has no representation of the people in government. Hence it does not, of its own force, carry with it in its progress human freedom. It is not the handmaid of liberty.

There is, sir, another system. It had its rude beginnings in the woods of Germany, among a brave and barbarous race. In its very inception it recognized the agency of the people in the whole business of government, both in the making of the laws and the administering of them. This system, in its great outlines, became part and parcel of the Anglo-Saxon mind. Neither the violent Plantagenets, nor the haughty and imperious Tudors, nor the tyrant Stuarts, could displace or uproot it. Though there are in this system some harsh features, it has, in a wonderful degree, secured the liberties of men; and wherever the common law is found there are found men who claim freedom as the birth-right. Why is it so? The answer is the very first principle in this system is, the people by their representatives make their own laws and tax themselves.

Strange as it may seem, this great fundamental principle of freedom was settled among the Saxons before they left their native forests; they carried it with them into Britain, and there had as their law-making assemblies, their *witenagemote*, and in later times their parliament. This race of men in all their dispersions claim the right of making the laws for their own government, and yield it to no earthly power. This was the very claim, the denial of which, in its full exercise, produced the American Revolution. This same principle has recently been recognized and re-affirmed in our Congress as a great common law principle, in conceding to the people of California the right to make their own laws and regulate their own institutions, without the intervention of even the General Government.

But by the common law the people are equally a part of the law-administering power. This too, was a principle settled in the very germ of the system. Long before the migration of the Saxons to Britain, Tacitus, in describing their manners in Germany, tells us that one hundred men accompanied the judge in his circuit, to aid him in his deliberations, as well as to assist in

carrying his sentence into execution. This was surely rude and clumsy enough, but it shows how early the people constituted a part of the court. In England, among their descendants, the jury brought in the aid of the people in their unofficial capacity, both for accusation and for trial. When it was proposed to subvert this system and introduce the civil law, which acknowledged no such agency, the reply of the sturdy English barons was, *we cannot consent that the common law shall be changed*. So now, when the same thing is proposed, I hope a like answer will be given by this Convention. For one, I want the people—the unofficial people—to remain as a part of our courts of justice. I will never consent that permanent police officers or magistrates shall take the place of the people themselves, in the maintenance of public order. If I am upon trial, I want my neighbors to try me, and no less, sir, do I want them to say whether I shall even be put upon trial. The Grand Jury I wish to stand between me and the malice of my enemies.

But, sir, there is another view. In this country, the people are for themselves the consensators of quiet and order. In our system, if it is to continue, it must ever be so. A police magistracy to hunt up, or rather to hunt down offenders, and to bring them to trial is, I say it, with all deference, not an American idea. What is the Grand Jury? It is a portion of the people from the body of the county, representing the solid worth of the community, interested in upholding the laws and preserving the peace of society, detailed for the time, to overlook the county, and inquire as to the infraction of the laws. It appears to me, that this is a wise and politic institution, to make society the keeper of its own peace. But why not leave this duty to every man who may see fit to perform it? I answer, according to the homely proverb, what is every body's business is no body's business. Men, and especially the best men, do not choose to step forward as prosecutors on behalf of the public. Ordinarily, they do not do it. For example, gambling is not now an indictable offence in this city. When it was so, I am informed, indictments were frequent. Now there are no prosecutions, though, it is said, the vice has greatly increased. No one chooses to incur the odium, and perhaps the danger, of becoming the prosecutor.

But it is objected that an indictment found against an innocent person, inflicts a lasting and irreparable injury. What is an indictment? It is, I suppose, an accusation drawn up in a formal manner, and prepared by a Grand Jury. But under any system, there must be some process before trial. Before an examination by a magistrate, there must be arrest. In all this proceeding, there is some disgrace. Any charge public or private, inflicts some injury. If it is said of a man, he was indicted for this or that offence, the answer, in case the indictment is

not sustained, is, he was found innocent upon trial. Just in the same way, if it is said of a man that he was arrested and carried before a magistrate, it may be answered, if such is the fact, very well, he was discharged. There is humiliation, perhaps some disgrace in either case. But it is incident to any system.

Again, it is urged that the examination before a Grand Jury is *ex parte*. Let us look at this objection. The Grand Jury decides nothing further than that there are sufficient grounds to put the accused upon his trial. If the person as to whom the inquiry is instituted, is present with his counsel, and the State with its witnesses, why, you have already a trial, when the only question is whether there is need of one, and the party ought not to be tried a second time. I have thought all along, that gentlemen have confounded the question of putting upon trial with trial itself.

But the secrecy of the Grand Jury investigation is another ground of objection. Here again, I repeat, the Grand Jury is not a court of trial. The right of the accused to a speedy and public trial I will never give up. It is a great common law right, founded upon humanity, a right I may remark, but little understood in countries where the common law does not prevail.

But that every preliminary investigation should be public is quite another and a different thing. Mere police inquiries, if public, would, in many cases, be useless. The publicity, would often defeat the very end for which they were instituted. The petit jury has its deliberations in secret, and your supreme judges do not call in the public, when they are settling their decisions. Secrecy, then in itself, is not an evil, even in judicial matters. The Grand Jury sitting as a mere court of inquiry, a police magistracy of the people, look over society and determine what, and how far? Why, that there ought to be a public investigation as to certain offences. Many public accusations they suppress altogether. Many frivolous and ridiculous things they arrest in their inception, and save society from the excitement, the turmoil, and disturbance of a public investigation. They thus throw the mantle over many human errors and frailties, not, in their opinion, amounting to crime, and which no public good requires to be exposed to the popular gaze.

Mr. President, not long since, I read a capital article, taken, I believe, from a London law journal, in favor of abolishing petit juries. It proved, as I thought, that a clever man may make a right good argument in favor of any thing. But seriously, I fear, when the Grand Jury is destroyed as a relic of antiquity, no longer to be tolerated, that the petit jury too may be assailed upon the same ground. As a member of this Convention, neither the one nor the other, constituting as they do, the popular branches in our courts, will I consent to give

up. Not only are they tribunals of great value in themselves, but they are beyond estimate in throwing back upon the people the responsibility of maintaining law and order, and in this latter view, the Grand Jury is the more important institution of the two.

Mr. ROBINSON said; Mr. PRESIDENT:—Although I am not in general very sympathetic, yet have this natural peculiarity, that I can never attempt to address a deliberative body without a feeling of embarrassment, and I should not now obtrude myself upon the attention of the Convention did I not feel that on a question of some importance, one that has existed so long, that the memory of man can hardly trace its origin; an institution which has been brought down to us by our forefathers, and adopted by us as one of the guarantees of our rights, was likely to be successfully assailed. I have, also, a further inducement to appear at this time. On a former occasion, I offered a resolution for the adoption of a section into the new Constitution, which, as I believe, embodies everything necessary to give permanency and stability to this institution, and quiet the public mind in regard to it, and I thought I had made a tolerable good speech upon it. But now, after the reading of the learned and classic lecture of the gentleman from Monroe, (Mr. Read,) I find that my ideas are very much obscured. [A laugh]. But I find, also, that many of the positions of the gentleman, humble as are my pretensions, do not come up to my expectations of the man, nor my views of the question.

Mr. President, I never write what I say. I never take notes when I feel called upon to advocate or oppose any measure. But, I propose now, for a few moments, (if I can gain the attention of the body, for nothing can be more embarrassing to me than to address an inattentive audience,) to attempt an examination of this question.

I am satisfied, that when we look at the principle involved in the resolution and instructions of the gentleman from Hancock, (Mr. Walpole,) in connection with what he read from the Federal Constitution, that we cannot abolish the Grand Jury system, without contravening that instrument. I have yet heard no argument in this body which has, for a moment, convinced my mind, that the powers of the Federal Constitution did not intend to guard our rights for all time, by throwing the Grand Jury between the government and the citizen.

My remarks upon this occasion shall not be, directed to the origin of Grand Juries. The purpose for which they were first constituted has been ably argued on both sides. I shall direct my remarks to the Grand Jury system, as connected with the criminal jurisprudence of our own country. I shall offer nothing with respect to their antiquity, nothing upon the question whence we have derived the system, nor whether it has been used as a support of

the demands of the crown, or in defence of the rights of the subject or citizen. And if upon this examination of its connection with the judiciary of our country, we should find it works well, that it is the best method by which we can ferret out and punish crime; if we find the system to be best calculated both for the protection of the rights of the State and the citizen, then I shall be in favor of its continuance.

It is a principle conceded by every well disposed citizen, that it is necessary for every well organized government to be able to detect and punish crime. This is the safeguard of the people. It is the safeguard of the weak against the strong—the protection of the innocent against those who are regardless of their rights. There must be some means by which to point out crime. This is the principle that shall govern my vote, when we shall come to the question whether Grand Juries, as they are now constituted, are not better calculated to subserve the ends of justice than any substitute for them which has been yet proposed.

An objection to Grand Juries has been raised with some degree of force upon this floor, upon the ground of the secrecy of their proceedings. Upon this subject I am prepared to say, with a gentleman who preceded me this morning, that the manner of Grand Jury proceedings in their retirement for these investigations, is one of the chief beauties of the system. What is there in this feature of the system which any honorable man can complain of? The only secrecy which attaches to Grand Jury proceedings is this: when they come in from all parts of the county from which they have been selected—when they have been subjected to challenge, and received the charge of the court—and the moment comes for them to proceed to deliberate upon the rights of the citizens and of the State, they retire from all confusion and everything which could be brought to bear upon them, in the way of misleading their judgment. The fact that they consider of these things in retirement as a body, cannot for a moment constitute an objection that would weigh any thing with me. I believe it constitutes the best guarantee of the rights of the citizen.

But there is another reason why I think that Grand Juries are better calculated to ferret out crime than any system which can be substituted in their stead. When the Grand Juries come together to discharge their high and important duties to the State and to the citizen, they come from every part of the county, and bring with them the knowledge of crime committed in their respective neighborhoods; so that in all the investigations coming before that body, it is at once known something of the nature of every violation of the criminal law which has taken place in the county. They are thus enabled to send for the proper witnesses, and bring every matter fully before them; and they will, also, be able to know, when those witnesses come to

testify whether they are merely meddlesome and officious persons, or whether they are reliable, and can be fully depended upon.

There is another advantageous feature connected with these investigations by a Grand Jury, which I believe to be the most important thing connected with our criminal jurisprudence. It is due to the individual—I care not what may be the charge against him—it is his right, before he is arraigned, that the charge should be presented against him in a technical and legal form. It is his right that he should have notice, that he should know what the charge is, and that he should have time to prepare for his defence, and be able to tie down his prosecutor to the charges set forth. The Grand Jury find that such and such facts have transpired within their jurisdiction, and they present these facts to the prosecuting attorney, who draws up the indictment in legal form. The accused, in this way, has ample time to prepare to meet them. It may be six months before the next court, and when he does come to meet these charges, he will find the facts exactly as presented by the Grand Jury, thereby enabling him to make a clear defence, if he is not guilty.

But there is another reason that has brought my mind to the conclusion that I will vote against abolishing the Grand Jury system. I have heard learned arguments upon this question, from old and experienced heads; and I have listened to them with great attention, for the purpose of acting understandingly upon the first vote which we are to give upon the resolution before the Convention. But I have found that, at least in one point, amongst all the advocates for abolishing the Grand Jury system, there has been a grand failure. I take it as a well settled principle in argumentation, that when men of experience and great intellectual acquirements assail any institution, and when they have arrayed and set forth all the defects and deformities of that system—if they are unable to find a substitute for it—if they cannot find anything to present in its stead, which will answer a better purpose, it is a very sure indication that the old institution should be retained. And so it has been with the advocates for abolishing the Grand Jury system. Therefore, I think that the Convention cannot discharge their duties to their constituents without retaining this institution, which has stood so creditably for ages. It has been hinted at, to be sure, that, instead of Grand Juries we should institute public examinations before some one or all of the courts; but most of the advocates of change have seemed to prefer public examinations before a justice of the peace.

Sir, when a Grand Jury comes to the investigation of a charge against a citizen, and find, in their retirement, that they cannot be satisfied with respect to the law in the case, they have a right to come into court and demand at the hand of the judge an exposition of the prin-

ciple about which they may be in doubt, and the court is bound to give the exposition and instruct them correctly and fully in regard to the law governing the case. But if we should institute public examinations before a justice of the peace—I care not whether the court be composed of but one justice, or whether it be composed of many, congregated in the capacity of a county court—if the case be put by a prosecuting attorney of any skill, in nine cases out of ten, whatever may happen to be the opinion of the attorney, that will be the judgment of such a tribunal. I am willing to give to our justices of the peace all their due, but I am compelled to say, generally, that, with reference to the administration of criminal law, our justices of the peace can have no opinion of their own. Take an important legal question, arising in a case of murder, to be decided by the court—if that case is not decided by the prosecuting attorney, who must, in some sense, be regarded as an interested party, it then comes to be decided by a tribunal who does not understand the question. Cannot gentlemen see any danger in this? Is it of no importance that, in a case where the State of Indiana and the citizen are parties, we should secure a correct administration of justice? Is it of no importance that the law should not have the effect which it is designed to have? I should think that, when such important interests are to be decided upon, they ought to be decided by an impartial and a competent tribunal.

But it has been objected, that one half the indictments by the Grand Juries, are acquitted before a Jury of the country, and I am glad that it is so, if they were acquitted because the charges could not be sustained. It was, however, correctly remarked the other day, by the gentleman from Laporte, (Mr. Taylor), I think that in nine cases out of ten, if every charge could be probed to the bottom, if the Prosecuting Attorneys were capable of ferreting out every crime—a large majority of these cases of acquittal would be found guilty. The fact is, we have need so to change the law as to command the services of efficient Prosecuting Attorneys. Formerly a majority of our Prosecuting Attorney's were capable and efficient officers. But we became so exceedingly Democratic a few years ago, and I amongst the rest, as to make such a change with respect to the compensation of Prosecuting Attorneys, that any man who takes the office now, must necessarily stand at the lower end of the bar. Hence it is, that so many persons indicted by a Grand Jury, are acquitted upon their trial before the court. This, then is not so much the fault of the Grand Jury as of the Prosecuting Attorneys.

But it has been said that it is a disgrace for an individual to be indicted by the Grand Jury. Even if he should be acquitted upon his trial, it operates as a slander upon his character. Let us look a little into this objection, and see

whether this hardship could be ameliorated by the change proposed. Suppose, immediately after the adjournment of the court an individual to be arraigned for some offense against the law, before one of those dignified Justices of the Peace: suppose that Justice to set down upon the investigation of a criminal case, surrounded by all the prejudices against his office, on the one hand, and by a mob infuriated against the prisoner, on the other—himself without any knowledge of criminal law, whatever, which might enable him to decide understandingly any question arising in the case, involving the guilt or innocence of the accused, and suppose he tells the man that he is guilty and must give bonds to appear before the court six months hence, or be incarcerated in jail: and suppose the individual goes to jail: and suppose, at last, when his case is presented before a jury, properly informed of the law, that no evidence of guilt should be found against him—would not that be a hardship greater than any which could be charged as the result of the Grand Jury system?

Mr. President, the real complaint against Grand Juries is, not that when a man is indicted for murder, or any of the higher crimes, his trial does not come to a desirable termination: but that their inquiries extended too far into the investigation of petty misdemeanor—that they carried up cases enough to constitute three-fourths of the criminal docket, and this, also, is another cause why so many persons indicted upon the finding of Grand Juries, pass without conviction. But, sir, I will venture to say this, that, if the people of Indiana stood near here—if it were possible for us to hear them speak as one man, upon the question, whether they would entirely abolish the Grand Jury system, and throw the business coming before them, into the hands of Justices of the Peace, it would be found that a large majority were against it.

Under this impression, Mr. President, I have offered my proposition; which is, to take from the Grand Juries their jurisdiction over petty misdemeanors; and you thereby throw these cases before the Justices of the Peace, which, perhaps they have sense enough to manage. Reform your Grand Jury in this way—throw every case of a petty offence before a tribunal where the examination can be open, and the trial had without delay, and you will hear nothing more of the clamor against the Grand Jury system.

Another reason why we should retain this system has addressed itself to my mind with some force. It is, because I see it assailed by certain classes of the community. This fact furnishes a strong argument that the system is a good one. Suppose you were to go into a common doggery—such as there might be found in this and other towns of the State—suppose you were to go to the individual having the establishment under his control, and living upon the miseries of community by vending ardent

spirits, and ask him whether he was in favor of Grand Juries. He would answer you in a moment—"Down with them! I do not like their secrecy; and I am opposed to them altogether." But get at the unconcealed meaning of his heart, and it will be found that he is opposed to Grand Juries because he fears the hand of justice; because his occupation has so fallen under the condemnation of public opinion, that, if the Grand Juries are to be continued, his crimes will be faithfully presented and punished. And if you were to meet another class of men which infest every community, more or less—if you were to meet a midnight gambler, the man whose profession is to lead young men into debauchery and ruin—if you were to meet with such a man after a night of debauchery, and ask him the same question, what would be his answer? Why, he would respond in a moment—"Down with the monster! Abolish all Grand Juries; they have secret sessions; they are inquisitorial; I want them abolished." And it will be found that, in place of Grand Juries, he wants the public examination of criminals before some tribunal that has never been overburdened with honesty; he desires himself to go into court, where he may have some assurance of an opportunity to get clear; but, above all things, he desires to keep clear of the Grand Jury, who have taken the oath to indict no man through malice, nor let any escape through fear, favor, or affection. Just so it would be, sir, if you were to go into all the walks of crime. If the man that would go into your stable and take away your horse, and attempt to convert him to his own use; or the man that would put the torch to your house in the night; if a man of this class were to be brought up here, and required to answer the question, whether he was in favor of Grand Juries, his response would be—"No." I tell you, sir, I, for one, have not come up here to legislate for such men as these. I have not come up here to make a Constitution that shall be calculated to screen the guilty culprit from the condemnation of the law.

I say, sir, that these cases which I have supposed, furnish, to my mind, a strong argument for retaining the Grand Jury system; and the truth which they furnish is amply sustained by all my experience, which has been considerable, in defending criminals. This has been a part of my duty for nearly twenty years; and I believe that I never had such a client in my life, who would not declare himself to be against Grand Juries. The fact is, they are the best and the only successful means of ferreting out crime.

Permit me to say, in conclusion, that I shall vote for retaining this system, and also for limiting the jurisdiction of Grand Juries to the hearing of testimony against individuals accused of the most heinous and infamous crimes. Sir, this system is retained in the Constitution of nearly every State in this Union which has been

framed since the organization of the federal government; and this is a consideration why I should be unwilling to consent that we should become pioneers in a reform which would put down this system, which has stood for ages, and with which all other law-abiding citizens have been satisfied, down to the present day. This, to my mind, is also a strong argument. But there is yet another argument. It is, because our fathers have thought proper to place this system in our bill of rights, and because I find the same thing fixed in that article of the Constitution of the United States which prescribes that no man shall be put upon trial twice for the same offense.

Mr. KENT (interposing and Mr. R. giving way) said, the original framers of the Constitution did not assert that principle. The gentleman will find that it was supplied amongst the amendments to the Constitution years afterwards.

Mr. ROBINSON (resuming). It was a mere technical correction, sir; I stand corrected, however. I confess that I never was very technical in my notions; but I was right in the main, when I said that this principle came down to us from our fathers; and since it happened to be supplied in the Constitution by way of amendment, it only further sustains my position that the principle is a most important one, because the amendment was called for. After the original Convention had discharged their duty faithfully, as they thought, years afterwards, it was found that they had been remiss in one thing. It was found, upon reviewing the whole ground, that this principle was necessary to protect the rights of the citizen, and therefore it was at length supplied by way of amendment. This was the second sober thought—the second operation of the mind of the philosopher. And for this reason it addresses itself to my mind with double force. This correction, then, only operates as an additional reason why I should feel myself bound to sustain the Grand Jury system.

There is another argument in favor of this system, to which, I believe, I have before alluded. If the honorable gentleman from Tippecanoe, (Mr. Pettit,) who is learned in the law, and every way well qualified to carry forward any system of reform; who is not surpassed in intellect by any member of this body; but, after he has examined this question thoroughly and delivered here an argument against Grand Juries; (which I confess to be of the first class of argument for beauty and strength,) after looking over his printed speech, and reading it upon my pillow, I have sought in vain for an adequate substitute; I have weighed it in the balance and have found it wanting. However willing I am to bow with deference to the decisions of his superior intellect, yet, until he can come here and tell me that he has prepared a substitute which will work better than Grand

Juries, both in theory and practice, I must be compelled to part company—though I cannot say this with so many tears as my learned friend, the gentleman from Monroe, (Mr. Read). I tell you, sir, if you heard one part of that learned lecture of my learned friend, you would have thought him to have been almost the wife of the gentleman from Tippecanoe, and that a divorce had just been proposed. [Some merriment.] I believe it is a custom which prevails in most deliberative bodies, that the gentleman submitting the proposition under discussion has the right to close the argument. I suppose, therefore, and agreeably to his own announcement, I believe, that the gentleman from Tippecanoe will be heard again. I want to say to him, therefore, that I desire him to bring forward some practical substitute for the system which he proposes to abolish. I want him to make it clear, that if his substitute should be made a part of the organic law, it will be without exception. But I must be permitted now, with due respect to that gentleman, to say one thing: that you may take that gentleman, with all the stores of information he has been able to treasure up, and place him in the midst of all the books he may desire, and then allow him to labor until he shall become as blind as an owl at noon-day, and after all this, it is my confident belief that he would not be able to produce a better scheme for the administration of our criminal law than the Grand Jury system; and until he does this, I shall be under the necessity of casting my vote against his resolution.

I have now to say to the Convention, that I am satisfied myself, and thoroughly settled in my judgment upon this question. I claim to be able to form my own opinions, and to act upon them. So long, therefore, as gentlemen fail to produce an adequate substitute for this system, I cannot go with them. I am unwilling to launch upon an unknown sea. Let us have some port—let us know where we are to land—in what harbor we are to anchor, before we embark. But I don't believe my objections can be satisfactorily answered. I don't believe that facts can be produced which will furnish the argument that will sustain the resolution. I do not believe that the brain of man can furnish them. Gentlemen may propose their opinions, they may recommend an experiment; but it will be all opinion and experiment, and nothing else. I am not willing to cut loose from the good old land marks, until the matter shall be settled that I can do so without injury and loss. I am not wedded to the Grand Jury system any further than as it is connected with the administration of justice, in detecting and ferreting out the evidence of crime. I am unwilling to let go this safeguard of the citizen. I must adhere to the old system, although it may be said that I am behind the times, and have no idea how far we have progressed in this progressive age. I must remain unwilling to let go this

strong old safeguard of the community until gentlemen shall be prepared to submit a better system, and demonstrate that it will act equally upon the rights of all. I care not what origin the proposition may have. I shall never inquire whether the measure originated with Whig or Democrat. I despise all party names and designations here. I have brought none of them here with me. True, I have been, perhaps, a tolerably mild Whig; and when the principles of that party have been at stake, I have done battle for them. But when I left home for the duties of this hall, I put off that harness; I came here as a delegate—not as a partizan. I have cast no partizan vote here. I came here to help to make a Constitution worthy of being handed down to posterity; and when the day comes that this body shall be dissolved, and we shall return to the people, I hope to find my own harness in order, and, if necessary, to do battle with it as heretofore.

Mr. OWEN. I have but a few remarks to make, and they do not have special relation to the expediency or in expediency of abolishing the Grand Jury system. What the Convention is considering, or ought to be considering at this time, is, not that question, but the resolution moved by the gentleman from Hancock, (Mr. Walpole,) proposing that the whole subject be referred to a select committee with instructions. The instructions are, in substance, to inquire into the right of the Convention to decide this question at all; to inquire whether, if it should be our judgment that it is best for us to have no Grand Juries, we have the power to abolish them; or whether we are not estopped from doing so by considerations of honesty and good faith.

Mr. WALPOLE interposing, and Mr. O. giving way, said, I propose to correct the gentleman. The proposition which I presented intimates, not what the gentleman rehearsed for the second point in the instructions, but merely an inquiry into the fact, whether the second article of the compact of the 13th of July, 1787, between the State of Virginia and the government of the United States, does not confer upon the people of Indiana the benefit of judicial proceedings, according to the course of common law. The third point of my proposition suggests an inquiry whether this compact was not confirmed and ratified by the federal Constitution, and binding upon the people of this State.

Mr. OWEN. In reply to the gentleman, Mr. President, I read from the second article of the ordinance of 1787, the same to which he has referred:

"ART. 2. The inhabitants of the said territory shall always be entitled to the benefit of the writ of habeas corpus, and of the trial by jury; of a proportionate representation of the people in the legislature, and of judicial proceedings according to the course of the common law."

If I have incorrectly understood the position of the gentleman from Hancock, I hope he will now correct me. I understand him, in the first place, to infer that, under the term "judicial proceedings," here employed, the institution of the Grand Jury is included; and that, as, in what must be regarded as a compact between Virginia on the one part, and the States to be formed out of the north-west territory and the original States of the Union on the other, it is declared that the people of that territory shall "always be entitled" to these judicial proceedings, it follows, that we of Indiana have no right, without the consent of Virginia, to abolish the Grand Jury system. Is not that his position?

Mr. WALPOLE. Yes, sir, that is my position.

Mr. OWEN. A strange doctrine, surely, to promulgate, at this day! I express, at the present time, no opinion as to the expediency of abolishing or of retaining the Grand Jury system. But, suppose that a majority of this Convention decide on its abolition. What is the remedy for this infraction, as the gentleman from Hancock holds it to be, of the compact? A protest addressed by the Governor of Virginia, to our Governor? A remonstrance, adopted by a Virginia legislature, that the Constitutional Convention of Indiana has transcended its powers? That will not do, certainly! I have always believed, as I now believe, that I live in a sovereign State, and that no other state or nation on the habitable globe has the right to control, or to dictate, in any particular whatever, what shall be the form of our State government, or what the minutest of its details. There are, doubtless, in connection with the compact referred to; namely, in the previous act of session by Virginia, certain conditions of a temporary character; as that "the territory so ceded shall be laid out and formed into states, containing suitable extent of territory." Again, "that the necessary and reasonable expenses incurred by this State (Virginia) in subduing any British hosts, or maintaining forts, shall be reimbursed by the United States." That certain lands should be granted to General George Rogers Clarke, and so on. These conditions have been faithfully fulfilled, as it was right and proper they should be. But because of that, are we to infer that Virginia is also to exercise over the judicial system we may see fit to adopt and to modify, a supervisory control? And is this control to endure not for the present only—not through the generation that now lives alone, but throughout the lives of our children and our children's children, even to all succeeding generations? Nothing is farther from our hearts; nothing more repugnant to our feelings; nothing more flagrantly in violation of every right we hold dear. And nothing, I will add, more impossible to be carried out. This Convention itself, with all the power delegated to it by the people of Indiana, cannot do what the gentle-

man claims that Virginia has the right to perform. This Convention has no power to declare that the Grand Jury system, or any other provision in any department whatever of our State government, shall last forever. It can but decree its existence or non-existence, while the Constitution continues in force.

There is, in our present Constitution, a provision which occurs to me in this connection. I read it, from the close of the eighth article: "But as the holding of any part of the human creation in slavery or involuntary servitude can only originate in usurpation and tyranny, no alteration of this Constitution shall ever take place, so as to introduce slavery or involuntary servitude in this State, other than for the punishment of crimes, whereof the party shall have been duly convicted."

As an expression of opinion strongly, solemnly set forth by the framers of our State Constitution, that slavery is a terrible evil, unjust in itself, and fatal in its consequences, and that it ought never to be suffered to blight the free soil of Indiana, I receive, and from the bottom of my soul I respect, the clause I have just quoted. As a Constitutional provision binding through all time, it is not worth the paper it is written on!

I seldom refuse to vote for such a request as this by the gentleman from Hancock, for a reference to a committee of inquiry. Yet, very surely, I have made up my mind on the subject. And, as surely, I think, has the Convention done so, in advance of all such reference. I cannot but think—and I know the gentleman will believe me when I say, that I make the suggestions in no offensive spirit—I cannot but think that when the gentleman calmly reviews his position and the consequences to which it inevitably conducts, he will not press his motion for a select committee.

Mr. WALPOLE. I wish the gentlemen would argue the point involved in this matter, now.

Mr. OWEN. I have said all that I deem necessary upon the subject.

Mr. KENT said—

Mr. PRESIDENT; It will be recollected by the Convention, that the committee on the rights and privileges of the inhabitants of the State, have reported a section virtually abolishing the Grand Jury system. When we reach that section by the regular order of business, the whole question will again come up for discussion. Now, if we desire to avoid duplicating this discussion, would it not be advisable to postpone the further consideration of the subject, until we reach it by the order of business adopted by the Convention. Believing this course will save time, I move to lay the resolution and pending amendments on the table.

The motion was agreed to, and the resolution and accompanying amendments were laid on the table.

Mr. HALL. I ask that the order of business be suspended, in order to give me an opportunity to introduce a resolution. I will read the resolution for information and that the Convention may see my object in asking a suspension of the rules.

Resolved, That on and after Wednesday of this week this Convention will resume the holding of afternoon sessions.

I think, sir, that the time has now arrived when we should resume our afternoon sessions; the committees have, perhaps, had ample time to prepare their reports, and we can now spend more time in regular session without prejudicing the public interest.

The order of business was suspended.

Mr. HALL introduced his resolution, and remarked that he would be glad to have the day fixed so as to suit the Convention, if the day he had named was not acceptable.

Mr. PETTIT proposed that afternoon sessions should be resumed on Monday next, one week from this day.

Mr. HALL remarked that, under the rules he supposed his resolution, being an imperative one, would lie over one day.

Mr. WOLFE. I do not see the necessity of that.

The PRESIDENT. If the gentleman will turn to the rules adopted by the Convention, he will find that any resolution proposing to change the rules or the order of business, must lie over one day.

Mr. WOLFE. I think every member is satisfied with the resolution, and desires its adoption. It is high time that the Convention resumed afternoon sessions. The reports are nearly all prepared, and we shall get along just twice as fast after the adoption of this resolution. I would move a suspension of the rules that it may be adopted now.

The motion was not agreed to.

The Convention proceeded to the order of the day, being the consideration of article number one.

Mr. BORDEN. Would it be in order to propose a new section to this article?

The PRESIDENT. It would.

Mr. BORDEN. In order that the time of the Convention may not be consumed unnecessarily, I would inquire of the gentleman from Clarke, if the committee of which he is a member has had under consideration the subject of the election of a State Printer and a Warden of the State Penitentiary? If the committee have the subject already under consideration, I will not take up time by offering the section I have drawn up.

A MEMBER. The committee are preparing to report upon that subject.

Mr. BORDEN then declined offering his amendment.

The article was then ordered to be engrossed for a third reading.

Mr. CHANDLER. I desire to move a reconsideration of the vote taken on Thursday last upon the section relative to the tenure of office of the State Auditor and State Treasurer. I wish to get a reconsideration of the vote whereby the word "two" was stricken out and the word "four" was substituted, making the term of office four years instead of two, as reported by the committee.

Mr. BORDEN was understood to remark that by unanimous consent the vote upon reconsideration might be taken now.

Mr. CHANDLER then gave notice that on to-morrow he should move a reconsideration of the vote above mentioned.

Mr. MAGUIRE moved to re-commit the article, with instructions to the committee to report a section fixing the terms of Auditor, Treasurer, and Secretary of State, at two years, and rendering them ineligible more than six years in any period of eight years.

Mr. WOLFE moved to lay the motion to re-commit, upon the table until the vote upon reconsideration was taken,

Which motion was agreed to.

The Convention then took up the report of Mr. OWEN from the committee on the rights and privileges of the inhabitants of this State.

The first section was read, and is as follows:

There shall not be imprisonment for debt except in case of strong presumption of fraud.

Mr. ROBINSON offered the following amendment:

Strike out after the words "except in case of" the words "strong presumption of," and insert after the word "fraud," the words "to be proven by the party alleging the same."

Mr. ROBINSON. I do not intend to make a speech at this time, but I desire to state my objections to the section as it now stands. Under its provisions a citizen of Indiana may be imprisoned for debt. It is consistent with our views of government that imprisonment for debt should be regarded as of barbarous origin. But the language of this section is too general in its character. The word "presumption" is a very general and comprehensive one; it is not precise and definite in its meaning. It is a word that will be differently understood and defined by different men. What would furnish a case for the presumption of fraud with one man would not satisfy another man. You leave the citizen liable to be imprisoned upon the bare "presumption" of fraud, and that word to be construed, perhaps, by an incompetent tribunal. It seems to me that the most pernicious and unlooked for results would follow the engraving of this section, in its present form, in the new Constitution. But if we adopt my amendment, it renders the matter certain; it leaves no room for mistakes as to whether the presumption of fraud is strong enough to warrant imprisonment. The party that seeks to have another incarcerated, will be compelled to

show a sufficient cause to warrant imprisonment. Fraud will be that sufficient cause.

It is an old doctrine, that wherever a debtor has attempted to defraud his creditor a summary procedure should be given to the creditor. But the crime—for it amounts to that—of fraud should be clearly proven. A man that asks that his fellow citizen should be committed to prison, should first prove a fraud. The term which I have used is, therefore, more certain and specific. Fraud can be proven, and there is not that latitude and opportunity given to do wrong, and through malice of the accusing party or ignorance of the tribunal, injure the citizen. I think it is going far enough to imprison for debt when there is clear evidence of fraud. I believe that it is a settled principle in legal jurisprudence that when fraud is alleged the burthen of proof rests upon the prosecuting party. My amendment is right, because it prevents uncertainty, and no citizen can be imprisoned until a clear case of fraud is made out.

Mr. DOBSON. I would propose the following substitute for the amendment offered by the gentleman from Decatur (Mr. Robinson).

Strike out all after the word debt, so that the section would read simply "There shall be no imprisonment for debt."

Just one word, Mr. President, in regard to—

The PRESIDENT. Unless the gentleman from Decatur accepts the substitute for his amendment, the proposition of the gentleman from Owen (Mr. Dobson) cannot be entertained.

Mr. DOBSON. Can it not be entertained as an amendment?

The PRESIDENT. It cannot, because it destroys that which it proposes to amend. It cannot be entertained until after the amendment proposed by the gentleman from Decatur has been disposed of.

Mr. DOBSON. I hope that the gentleman from Decatur will accept my substitute.

Mr. ROBINSON. I cannot accept it; I am opposed to it because it fails to secure a principle which I wish to see incorporated in the new Constitution.

Mr. DOBSON. Then I hope the Convention will vote down the amendment of the gentleman from Decatur, and then my proposition will be in order.

Mr. ROBINSON. I really hope the Convention will not vote down my amendment.

Mr. CLARK. I hope the gentleman's amendment will not prevail, and then, that the amendment suggested by the gentleman from Owen (Mr. Dobson) will be adopted. The clause, then, will simply prohibit imprisonment for debt. There ought to be no imprisonment for debt. The imprisonment should be for fraud. I think fraud may be separated in idea

from debt. We attach to the idea of imprisonment, that it is a penalty inflicted for the punishment of crime. We punish the fraud, and whether proven by the party defrauded, or others, is equally deserving of punishment. As I understand the amendment of the gentleman from Decatur, it would only limit the proof of the fraud to the creditor.

Mr. BIDDLE. Is the motion of the gentleman from Decatur divisible?

The PRESIDENT was understood to say that it was not.

Mr. BIDDLE. I know it is not divisible, where the motion is to strike out and insert, but this motion is to strike out and add other words at the end of the section. I would vote, with the gentleman from Decatur, to strike out the words he proposes to, but I should not vote for his addition. And my reason is this: The principle is well settled that the person alleging an affirmative must prove it, and therefore his addition is surplusage. The bare fact that the creditor charged fraud would place him in a position where he must prove it, without any constitutional affirmation of his obligation to do so.

I concur with the gentleman from Decatur (Mr. Robinson) in his dislike of the use of the word "presumption" in this connection. We all know that men would differ very widely as to what should constitute a sufficient evidence for a "strong presumption" of fraud. I should require the person alleging to prove the fraud. By the common law he must do that.

Mr. HOWE offered the following amendment:

Strike out the words "strong presumption of," so that the section would read, "There shall not be imprisonment for debt except in case of fraud."

Mr. ROBINSON. Having offered the amendment now before the Convention, and believing it to be right, I desire to say a few words in explanation.

It is known to every legal gentleman that my objection to the use of the word "presumption," in this connection, is a good one. It is too uncertain, and capable of different constructions by different minds. It will be conceded that the word "fraud" is very closely assimilated to the term "crime;" every legal gentleman knows this. In many instances fraud itself becomes criminal. Now, sir, criminal proceedings, as the courts now administer the law, compel the crime charged to be proven strictly. There is but little difference between a crime charged directly and the charge of a criminal act. A crime may be presumed from strong circumstantial evidence, but my objection to the word presumption is, that this question (in-

volved by the Constitutional provision that there shall be no imprisonment for debt except in case of strong presumption of fraud) will very often, indeed in most cases, have to be submitted to the inferior tribunals of the country. Now, I am frank to say, that if I was assured that this question was always to be submitted within the jurisdiction of the gentleman from Cass, (Mr. Biddle,) I should have no fear of a correct decision, because his court is a forum capable of deciding all such questions accurately. But, then, it will very often be the case, that an important matter will be submitted to the inferior, though honest, tribunals of the State. My object, then, in moving to strike out the word "presumption," is, that it will necessarily come before those tribunals unaccustomed to the strict construction of language which is supposed by the framers of this section. Of course those who take a different view—who do not apprehend the dangers which I see—will vote against my proposition. I am inclined to think that the word "fraud" is not a necessary part of the section. As I before intimated, if the gentleman from Cass was to preside in all the courts where this question will come up, he would require the charge of fraud to be strictly proven without my amendment being there; but when the question is referred to other and less competent tribunals, I wish so to guard it, that they will not commit a man for fraud until it is proven. My object is to guard the citizen against encroachments upon his rights, either through design or ignorance.

Mr. DOBSON. I know, Mr. President, that my proposition is out of order, but I wish to make a plain and distinct statement of this matter of imprisonment for debt. I am wholly and decidedly opposed to imprisonment for debt. I will not argue the point any further than to say, that when we give the Legislature power to pass laws to punish the commission of fraud in a proper manner, we have given them latitude sufficient. But so far as imprisonment for debt is concerned, I want it distinctly provided against in the Constitution. There is not a man to be found in Indiana who will openly advocate imprisonment for debt. That clause should have been stricken out long since. When you punish a man, let it be for a proven fraud, never because he cannot pay his debts; make these things separate; do not confuse and mix up imprisonment for debt with imprisonment for fraud. When you arrest a man under the provisions of that section, as amended by the gentleman from Decatur, (Mr. Robinson,) which do you send him to jail for, the fraud or his poverty? Recognize fraud as one thing and debt as another. Just say in so many words, "There shall be no imprisonment for debt." I will go with the gentleman to imprisonment for fraud; but never grant the power to a creditor to put his debtor in prison on a charge of fraud, but really because he is poor.

Mr. President, it is for such reasons that I say I hope the amendment of the gentleman from Decatur will be voted down; then mine will be in order, and I believe it will so commend itself to the judgment of the Convention that it will be adopted.

Mr. PETTIT. I rise, sir, to keep the floor but for a moment, and to say that the position of the gentleman from Owen meets with my hearty approbation.

I say to the gentleman from Decatur, (Mr. Robinson,) that if we cannot succeed in voting down his amendment, and then adopting the proposition of the gentleman from Owen, (Mr. Dobson,) I should then rather vote for his amendment than the section as it now stands. I want to put under and abolish at once and forever, all imprisonment for debt.

In my own estimation, although "the books" do not recognize fraud as a crime of the grossest dye, yet the courts go a great ways to blacken and blast a man's character that has committed a gross fraud. A poor man, who is charged by his creditor with a fraud for the sake of getting him in prison, may never regain his position in society. I shall, therefore, in order to make the section short, vote to leave it thus: "There shall be no imprisonment for debt." In order to do this, we have first to vote down the original amendment of the gentleman from Decatur. But I say to the friends of that amendment, if it has any, that I will help them to amend the section rather than leave it as it now is. But inasmuch as the proposition of the gentleman from Owen is, in my judgment, still better, I will first try to get that. It is making it a plain, unambiguous and unequivocal matter, so that there can be no mistake as to its meaning. I think that those who have known me through life, will bear me out in saying that all my actions warrant me in declaring that such is my character. I wish to do things openly, and to meet everything in the same open and candid manner. As the boy said, "I want to take the bull by the horns and push him off the bridge, or have him push me off." [Laughter.] If I must take medicine, give it to me in all its strength and naked bitterness; don't coat it over with molasses. [Renewed laughter.] I want no covert action in anything.

Inasmuch as this section leaves it open as to how much evidence shall create a "strong presumption of fraud," I am opposed to it; I want the section to read, "there shall be no imprisonment for debt." Therefore, I shall vote against the pending amendment, in order that the gentleman from Owen may present his proposition, which I wish to see adopted.

Mr. OWEN. Mr. President, I have considered the matter since, as one of the members of the committee who reported this section, I presented it, and I agree with the gentleman from Owen.

Debt, is a misfortune—fraud is crime. I think that the distinction between misfortune and crime should be plainly and unmistakably made. If we strike out the words proposed, we can provide in another place for the punishment of fraud. I would prefer to take merely the first clause of the section—"there shall not be imprisonment for debt." I hope the amendment of the gentleman from Decatur will be voted down. If not, I would suggest to him that he will attain his object by striking out the part he proposes to, without insisting upon the addition he proposes.

Mr. EDMONSTON. For the purpose of getting a direct vote upon the question, I ask for a division of the question; the first question being then upon the motion to strike out.

Mr. PETTIT. No; that would leave the words, "except in case of fraud," in the section. Better move to lay the original amendment on the table.

Mr. ROBINSON. Will the gentleman from Dubois withdraw his amendment for one moment?

Mr. EDMONSTON. Certainly, if it will oblige the gentleman from Decatur.

The motion was withdrawn.

Mr. ROBINSON. I wish to—

The PRESIDENT. Will the Convention give the gentleman from Decatur leave to speak again—he having spoken twice upon this subject?

SEVERAL VOICES. Yes, if he will be brief.

Mr. ROBINSON. I will endeavor to be very brief.

As a legislator, I am always willing to concede a good deal for the sake of gaining the main object; and if it was only necessary for me to support my amendment for the sake of securing my personal position, and if the substitute proposed accomplished my object, I should not insist upon my amendment for an instant. But, sir, my main object is not to abolish all imprisonment for debt; it is not to secure a constitutional provision that the creditor shall never, under any circumstances, imprison his debtor. There are circumstances connected with the collection of debts when the debtor should be imprisoned—I mean when there is evidence of fraud. If the Convention votes down my amendment, as the gentleman from Owen proposes and asks to be done, and you abolish imprisonment for debt under any circumstances, and, as the gentleman from Tippecanoe (Mr. Pettit) proposes, punish fraud as a separate and distinct matter, what will be the result? Let me ask that gentleman: suppose he arrests a man, A. B., that justly owes C. D., he is arrested not for fraud in not paying his debts, although you may have sufficient evidence that he has property and money, because there is a constitutional provision forbidding any imprisonment for debt under any circumstances,

but you arrest him for fraud. I ask, what good will it do C. D. that A. B. is imprisoned or even convicted of fraud? Of what advantage or even help is it in the main object, the securing of C. D.'s lawful claim? The man may be arrested and convicted of fraud, the State may be satisfied, the vindictive portion of the laws may be appeased, but where is the collection of the debt? What has become of the main point? The creditor is neither gratified nor benefitted by the imprisonment and suffering of, as may be the case, his rich debtor. He demands and desires to enforce the collection of his debt, not the punishment of the debtor, farther than assists in that collection. I am not one of those who believe that a man should be allowed to go abroad and cheat whom he pleases and where he pleases with impunity. I desire to provide that he may be summarily dealt with in extreme cases. Strike out of the section the word, "presumption," then, and the practice under the provision would be, that no man could be imprisoned for debt in Indiana without it was proven that he had committed a fraud. Now, if you arrest a man for debt, the Legislature, in the absence of an express constitutional provision to the contrary, will always furnish some stringent enactment by which a man can be arrested for debt, and, if fraud is proven, imprisoned. It is often important to inquire, in connection with the recovery of debt, into the question of fraud. If fraud is proven, the debtor should go to jail until he reveals the secretion of property or suffers for the violation of law. If fraud is proven, but the possession of property at the time of arrest is not clearly proven, then he should be imprisoned until he shows his inability to pay the debt. Then, in order to secure the rights of the creditor and the prosperity of society, strong measures are necessary, and these the Legislature will always enact in the absence of a constitutional prohibition. What do I propose? Nothing more than this, and I think that this Convention is not in favor of cutting loose all hands in regard to this matter, and allow men to cheat and impose on the community without let or hindrance. You indict me, as a debtor having property which I will not disclose, for fraud, but what becomes of the debt while you prosecute against me a criminal action? The debtor has made the speculation, he has got the money, but you cannot connect a criminal with a civil action (under the operation of this constitutional prohibition) together. The jury will not convict for fraud and render judgment for the amount of the debt.

One moment's reflection will show to every member that I have proposed the only tangible remedy. You arrest a man for debt and allege fraud; the State punishes the fraud, and you, if the debtor has property, secure your debt. But with the section as it is, is a simple allegation of fraud, to be tried by every inferior tribuna

in the country. It should be proven by the party alleging. I am not willing to take from the creditor the right to collect his debts by extreme process, by the aid of imprisonment, if he clearly proves a fraud. I will not give a fraudulent debtor an opportunity to escape with impunity, by merely requiring that there shall be strong presumption of fraud to imprison him, leaving it to the judgment of inferior and inexperienced tribunals to judge of what constitutes a "strong presumption."

Mr. President, in conclusion I must say that I shall insist upon my amendment, for the reasons I have given. If I am fairly voted down, I shall submit without a feeling that I have been in the least uncourtously treated. But, I cannot, consistent with my view of duty, and my belief in its policy, withdraw my motion. I now submit it to the sound sense of the Convention, if I am wrong, as I before said, I shall not construe it as a mark of disrespect if I am voted down.

Mr. HOWE. I wish very briefly to make a statement of the present position of this matter, and the effect of the vote that is about to be given.

If the Convention votes to strike out all after the word "debt," an effect may be produced not clearly foreseen by members. The question is, whether we will, by a Constitutional provision, take away all remedy against fraudulent debtors, as we shall by voting down the amendment of the gentleman from Decatur, and then agreeing to the motion, or rather adopting the substitute of the gentleman from Owen. The original amendment (Mr. Robinson's) proposes that there shall be no imprisonment for debt, except in cases of debt coupled with fraud; therefore, if that amendment be voted down, and the substitute (Mr. Dobson's) adopted, the effect will be to abolish all remedy against fraudulent debtors in any case.

Mr. PETTIT. Punish the man separately for fraud.

Mr. HOWE. The gentleman says, "punish them separately for fraud;" but how punish them? Will you reach him with a *capias*, or in a civil case? I cannot go so far, nor will this Convention, when it comes clearly to understand the matter. I repeat it, so that there may be no misunderstanding when the vote is taken—the effect of the adoption of that substitute will be to abolish, in civil cases, all remedy against fraudulent debtors. I think that my amendment expresses the view that the Convention will finally take of the matter, and that it gives us as good language as we can have in this case, for, in this Constitution, as in the drawing up of statutes, the object is to use the fewest words consistent with a clear expression of meaning. If the words, "no imprisonment for debt except for fraud," give us all that we want, if they fully express our meaning, then

the addition of more words would be a mere surplusage.

Mr. BARBOUR. If I understand the gentlemen from Tippecanoe and Owen, they are not willing that there should be imprisonment for debt under any circumstances.

Mr. PETTIT. That is most certainly my desire.

Mr. DOBSON. The gentleman has correctly stated my position, as opposed to all imprisonment for debt.

Mr. BARBOUR. Mr. PRESIDENT: I am not a little surprised to hear so many members oppose imprisonment for debt, in all cases whatsoever. I can assure gentlemen that those sentiments are not the sentiments prevalent among the people. Can it be possible, sir, that it is proposed that the person who has in his possession your money, and, because you cannot reach it by a common execution, that you shall not have the aid of the strong arm of the law to reach it, and recover your just debt? Before you can imprison the body of the debtor, you must establish before a jury, that he has money or means with which he could discharge your debt, and that he keeps the same concealed, with intent to defraud you. Fraud is now punished as a crime, yet this is no remedy for the creditor against a fraudulent debtor. And, if you should attempt the prosecution of the fraudulent debtor criminally, he might possibly slip through the fingers of your justice of the peace. Although it might blacken the character of a man convicted of fraud in a court of justice, yet the moral sense of the community would not be very highly shocked at the injury or justice done such an individual. If a debtor is really guilty of fraud in concealing his means and refusing to pay his honest debts, what wrong or injury is done in compelling him to disclose and deliver up his concealed wealth. It is no satisfaction to the creditor to prosecute his debtor criminally. He wants his money, and it is right he should have it, and the law should aid him when the debtor has the means, but fraudulently conceals the same.

Mr. HENDRICKS said—

Mr. PRESIDENT: The reason of the law authorizing the imprisonment of the debtor, in any case, seems to be misconceived. In no case is a man, under our laws, imprisoned because he is poor—because he is in debt. Nor is it the object of the law, to gratify any bad feelings of a hard creditor, by allowing him to arrest and throw into prison an unfortunate debtor, who may be unable to discharge the debt; to give the creditor the control of the person of his debtor, to detain in prison, in satisfaction of the debt.

Such seems once to have been the object of the law in England, as we gather from the language of the writ of execution against the person; when all process was in the Latin lan-

guage, and which has now become the name of that writ; "capias ad satisfaciendum."

Nor, sir, is it the object of the law, in allowing process against the person, in a civil cause, to punish the debtor for any fraud he may have committed.

For neither of the purposes which I have mentioned, should there ever be imprisonment in a civil suit.

The true object of the law in giving process against the person, is to compel the fraudulent debtor to make satisfaction to his creditor, when he has the ability to do so, to force him to surrender any means which he may fraudulently conceal, or withhold from the payment of his debt. If the proposition of the gentleman from Decatur (Mr. Robinson) shall be voted down, I have an amendment to the section which I will present. For the information of the Convention, I will read it. "There shall be no imprisonment for debt after the debtor shall have delivered up his estate for the benefit of his creditor or creditors, in such manner, and to such extent, as shall be prescribed by law."

This, sir, will attain the object, and the only legitimate object of imprisonment in a civil cause.

As it is now the hour of adjournment, I move that the Convention do now adjourn.

Which motion was agreed to, and the Convention adjourned until nine o'clock to-morrow morning.

TUESDAY, NOVEMBER 5, 1850.

The Convention met pursuant to adjournment.

Prayer by the delegate from Lake (Mr. CRUMBACKER).

The journal of Monday was read and approved.

BANKS.

Mr. HAMILTON presented a report from the committee on currency and banking.

The report having been read,

Mr. HAMILTON remarked, that it might be proper for him to state to the Convention, that, when the article which had just been read was first presented to the committee, he did not entirely approve of it, nor did a majority of the committee. It is, however, said Mr. C., submitted in the belief that it will more nearly meet with the approbation of the Convention than any other proposition which could be agreed upon by a majority of the committee. At the proper time, I shall move to make some amendments, and among them, one for the taxation of Bank stock.

Mr. PEPPER of Ohio. Mr. President, I wish to inquire, through you, whether there is not another section that was agreed upon by a majority of this committee?

Mr. HAMILTON. It is true; I had intended to present it first, but it escaped my notice. I will present it now.

The report was read.

Mr. WATTS. I wish to disclaim all connection with the report made by the minority of this committee, and also with the majority report. I could indorse neither.

Mr. RARIDEN. I move that the reports be laid on the table and printed. I should like to have the rules suspended, in order to ask a reference of the reports to a committee of the whole, and have them made the special order.

Mr. COLFAX rose and said, that he wished to state—

The PRESIDENT. The Chair would remark to the gentleman from St. Joseph and others, that debate at this stage of proceedings is out of order.

Mr. COLFAX. I hope I shall be indulged in making a single remark. For some time it was extremely doubtful whether any proposition at all could be agreed upon by a majority of this committee, and whether all the reports would not be minority reports.

The PRESIDENT then put the question, whether the Convention would receive as many minority reports as might be made from the committee on Banking and currency.

The Convention decided to receive all that should be offered; whereupon several minority reports were presented from the same committee.

The Convention then proceeded to the orders of the day, and, on motion by Mr. BASCOM, took up article number one.

Mr. CHANDLER. Pursuant to previous notice, I now move a reconsideration of the vote previously taken upon the first section of this article. I will read the article and state the effect of the vote taken:

"SEC. —. A Secretary of State shall be chosen by the qualified electors, and be commissioned by the Governor for two years, or until a new Secretary be elected and qualified: *Provided*, That no person shall be eligible to the office of Secretary of State more than four years in any term of six years. He shall keep a fair register, and attest all the official acts and proceedings of the Governor, and shall, when required, lay the same, and all papers, minutes, and vouchers relative thereto, before either House of the General Assembly; and shall perform such other duties as may be enjoined upon him by law."

The vote taken on Thursday last was to strike out the word "two," where it occurs in the first sentence of the section, and insert "four." I move a reconsideration of that vote.

The question being put,

The motion was agreed to, and the Convention reconsidered the vote.

The question then being upon the motion to strike out the word "two" and insert the word

"four," where it occurs in the first sentence of the article, the same was disagreed to.

Mr. THOMPSON gave notice that he should move a reconsideration of the vote by which the word "six" was stricken out of the same article, where it occurs, and the word "eight" inserted.

The PRESIDENT. The pending motion is to re-commit the article to the committee on State officers, other than the executive and judiciary, with instructions.

Mr. FOSTER. I understand that the vote on the motion of the delegate from Brown (Mr. Chandler) to reconsider, placed the article in the same position in which it came from the committee.

The PRESIDENT. But one amendment was reconsidered by that vote.

Mr. MAGUIRE. I desire, Mr. President, to explain my motion to re-commit. The only respect in which my motion differs from the article as originally reported from the committee is in providing that the State officers named in the article may be eligible to an election for three terms of two years each, instead of two terms. It instructs the committee to adopt the two years term principle in respect to the Secretary, Auditor, and Treasurer of State. If this proposition should meet the views of a majority of the Convention, it can be most readily accomplished by a re-committal. I offer the proposition in a spirit of compromise, inasmuch as there appears to be a great diversity of opinion on the subject, and not much prospect of agreeing to a plan without some compromise. Some gentlemen are of opinion that these officers should be elected for one term of four years and be ineligible; some are in favor of fixing the term at four years, with the right to be re-elected as often as the people choose to vote for them; others are in favor of terms of two years, to be ineligible after four years; and still another class are in favor of the two years terms and to be re-eligible without any limitation. I think, sir, that my proposition offers a medium ground upon which a majority might place themselves. Limit the term to two years, and leave the power with the people to continue the incumbent three terms, if, in their judgment, it be proper to do so. This is nearly in accordance with my own views, and I have thought it possible that the Convention might adopt it as a compromise.

Mr. President, while I am on the floor permit me to say that I know from experience that the office of Auditor of State is one, the duties of which are laborious, responsible, and important, and the qualifications for which do not seem to be fully appreciated. I assure gentlemen that they are mistaken when they suppose that any citizen can go into that office and perform its duties intelligently without any previous training or experience. You may place any man there, I care not how great his ability

and talents may be in other respects, and if he has had no experience in the duties of that office, he will feel like a stranger, and stand greatly in need of the aid which may be afforded by some one conversant with its complicated duties. A man of the most ready mind and penetrating intellect will continue to learn something in the Auditor's office for many years, and I think the people should be left free to continue the same individual as long as my amendment proposes, if he be found honest, capable, and obliging. It will be observed that my proposition by no means requires an individual to be kept in either of the offices for six years. It proposes only to leave with the people the unrestricted right to re-elect him for three terms of two years each if they are satisfied the public interest will be promoted by such re-election. I have voted uniformly for short terms, and will continue to do so, believing, as I do, that power should be frequently returned to the people as its legitimate source.

I offered the proposition, as I before remarked, with the hope that it might harmonize the views of a majority of the Convention. It is similar to the original report of the committee, except that it is a little less restrictive upon the power of the people. It avoids both extremes as to the tenure of office. I may be allowed to say that I advocated a plan like this before the people in the canvass preceding the election of delegates, and I believe the people whom I in part represent concur very nearly with me on this subject.

Mr. NILES. Mr. President, if I understand the gentleman's proposition, it would be more objectionable to me than the proviso originally reported by the committee. If I fixed a limit at all upon the right of the people to elect whomsoever they please to these offices, I am not prepared to say but that I would adopt the one term principle. I am inclined to believe that, whatever minor inconveniences might result, that is the true doctrine in reference to officers who control the public revenues, and I only think that they will be more likely to be re-elected by being limited to two or three terms. But I hold that it is entirely safe and according to the theory and principles of our government to leave that matter wholly with the electing power—the people. My friend from Posey, as I hope I may be permitted to call him, (Mr. Owen,) stated that the question now before the Convention is, whether it is proper to continue the Auditor and Treasurer together in office, more than four years. With great deference to that gentleman, I insist that that is, as the lawyers say, a false issue. The question, after all, resolves itself into this, and only this, is it safe to trust the people to judge and act for themselves in this matter? By unanimous consent we give the election of all officers to them. The question now is, can we safely trust them? I contend that we can and should,

and I believe they will ultimately, in reference to such offices, adopt the doctrine of one term and short settlements.

The gentleman from Hancock (Mr. Walpole) says that a limitation like that reported by the committee, is necessary to secure the freedom of the elective franchise, on account of the influence which these officers can wield by means of their patronage. I admit that they have some power to misuse their trust. So has the President of the United States. He is invested with a power of patronage far greater, in my judgment, than can be wisely committed to any one man; his right arm reaches out into every county and neighborhood in the Union. But, sir, let him be found exerting that influence for personal aggrandizement, and securing a second election by means of that patronage, and the one term rule in relation to the Presidency shall become as fixed as the laws of the Medes and Persians.

But gentlemen say these elections will be controlled by caucuses, and unfit men will be imposed upon the people. Let it be so; and let the people, if need be, loose something by their confidence; the lesson will be worth more than it will cost. Let the caucus, if it see fit, impose a swindler upon the people for a second or third term, and the power of the caucus will begin to fail, and by and by the people will scatter to the winds that most odious of all oligarchies. I repeat again, that wisdom purchased by such experience, would be worth all its cost.

I insist then, sir, that if we engraft this principle upon the organic law of the State we send out from under our hands a doctrine, an idea, precisely like that which led many of the temporaries of Washington to desire to invest him with the purple—the doctrine that free government cannot be sustained, or, in other words, that the people are not fully to be trusted in what is altogether their own business. I hope we shall not do it.

Mr. OWEN. I always receive with much deference and respect any suggestion coming from the gentleman who has just taken his seat; but I find myself obliged, upon this occasion, to dissent from his position. His assertion is, that when I declared the true question in this case to be, whether the Auditor and Treasurer of State ought to remain together in office longer than four years, I made a false issue; the true question being whether it will be safe to trust the people to decide for a longer term of four years if they see fit?

I cannot but think here is the same confusion of ideas to which I have already, within a day or two, had occasion to reply.

There are two modes in which the people can decide a question; but in both, the people themselves decide, and none other. By one mode the question is to be decided for a quarter of a century, a third of a century, and perhaps for a half century. By the other, the question

may be decided every year. In the first instance the decision is made in the formation of the organic law; in the second, in the statute law.

If the gentleman from Laporte (Mr. Niles) is so thoroughly convinced, as he informs us he is, that the public officers ought not to remain together in office for a longer term than four years, why scruple to say so in the Constitution? If the people fully concur with him in opinion on this point, why should they not declare it in the Constitution? If he is sure, and they are sure, the thing is right, why not settle it once for all, and have done with it? If a provision be of doubtful expediency, let it be embodied in law, which may be changed from year to year. But if we are perfectly satisfied of its expediency, let us give the people an opportunity to adopt it when they meet next year at the polls, to ratify or reject this new Constitution.

Mr. STEELE. Mr. PRESIDENT: I understand the question now before the Convention, to be upon the motion of the gentleman back of me (Mr. Maguire,) to re-commit this article to the committee with certain instructions?

The PRESIDENT. That is the pending question.

Mr. STEELE. I shall go against the reference. The section as originally reported meets my approbation and is better than the amendments proposed. I wish to say, that it appears to me that the delegate from Laporte (Mr. Niles,) is clearly right in the position he has assumed in reference to the eligibility of public officers and the right of the people to elect a man as long as they see fit. I heartily agree with him that it is safe to trust the people at all times and under all circumstances and that we should not, in this new Constitution restrict them in the freest choice of their public servants; that the people should not continue a man in office for four or eight or twenty years, if they have confidence in him and desire him in preference to any other man. I know that the distinguished gentleman from Posey (Mr. Owen,) says, that the people are here in this convention; it is true that they are represented here, but notwithstanding that, the work which we do here, must be submitted for their approval next year at the ballot box.

For one I am decidedly against restricting the people in this matter. I know that gentleman may consider me stubborn on this subject; I am determined. You know it is in the nature of an old ox to be always stubborn. I believe that the people have the right to select their own officers and keep them in their service as long as they choose and I will maintain it here and elsewhere. I will maintain it now and forever. I do not believe that in forming a new Constitution, we should insert those provisions that will beget frequent electioneering and scrambles for office. If elections are to be every two years and the officers not eligible for a second term, we shall have an hundred times the strife and electioneer

ing that we otherwise should. And there is another consideration to be urged against such a provision. We all desire that our work done here shall be approved and ratified by the people, we want this Constitution to be adopted. But I can tell delegates that if they will adopt a provision restricting and muzzling the will of the people in the choice of their officers, there are thousands of the citizens of Indiana who will vote against your new Constitution and I do not know but that among them will be your humble servant. I think with the gentleman who preceded me (Mr. Maguire,) that we had better compromise the matter. I think the people would be benefited by our adopting such a compromise. But sir, I shall vote against the reference of this article at this time and I shall vote against the article itself on the final passage if it contains the amendments which have been offered, and I shall journal my vote upon the call for the yeas and nays that my position may be known to the people whom I represent.

Mr. BIDDLE. It is well known how I shall vote on this question. I do not rise to make a speech, but with the indulgence of the Convention I will tell an anecdote. (Several members, "go on" "go on.") My friend from Laporte, (Mr. Niles) since this discussion began, (cries of "louder" "louder.") I was saying that since this discussion began my friend from Laporte, whom I value very highly, and to differ with whom always gives me pain and perplexity—pain on account of our personal relations, and perplexity with his logic, which he weaves as close as sail cloth—made me a social visit at my room.—After some time spent in general conversation he rose to depart saying: "Well, my dear sir, come and see me; and I will just tell you, I have a basket of the most delicious apples you ever saw; I fear I shall do wrong by eating too many unless you come and watch me." I replied "I shall surely come; but my dear friend will you allow me to point your remarks with a moral?" "Certainly, certainly," said he, smiling. "If a person of your philosophy cannot withstand the temptation of a good apple, how do you expect others of much less virtue than yourself to forego the allurements of a fat office? (Laughter.) And remember, it was nothing but an apple that tempted Eve. She fell and brought death and wo on all mankind!" (much good humor.)

Mr. WOLFE. I am satisfied that the Convention is prepared to vote upon this question, if a vote can be obtained. I will, therefore, move to lay this subject upon the table until we can then get to a decision.

Mr. KILGORE. I have listened to the arguments advanced on this question hitherto very patiently, but have not been disposed, until the present time, to participate in the discussion. It does seem to me, however, that the gentlemen with whom I differ have mistaken the object for which this Convention was

called. I understand that the great duty which we have to perform, and I believe such is the general understanding of gentlemen, is to establish an organic law for the State. It is no part of our business or mission here to place restrictions upon the rights of the people of this State. We desire to devise a plan of government, and it becomes a necessary part of the political machinery that we should divide it into different departments, and to each of these departments we assign appropriate duties. Those duties, sir, are not to be performed to the prejudice or the restriction of the sovereign people, but for the good of the whole. To the legislative department we assign one duty, to the judiciary another, and to the executive another. To each of these departments we delegate certain powers and privileges, which are to be exercised within certain limits prescribed by the law. We throw around them restrictions in order to guard the people from any unjust abuse of the privileges conferred upon them. These restrictions are a necessary part of the political machinery; and when we have prescribed some mode by which our government is to be conducted, we have done all that the people have asked at our hands. We may create additional departments, and we may confer upon those departments whatever power we may deem necessary or proper for the good of the people. We may declare what shall be the qualifications of the members of the Legislature, and in organizing that department may fix the tenure of office. In organizing the judiciary we may declare what number of judges and officers the courts shall be composed of, and the peculiar duties to be performed by them. We appoint to the executive certain duties to be performed by him, and there we stop. There we should stop. The great political machine is then completed. Every step we go beyond that point is a wrong one. We have assembled here to form a new Constitution, because the people conceived that the old Constitution threw around them certain restraints that ought not to exist. One of the greatest of those restraints was the prohibition against the disposing of the fines and forfeitures in any other manner than that specially named in the old Constitution, viz: For the benefit of county seminaries. This was a restriction upon their power, and it met with almost universal condemnation, and I venture the prediction that if that subject had not been discussed upon the stump by two distinguished political leaders, candidates for governor, at almost every cross road in each of the counties of the State, and if the necessity had not been urged upon the people of throwing off these restraints imposed upon them, this Convention would not have been called at all. They were, also, restricted from electing their own officers. That duty was assigned to another head, one of the departments of which I have been speaking. The

people looked upon it as a restraint upon their liberty, and called for a redress of their wrongs. They asked that delegates might be elected to revise the present Constitution, so as to give them the power and control over the *Seminary* fund, and also the power to elect their own officers. These two restrictions were the topics mainly discussed throughout the State, and were the principle cause that induced the people to vote for the calling of this Convention. We are here then for the purpose of removing these restrictions, and shall we, instead of trying to remove them, add additional restraints. True the subject of the tenure of office was not agitated before the people, but when we attempt to limit that tenure, and decide as to who they shall elect, and who they shall not, we are throwing a new restriction around their power and privileges. It is one too that is unnecessary to the well-being of society. These officers are mere functionaries, a necessary part of the political machinery. The people are the most competent to determine as to the tenure of office, and shall we limit their power on this point. It is a restriction thrown around the people to say to them in regard to these officers, thus far shalt thou go and no farther, in this particular.

Gentlemen have remarked that the tenure of office has been fixed in other State Constitutions and some gentlemen have referred to the precedent the people have established in relation to the election of the President. They declare that public opinion has sustained the two term policy; and that this principle applies not only to the President, but to all the minor officers of the nation. The President is an officer who can exert the most unbounded influence. The Secretary of State, Auditor, and Treasurer have not one iota of patronage, and it is perfectly clear that the President holds an immense patronage, and is capable of wielding a powerful influence. Yet with all that power and influence the people have willed by common consent that he shall not be eligible more than two terms to that office. If the people have thus regulated the exercise of their judgment in relation to so important an officer, possessing so much power and influence, may we not safely confide in the people, and trust them to regulate this matter according to their judgment? This principle is intended for the good of the people, and not for the good of the office-holder; and in the faithful discharge of the duties imposed on the office-holder the people who elect him are deeply interested. It is perfectly immaterial who the officer is, so long as he does his duty. Every inducement is held out to an officer to perform the duties entrusted to his charge faithfully—and if satisfactory to the people, they should have the power to re-elect him at any time.

It was said by gentlemen the other day that the immortal Jefferson objected to the Consti-

tution of the United States because the doctrine of rotation in office seemed not to have been recognized so far as related to the office of President of the United States. Mr. Jefferson lived in another age, and he could not, with all his political sagacity, foresee the great improvements that would be made upon the theory he laid down at that time. He could not possibly foresee the great improvement in the doctrines he so strenuously and ably advocated; that of rotation in office and universal democracy. In relation to the election of President, he thought that the Constitution was couched in such terms that he might, if the people so willed it, be kept in office during his lifetime; yet we find the people have settled that matter differently. They have settled in their own minds upon two terms as the extent of eligibility to that office; and shall we fear to trust the people of this State to elect a Secretary or Treasurer? Shall we say to them, we will permit you to elect officers for one or two terms, and no oftener? Let the doctrine of rotation in office be our doctrine, but for heaven's sake let the people establish the doctrine. They are in favor of rotation in office, and let them carry out the principle of their own free will, but do not force it upon them and prevent them from exercising a power which they should be free to exercise.

One gentleman remarked that the people would be liable to be led astray and cajoled into the support of an incumbent on account of his great power and official influence. Another gentleman also said that the caucus organization is to be dreaded in the selection of these officers from the people. Well, sir, the action of caucusses is the same, and the action of one is just as much to be dreaded as the action of another. It is perfectly immaterial whether these officers shall be elected for one or two terms, and if the question is left open as to whether the holding of an office for one or two terms renders an aspirant for office eligible or ineligible, the caucus can settle the matter. If the term of holding an office terminate at the end of four years, and it is found that the incumbent is not eligible for re-election, the caucus can select the one to succeed him. If the matter of re-eligibility to office is left open, as I trust it will be, the caucus can settle the question satisfactorily. The members of the caucus which convenes at this capital for the purpose of selecting suitable officers for the people will have some friends who necessarily must have some part of the loaves and fishes. They will determine the office-holder's tenure of office; no difference whether it meets the wishes of an incumbent or an aspirant; they will settle the matter in their own way, according to their political economy; and when the caucus lay their hands on him he becomes a victim.

I desire, Mr. President, then, to be understood as far as this question is concerned, that when

any effort is made to take it out of the hands of the people, I shall be found in opposition to the effort. Why, sir, is there not as much propriety in saying that a member of the Legislature, one of the people's representatives shall be eligible two years out of four or six, as to say that the Secretary, the Treasurer, or the Auditor, shall be eligible for a certain time and no longer? Why is there not just as much propriety in the application of the principle to the one as the other? The members of the Legislature are the mere servants of the people, and have certain duties to perform, and so in relation to the State officers; and, if the State officers may not be re-eligible to election, why should it not be the case with the members of the Legislature?

Let us, sir, carry out the doctrine of rotation in office in its fullest extent. Let it not be violated in a single instance; for, if it is right in one case, it is right in another. I look upon it as radically wrong to take this power from the hands of the people. Sir, there is great danger that we, as the representatives of the people, may abuse the power which, for the time being, they have placed in our hands. We may incorporate this restrictive principle into the new Constitution, and it may be odious to the people. But sending it down for their sanction connected, as it doubtless will be, with other wholesome and popular provisions to be voted upon and adopted, or rejected, as a whole, they may, and perhaps will, for the sake of those other provisions, vote for its adoption notwithstanding the objectionable feature. But that is no good reason why we should seek to impose upon them a restriction which will ever call forth their disapprobation.

Mr. SMITH of Ripley. It appears to me, sir, that this is a very extraordinary discussion and I confess I am getting somewhat tired of the manner in which it is being carried on. A portion of the Convention are in favor of limiting the tenure of office, and rendering those holding office, after the expiration of their terms ineligible, with the view of preventing officeholders from exerting any great power or influence over the country, from their continued establishment in office. This principle as far as I can judge, appears to strike every gentleman as a correct one, although there are certain of the members who express their approbation of it in a very contradictory manner. What is the argument? Gentlemen get up here and insist that this will prove a restriction upon the sovereign rights of the people—though at the same time they acknowledge the principle itself is correct, and the people themselves will require it. This is the position occupied by gentlemen.

I did not rise, sir, for the purpose of arguing this question, but simply to make a few remarks in reply to my friend from Delaware (Mr. Kilgore). That gentleman in alluding to Mr. Jefferson's views, stated that Mr. J. had found fault with

our present National Constitution, because the principle of rotation in office had not been engrafted in it, that he had contended fifty years ago, that this was a democratic doctrine, and should be embraced in the Constitution of the United States. The gentleman from Delaware further remarked, that Mr. Jefferson's views on this question was not applicable to the present age. Sir, who does not know that Mr. Jefferson was a century ahead of the people in his ideas, and that we have not got now where Jefferson was then.

There was another remark of the gentleman, in relation to the question of rotation in office, he stating that the people, by common consent, had fixed the tenure of that office of President, and that it should be used as a precedent; and inasmuch as this has been done by the people, he considers they will do the same thing when it is proper to be done in regard to minor officers. He argues, in short, that the people have restricted the office of President of the United States. Now, I must be allowed to say, sir, with all deference to the gentleman, that the people have had nothing to do with it. How was it with the illustrious Washington? Not a long time previous to his election as President, the people wished to clothe him with the purple—the mark of kingly power; and when that patriotic man desired to retire from his office to the bosom of his family, what was the voice of the people? Why, an unanimous spontaneous demand upon him to remain in the office—and, if he had lived fifty years, the same course would have been pursued by the people. Such is the case now. Let men hold a responsible electioneering office, and the people will cry out, hold on, although it may be that these very men, while apparently very faithful in the discharge of their duty, are imposing upon the public, and their iniquitous conduct cannot be found out while they continue to hold office.

Gentlemen argue that, if this course is right, why not apply it to all officers of the State—executive or otherwise. Well, sir, I am for making the principle apply to all officers of every grade, the judiciary not excepted. By all means, sir, make the judiciary ineligible to office after they have served a certain period—this will make them independent, and they will have no selfish motives to induce them to electioneer while sitting upon the judges' bench.

This is my view of the matter. The people demand short tenures of office, and require ineligibility after those terms have expired, especially in that portion of the State from which I hail. They demand, most emphatically the election of all officers, short tenures of office, and ineligibility. The true republican doctrine, very simple in its nature, I contend, was shadowed forth by the illustrious Jefferson, half a century ago; in his views he was a century ahead of that period. Illinois and several other States, if I am correctly informed, have taken

the true position upon these questions, and I hope the people of the State of Indiana, assembled here in Convention, will adopt the same policy. For, I contend, sir, that the people of Indiana are themselves here, and we are sitting here to form a Constitution for the State of Indiana, that is rest of Constitution and law. If I may be permitted the expression, here are a set of men cast away, as it were, upon an island, in the midst of an ocean, surrounded only by their natural rights. We are here for two purposes alone; and what are they! The first purpose is as clear as possible—to ascertain the rights of individuals. We are then to point them out, so that the legislature may not interfere with them. We should ascertain the rights of the people, and, after that, place limitations upon them, so far as to indicate how public authority shall be exercised, and the manner in which the duties of the public functionaries of the government shall be executed.

Mr. KENT. Mr. PRESIDENT:—Without intending, or even desiring to discuss, at length, the question now before the Convention, I will briefly respond to the remark which has been frequently made by gentlemen during the debate, that it is absurd and anti-republican to restrain the sovereign will, and particularly in the selection of candidates for office.

I imagine, sir, that there is no discrepancy of opinion in this body, as to the soundness of the position that this Convention represents the political sovereignty of Indiana, at least in the revision of the Constitution, and that when we shall have accomplished our work, and the new Constitution is submitted to the people for their approval, or rejection, their decision will carry with it the highest political authority of the State. If then this instrument provides that no person shall be eligible a second or third term for the same office, and the sovereign will shall adopt it, how, I ask, is this elementary power of the government restricted? Certainly not by the adoption of the Constitution; for in that very act the electors, from whom we derive the authority to occupy seats in this Convention, declare it shall be the supreme law of the State, not only for the purpose of limiting and controlling the different departments of the State government, but even the sovereign will of the governed.

But those gentlemen who oppose the proviso in each of the sections under discussion, forget that this sovereignty, of which so much has been said, will ever retain the inherent right to amend or revise the Constitution. And I hope an article will be inserted in the new Constitution, providing that whenever a majority of all the members elected to both branches of the Legislature, shall adopt an amendment or amendments, that the same shall be submitted to the electors at the next general election thereafter, and if a majority shall ratify and approve such amendment or amendments, the same shall be-

come a part of the Constitution. [Several voices—"consent! consent!"] With such a wholesome provision in the amended Constitution no apprehension whatever need be entertained that the people will long endure a bad, or even an anti-republican form of government, as some gentlemen have so eloquently contended ours will be, unless the ineligibility clause in the sections now before the Convention is stricken out.

It was but a few days since that the Convention decided by a vote of 124 to 5, that the sovereign will should not be heard annually, but biennially through the Legislative department of government. Nearly one hundred sections have already been reported to this Convention, from standing committees, many of which will, no doubt, be inserted in the new Constitution. Among these sections we have one, declaring that the sovereign will shall not elect to exceed one hundred representatives and thirty-four Senators.

Another section declares that there shall not be imprisonment for debt except in case of strong presumption of fraud. We have, also, among these sections, another class of provisions, of a declaratory character. In these, if adopted, we say to the sovereign power, that there shall be elected a Governor, a Lieutenant Governor, and a certain number of State and county officers. In fact, it is hardly possible to insert a clause in the Constitution, but what will limit and control in some form or other the sovereign power, and this is well understood to be nothing more than the sovereign will, controlling itself by the adoption of a written Constitution.

One word, Mr. President, as to the expediency of providing that no person shall be eligible to the office of Secretary, Treasurer, or Auditor of State, more than four years in any term of six, or even eight years.

While I have no complaints to make of court house influences, or the action of political cliques, I hope that the proviso will be retained, and that the same wholesome principle will be carried out with regard to county offices.

An able French author, in a work on Democracy in America, attributes the instability of parties in this country to the almost infinite desire for office. We all know that in every district, and almost every county, there is a class who make politics a trade, and I think no one will question the allegation, that this class are not the most capable or deserving of office.

All admit the importance of having faithful and competent officers, and that the policy which will best secure this object, should be adopted. I am quite sure, however, that we shall not be able by any change in the Constitution, entirely to remedy the evil complained of by gentlemen.

But, Mr. President, I am convinced that the proviso will have a tendency to increase the difficulties of office-holders, in the formation of combinations to secure their continuance in office, and, sir, if this were the only good we could reasonably anticipate, by the adoption of the article reported by the committee, it should receive my cordial support. But may we not indulge the hope that other benefits will result from this ineligibility provision? Will it not create a more general and laudable desire among the people to qualify themselves for official distinction in the affairs of government, while it will greatly lessen the power and influence of the mere politician, that class of aspirants to office whose love of country and fidelity to party is measured by the spoils of office. [Several voices—"Consent to that doctrine!"]

Mr. LOCKHART. It seems to me that it must be evident to the Convention, that it is unnecessary to continue this discussion any further. The proposition now under consideration, is the same which has been decided before, two or three times, and by a large majority, laid upon the table. I have myself, voted for several amendments, which have been proposed, and I am not yet satisfied with the provisions of the section. But I am fully satisfied that its further discussion is unnecessary, therefore, I call for the previous question.

Mr. HOLMAN requested the gentleman to withdraw the demand for the previous question.

And the call being withdrawn,

Mr. HOLMAN said, the question is upon re-committing the article, with instructions. I wish to inquire whether it would be proper now to amend the instructions.

The PRESIDENT. Yes, sir. The gentleman will send up his amendment in writing.

Mr. COOKERLY. I call for a division of the question.

The PRESIDENT. The first question, then, will be upon recommitting the article.

The question being put, the Convention refused to recommit.

The PRESIDENT. The question now recurs upon the engrossment of the section.

Mr. BORDEN. To give an opportunity for re-considering the vote taken upon the first amendment to this section, (Mr. Carr's,) I move to lay the section upon the table.

The motion was not agreed to.

Mr. DOBSON. I hope, that, by common consent, the rule requiring one day's notice to re-consider, will be disregarded now, for the obvious reason, that the language of the section, as it stands, does not harmonize—is not consistent.

The PRESIDENT. By disregarding the rules, a motion to re-consider may be entertained now.

By unanimous consent of the Convention, the vote of yesterday, adopting the amendment, proposing to strike out the word "six" from the

fourth line of the section, and inserting in lieu thereof, the word "eight," was re-considered.

And the question being taken on the said amendment, it was rejected.

The question again recurring upon ordering the article to be engrossed,

Mr. LOCKHART proposed to amend the second section by inserting, after the word "Auditor," the words "of State."

Which was amendment was agreed to.

The question again recurring on the engrossment of the article,

Mr. HOVEY said—

Mr. PRESIDENT: I would not at this late stage of the debate trouble the Convention with any views of mine, were it not from the fact, that I feel constrained to differ with those heretofore expressed by my honorable colleague (Mr. Owen). Nor, do I expect to change the mind of any delegate upon this subject, but desire to express my views, for the purpose of justifying the record of my votes, which has, and will be made to the section under consideration.

The provisions of all Constitutions, might, I think, be classed as declaratory, restrictive, or mandatory. Declaratory, where some well acknowledged principle or right is asserted, as in the "bill of rights;" restrictive, where the exercise of some natural right is prohibited, as that the legislature *shall not* pass certain laws; and mandatory, where the Constitution enjoins upon some officer or body the performance of some particular duty, as for instance, that the Legislature *shall* pass a homestead law.

I think, then, it may be safely said, that the most dangerous part of a Constitution, is its restrictive sections, and that we should not adopt anything of that character, without the most deliberative consideration. Every restriction is in derogation of the natural rights of man; no difference how inconsiderable it may be. And, I think, it would be laying down a correct rule to say, that no shackles should be placed upon the exercise of those rights, without experience has taught their absolute necessity.

Under this rule, sir, I would then inquire, whether practical experience has taught us, that it is necessary to make a Constitutional provision to rotate these officers?

By the Constitution under which this State has existed ever since its formation, the offices of Secretary of State, Auditor of State, and Treasurer of State, have not been clogged with the restrictions now proposed. And, I would ask, when, where, and how, have the people of this State been injured by the old principle of re-eligibility? These officers have been re-eligible for the last thirty-four years, and yet gentlemen are unable to point to the time when any injury has resulted from the practice under that principle.

But gentlemen say, if we permit them to be re-eligible now, that they will corrupt the purity of our elections—that they will wield the

privileges of their offices for selfish purposes, and by their corrupting influences, secure their re-election.

Now, sir, as it is understood that these officers are to be elected by the people, what do such arguments amount to?

Strip them of all sophistry, and they nakedly stand forth in this brief sentence—"the people are incapable of self-government." Incapable of self-government, because they *can and will be corrupted*. Sir, it seems to me, this is assuming much in favor of our penetration and wisdom. We "the wise men" of this Convention can see all this; we can see all the corrupt twistings of these office seeking sharks, but the good people of Indiana are so blind that they cannot perceive them—they will suffer themselves to be swindled and not know it. Sir, I utterly disclaim the conclusion to which such arguments will lead. I believe the people to be as incorruptible and as capable of perceiving the tricks which have been alluded to, as the members of this Convention, or any legislative assembly. Yes, even more incorruptible, as it is more difficult to corrupt a large body of men than a small number. And, I think, the inference is irresistible, that if these officers elected for the last thirty-four years by the Legislature have not wielded the corrupting influences attributed to them, there will be much less danger when elected by the people.

I regard, therefore, the argument of "corrupting influences" as preposterous, and do not think it can bear the slightest scrutiny.

There is another argument that I am fearful the people will think has had much to do, if we adopt the proviso in the section under discussion.

It was dimly shadowed forth a few days ago, when the gentleman from Ripley (Mr. Smith) spoke so feelingly in regard to the one-armed, and one-legged men, who are and would be aspirants for these offices. Sir, I am fearful the people will think there are a good many of those one-armed and one-legged gentlemen here, and that we are preparing a field in which we may reap the spoils.

The gentleman from Floyd, (Mr. Kent,) made use of a very ingenious argument, in saying that all restrictions were encroachments upon the natural rights of the people, but as they, and not this Convention, had the right to adopt or reject them, they would be self-imposed restrictions.

That is true, but we prepare the restrictions for them, and it certainly is not right to force them to take objectionable sections or reject the whole of our labors; but such I am fearful will be the final result.

Sir, in conclusion, I would say, that if this Convention adopt the ineligibility proviso in this section—which I believe to be anti-republican—they ought in all consistency to carry the same doctrine out, in the tenure of all other officers, senators, representatives, &c., for fully

as good arguments can be used for the application of the principle to the one class as to the others.

And yet I feel certain that some of those who favor this proviso now, will not be willing to apply it to senators and representatives, and if they do not—I will leave the inference with the people and the Convention.

Mr. SHERROD. I desire to make but a single remark. I have been no less surprised than amused at the strange doctrine that has fallen from the lips of honorable gentlemen upon this floor, and especially from the gentleman (Mr. Hovey) who has just taken his seat. Now, sir, I am decidedly in favor of the proviso, just as it is, although the gentleman has denounced it as anti-republican and anti-democratic. I must beg leave, with due deference to the opinions of that gentleman, to dissent from this declaration. I contend, sir, that the principle of this proviso is not only democratic, but also republican.

Mr. HOVEY (interrupting). I said it was anti-republican; I made no use of the word anti-democratic.

As to the definition of the words anti-democratic, and anti-republican, I cannot see that there is any great difference; the distinction, I think at least, is rather fine spun. Sir, you can define my position as you please. I contend that this proviso embraces the same kind of republican doctrine preached by a Jefferson, and the same kind that was denounced by his opposers; the same kind of doctrine sir, upon which the prosperity, the happiness, and glory of our common country depends.

I yield to no man upon this floor in my devotion, and advocacy of what I believe to be the true democracy of the country, that democracy sir, upon which the perpetuity of our institutions are based, and which guarantees to all an equal right to liberty and security, in his person and property. And while I say this, I have brought my own mind to the conclusion, that the adoption of the principle advocated by the opposite side of the House, would be striking at, if not the main pillar, one of the great principles upon which democratic government rests.

Sir, the history of all governments, from the foundation of the world up to the present time, proves conclusively, that in order to secure a good government the people have deemed it necessary to place certain restrictions and limitations upon their own power.

We have not only the history of our own government in proof of this fact, but turning our eyes for a moment to the Republics of Christendom, whatever else we may see, we discover one thing at least, that the same restrictions and limitations are found to be necessary there.

And here sir, I would ask, why it was that the people of Athens did not assemble in mass to enact their laws, and take into their hands the government? And why has the axiom been

handed down to us, that if every Athenian was a Socrates, then every Athenian assemblage would be a mob? It was because they could not trust themselves to the excitements and temptations, to which all men were liable; they were afraid to trust themselves to the popular hurricanes that sweep over all countries. Sir, the very foundation of all governments rests upon the restriction upon popular rights, and the people have wisely determined to take the authority from the masses and confer it upon certain agents.

If such was not the fact this Convention had better bring its deliberations to a close—it had better adjourn and go home—[cries of consent consent,]—and the sooner the better. Why, sir, what is our business here, if it is not to act as the agents of the people? I contend that this Convention has been assembled here to place certain land marks in the Constitution, by which the ship of State may sail safely and majestically through the rocks and quicksands and vortexes of popular excitement. But gentlemen seem to say, that by so doing, we are enacting a sort of gag law for the people. As I remarked before, we are assembled here to act as the agents of the people, and when our labors are submitted to them in the shape of a Constitution for their adoption or rejection, I assure you they will examine it closely; they will ascertain whether its provisions are in harmony with the spirit and genius of our institutions; whether we have kept an eye single to the purity of the ballot box, the elective franchise, the great lever upon which the destinies of all free governments must turn. And I would here remark, that when gentlemen talk so loudly about gag law and anti-republican doctrine, they should recollect that the Constitution when altered and amended has to be submitted to a greater tribunal than this Convention, before it can become the supreme law of the land. It has to be submitted to the sovereign people of the State, and gentlemen may rest assured, if they think that we have transcended our limits by placing a gag upon them in the shape of a Constitution, they will hurl it back upon our heads, and say “depart from me ye workers of iniquity.”

Sir, I am decidedly in favor of this proviso, but I cannot agree with all of the remarks of some gentlemen, who are also the advocates of this principle. Gentlemen have talked here, as though we have had heretofore little better than a set of scoundrels in the State offices. It has been remarked, that men did not aspire to these offices for the honor they conferred, but for the stealings.

Now, sir, I regret that such charges have been made upon this floor. I affirm that it is a burning shame, and scandal upon the State of Indiana for any gentleman to intimate that we have ever had a set of thieves and scoundrels in office. We may occasionally have corrupt

men at the helm of government, but gentlemen should be careful how they make such sweeping remarks. I have had the honor to vote for a number of our State officers, and I should regret to find, and be very slow to admit, that I had ever voted to place such a man in office.

Sir, I did not rise to make a speech, but merely to reply to some remarks of gentlemen which I could not concur in.

Mr. NEWMAN, who was imperfectly heard, was understood to say that he thought it useless to occupy so much space with this article. In view of the several votes taken upon the subject, said Mr. N., I feel satisfied that it is the mind of a majority of the Convention to prescribe that these three officers shall serve for three years, and until their successors are elected and qualified, and that they should have served four years; therefore I have prepared an amendment, by way of substitute, proposing to condense both articles into one. I move to strike out all after the word “article,” and insert the following:

Strike out all after the word “section” in the first line of the article, and insert: “There shall be elected by the qualified voters of this State, a Secretary, Auditor, and Treasurer of State, who shall hold their several offices for two years and until their successors shall be elected and qualified—they shall severally perform such duties as shall be enjoined upon them by law, and no person shall be eligible to either of said offices more than four years in any period of six years.”

Mr. HOYEY proposed to amend the amendment by striking out all after the words “and no person shall be eligible.”

Mr. KENT. I move to lay the amendment to the amendment upon the table. We have voted upon that question two or three times already.

This motion was agreed to, and the question recurred upon Mr. NEWMAN’S substitute.

Mr. READ of Clark. I propose to amend the amendment by striking out the words “of State” where they occur so often, so as to read “Secretary, Auditor, and Treasurer of State.”

Mr. NEWMAN. I accept the modification.

Mr. BORDEN. I rise, merely to suggest to my friend, the gentleman from Clark, (Mr. Read,) that the committee on revision, arrangement, and phraseology would regulate the article in this respect.

M. READ of Clark. I would remark in reply that the same committee might as well regulate every other matter of amendment.

The PRESIDENT. The Chair understands that the gentleman from Wayne has accepted of the modification.

Mr. NEWMAN assented.

The PRESIDENT. The question is upon the adoption of the amendment of the gentleman from Wayne.

Mr. WOLFE. I would suggest the propriety of prescribing some qualification for these officers, such as what shall be their age, and how long shall they have resided in the State before they can be eligible; and whether they shall be white or black.

Mr. NEWMAN's amendment was then agreed to; and the question recurred upon ordering the article as amended to be engrossed and read a third time.

A MEMBER. Is it in order to amend the article at this stage of the proceedings?

The PRESIDENT. No, sir. The matter reported by the committee having been all stricken out and a new article substituted, the matter substituted must stand as the judgment of the Convention.

Mr. READ of Monroe said—

Mr. PRESIDENT: The principle of ineligibility after a certain term of service as applied to the State administrative officers, is a new one, and has not yet been introduced, so far as I am aware, into any State Constitution. While I would not choose to adhere to any principle of government for no other reason than that it is old, I would not reject it simply because it is new. But new modes of political action should, before being adopted, be fully and calmly discussed.

I am in favor of the principle of such ineligibility as is embraced in the report of the committee and embodied in the amended form of that report, by the gentleman from Wayne (Mr. Newman).

This principle is objected to upon two grounds. First, that it is a restriction upon the power of the people. If it is so, I see no force in the objection. A written Constitution is from beginning to end a restriction upon power. It restrains the powers of officers—it restrains the powers of majorities—it prescribes the mode of exercising the powers it grants—it declares who shall elect—and who may be elected. A constitutional government is essentially a government of restraints—of self-imposed restraints. By the existing Constitution the Governor is ineligible after a second term. It is now proposed to extend this principle to the administrative officers, so that the principle is new only in the proposed application.

The second objection is, it rejects and throws away the best experience of the country. I beg, on this subject, to read from Judge Grimke's work on the nature and tendency of Free Institutions. [Cries of "read, read."] It is, I may observe, a remarkably calm and reflective view of popular government, and an able vindication of our American institutions.

"It has been supposed that where these changes are frequent, the persons elected must be, for the most part, inexperienced and incompetent. Public office itself, creates, to a great extent, the very ability which is required for the performance of its duties. It is not at all un-

common, when individuals have been snatched up from the walks of private life to fill responsible stations, to find that the affairs of society are conducted pretty much upon the same principles and with as much skill and intelligence as before."

Mr. President, I hold that the zeal and earnestness with which the new incumbent enters upon the duties of his office, often more than make amends for his inexperience. But there is another important view which this writer presents. "It is," he says, "of the greatest importance where the electoral franchise is extensively enjoyed, that as large a number of citizens as practicable should be initiated into the mode of conducting public affairs, and there is no way by which this can be so well effected as by rotation in office."

We all hold to the doctrine of rotation in regard to public political offices. I mean in theory we hold it. But when it comes to practice, each particular case is claimed as an exception to the general rule. All parties talk about rotation in office—the *outs* perhaps more than the *ins*; if there is any sincerity in the declarations which we hear in behalf of the principle, let it go into the Constitution, and be established as a rule of action.

Mr. President, I thought the allusion of the gentleman from Delaware (Mr. Kilgore) to Jefferson as "a man of a past age," peculiarly unhappy. Why, sir, if this Convention should now just adopt the reforms proposed by Jefferson in his Kercheval Letters of 1816, and then go home, we should have adopted the identical reforms which our constituents require.

The article was ordered to be engrossed and read a third time.

LENGTH OF THE DAILY SESSIONS.

On motion by Mr. BASCOM, the regular order of business was suspended, and the consideration of the resolution submitted yesterday by Mr. HALL, was taken up.

The resolution was read by the Secretary, and is as follows:

Resolved, That the resolution heretofore adopted abolishing the afternoon session of this Convention be, and the same is hereby, rescinded: and that hereafter this Convention shall hold afternoon sessions.

Mr. KILGORE remarked that a quorum had not voted.

Mr. PETTIT. Mr. PRESIDENT: I will move to fix Monday next as the day, upon which the Convention shall resume afternoon sessions. Let me say that there are several important committees which have not yet reported. They cannot meet in the evening to hold important meetings and the afternoons have not yet afforded sufficient time to mature all the reports. I will mention that the Committee on the organization of courts of law, met yesterday afternoon with a view of coming to a definite conclusion of their la-

bors. We were in close session from two o'clock until six and we were unable to finish our report, but shall require further sessions. There are several important committees in the same position. Several gentlemen are upon different committees and their action is further delayed on this account, as one or the other of the committees to which they belong cannot get a quorum. Therefore, I hope the Convention will fix Monday next for the day upon which this resolution is to take effect. I am convinced that the action of this body instead of being delayed thereby will be expedited.

Mr. BASCOM. I hope that the Convention will not consent to postpone the operation of this resolution until Monday next. How much benefit is it expected that one hundred and fifty men will reap from the committee labors of some dozen? Gentlemen should not be allowed to waste the time of this large body on the pretence—

The PRESIDENT. The gentleman from Wells will leave off such remarks upon other gentlemen.

Mr. BASCOM. Well, we have got work enough now lying on our table to keep us at work until some time in December, if the committees should not report until then. We shall never accomplish the business for which we were sent here if we only work one half the time. If we go on and hold sessions as we ought to, twice a day, we could, after we had got up even with the business now on the table, suspend afternoon sessions if it was necessary in order [several voices here called for the question] to give these committees more time. For my part I am tired of walking around the streets all the afternoon, with nothing to do.

The question upon **Mr. PETTIT'S** motion to resume afternoon sessions on Monday next, was then taken, and the same was agreed to without a division.

The Convention then proceeded to the consideration of the report of the committee on the "bill of rights," the pending question being upon the motion to strike out from the first section the words "strong presumption of" after the words "there shall be no imprisonment for debt except in case of" and before the word "fraud."

Mr. WATTS. **Mr. PRESIDENT:** I am opposed to the amendment, and to the amendment to the amendment. In my opinion the section is just right as it is and I shall therefore oppose any alteration. I do not think, Sir, that the interests of the honest man are well guarded without such a provision. Without it an individual might go into the country anywhere and purchase property upon a credit; he might sell that property and convert the proceeds into money, (and it is well known to every member, that you cannot reach money in a man's pocket by an execution,) and he may use that money in defending himself in a suit at law, which the creditor, of whom the property was purchased

may prosecute on an allegation of fraud. There would be no way to secure the rights of the defrauded creditor. There are men of so hardened and desperate a character that you must bring them to the jail door before they will disclose the possession of property and deliver it up for the satisfaction of their honest creditors. We must, if we would consult the interests of the mass of honest citizens, allow imprisonment for debt when there is strong presumptive evidence of fraud. I do not think the term so difficult to be understood, or so liable to misconstruction, as has been represented by the gentleman from Decatur and others. A chain of circumstances will generally indicate, with sufficient clearness to prevent the doing of injustice to the innocent, whether the debtor has concealed means with which he might discharge his debts, or whether he is really unfortunate and unable to satisfy the demands against him. There is scarcely the possibility of injuring the innocent man. On the other hand, without that provision the fraudulent debtor is secure in the possession of property, the creditor cannot compel him to disclose its possession and deliver it up, and he will seldom have the disposition to prosecute him in a criminal court for fraud.

I shall not consume time by making a speech, but I repeat my conviction that the section is right as it now reads and should remain unchanged. I shall therefore vote against the proposition to amend.

Mr. ROBINSON. In order to bring the Convention to a direct vote upon the principle involved in the amendment and to test the feeling of members, I will accept the amendment to my amendment, made by the gentleman over the way (**Mr. Howe**). As amended, my proposition would now stand thus:

"There shall be no imprisonment for debt except in cases of fraud."

This may effect my object in moving to amend the section, although it is not so certain and specific as I could desire.

Mr. DUNN. I would inquire of the President if it would now be in order, to move to strike out the whole section and substitute another new one?

The PRESIDENT. It will be in order, but I suppose it is not strictly in order while the present motion is pending.

Mr. BUNN. I will read my substitute for information. I propose to strike out all of the original section and insert the following:

There shall be no imprisonment for debt except in cases of fraud, and the debtor shall not be continued in prison, after he shall have delivered up his estate for the benefit of his creditor or creditors, in such manner as shall be prescribed by law.

I have but a word or two to offer in presenting this substitute. I find that there is a division of sentiment—a great difference of opinion relative to the form which should be

given to this important section. A part of this body is opposed to imprisonment for debt under any circumstances; another party is in favor of imprisonment for debt in cases of fraud; and no member is in favor of imprisonment of the debtor after he has delivered up his property for the benefit of his creditors.

There is a great difference between a negative and a positive provision on this subject. My proposition will not *require* the Legislature, even in cases of fraud, to pass laws for the imprisonment of debtors; but it will *restrain* the Legislature from providing for imprisonment for debt, except in cases of fraud. I am clearly of opinion that this Convention should impose as few restrictions as possible upon the legislative department, and only those which are clearly and absolutely necessary. Now, sir, I think it wrong to declare that the Legislature shall not have the power to enact laws providing for imprisonment for debt under any circumstances whatever. And yet I am aware that the feeling of many in this body is that the Legislature should be prohibited from legalizing imprisonment for debt, no matter how fraudulent the action of the debtor may be proven to be—no matter though he has the money in his pocket which would discharge all his debts, but openly sets the creditor at defiance. They are willing to adopt an amendment to this section which would leave the fraudulent debtor to go free, and his creditor without redress, save his power to prosecute the debtor in a criminal court, but where he cannot connect a civil action so as to reach the property of the debtor. My desire is to give the creditor some process whereby he may secure his rights; for, Mr. President, it seems to be partially overlooked that the creditor has rights worthy of protection. And I ask that we shall allow the Legislature to protect him under proper restrictions.

The seventeenth article of the bill of rights of the old Constitution provides, in substance, that there shall be no imprisonment for debt after the debtor shall have delivered up his property for the benefit of his creditors. It is a very wise provision; and I have copied substantially that feature of the provision. I am as much in favor of restricting the power of imprisonment for debt, as I am desirous to protect the rights of the creditor. I do not think that the Legislature should provide for the punishment of the debtor for fraud after he has delivered up his property for the benefit of his creditors; he should then be discharged from custody as a debtor.

Mr. President, I cannot understand the basis upon which gentlemen are acting, who are so desirous of prohibiting imprisonment for debt under all circumstances. I cannot see what obligations we are under to vote the freedom of the State to the fraudulent debtor, by saying in the organic law we are now framing, that the Legislature shall have no power to secure the

rights of the honest creditor, by giving the power, in extreme cases, to arrest a dishonest debtor and compel the disclosure of property, where he has it in possession, and its delivery for the discharge of his lawful obligations to his fellow-citizens. If we limit the power of arrest for debt to clear cases of fraud, to be proven to the satisfaction of the court and jury, no danger can arise of injury or oppression of the debtor.

Those familiar with the business affairs and transactions of the State, and especially those who live, as we do, upon the borders of the State, and know the facility with which fraudulent debtors secure property and escape to a neighboring State, where collection becomes almost impossible, know the absolute necessity that exists for some law for the protection of creditors. We very often see men, in the possession of property purchased upon credit, selling off that property which is subject to execution, and converting the proceeds to money and funds which cannot be reached by execution, and preparing to leave the State rich, it may be, from the proceeds of property which they have virtually swindled from our citizens. Under the operation of a constitutional provision, as proposed by the gentleman from Owen (Mr. Dobson) and others, the creditor in such a case must look on quietly but powerless to resist and assert his rights. But, on the other hand, with a law, the substance of which I have embraced in my amendment, providing for arrest and imprisonment in case of fraud, the creditor, when he should discover a state of things like that I have described, could, upon an affidavit made, require the debtor to appear and answer to a charge of fraud; and upon making proof of fraud, the debtor could be lodged in jail until he delivered up the property for the satisfaction of the creditor.

With these views, I shall vote against the pending amendment; and if that is voted down, I shall then propose to strike out the whole of the original section, and offer the substitute I have read.

MR. ROBINSON. Before the vote is taken—

THE PRESIDENT. Will the Convention give the gentleman leave to speak a third time upon the pending question?

Consent was given, and

MR. ROBINSON remarked, that he only desired to explain his position and views in as few words as possible.

I have (said Mr. R.) always been willing to sit quietly and listen patiently to gentlemen who deemed it their duty to explain their views and their reasons for their action. I am not fond of speaking, and I am never on the floor except when I feel it to be my imperative duty to explain the position I occupy and the reason for my votes.

Having proposed the amendment upon which the question is about to be taken, I desire briefly to explain why I hope it will be adopted. We have in this country, not only a class of unfortunate debtors, but also a class of unfortunate creditors, and both are entitled to protection and legislative and constitutional regard. I am no more disposed to concede all the benefits of legislation and constitutional provisions to the creditor than I am to the debtor. We cannot provide, in this instrument, for particular and isolated cases, but we must frame it with regard to the general interests of the people. There is, in this country, a class of creditors who deserve the appellation of "Shylocks"—men who would take from an unfortunate creditor, not only his entire property, but would strip him and his family of every article of personal necessity and comfort—aye, sir, would tear the man from his family and incarcerate him in prison, if, by so doing, an additional dollar could be forced from him. I make no reflection upon the gentleman from Dearborn. I know his honesty of purpose and goodness of heart too well, but there are men in the community—there are such Shylocks in the land as I have described.

Well, sir, in order to protect the unfortunate debtor—because, I say, there are many really unfortunate debtors, and it is untrue that every man who becomes embarrassed in his circumstances, and unable to pay his debts, is destitute of moral principle—to protect this class, I would provide against imprisonment for debt, except in cases of fraud, proven by the party accusing. There are thousands of insolvent debtors with as pure hearts and as honest purposes as any delegate upon this floor, but fortune has frowned upon them—adversity has come upon them like the winter's blast, stripped them of their property, and they are reduced, oftentimes, in an hour, to abject poverty. And what man is there on this floor, who will raise in his place and say, that such a debtor should be arrested and imprisoned, in violation of the spirit of our free institutions and the declarations in our Bill of Rights?

Then, sir, believing as I do, that the amendment I have offered to the article now before this body, sufficiently guards the rights and interests of the creditor, and at the same time throws around the debtor an equal guard and protection, I hope, that in this day of enlightened and philanthropic public opinion, it will not be voted down.

The effect of my amendment is this: you can connect an investigation of fraud with an investigation for the recovery of debt. And is there a delegate here who will say that an unfortunate debtor, whose fathers may have fought in the revolutionary struggle which secured us the right to govern ourselves, shall be imprisoned for no crime but that of poverty, because some Shylock asserts that there is a presump-

tion of fraud in his business transactions? I believe that no such sentiment exists here. If I did believe it, if I thought such a sentiment prevailed here, I should almost be decided to leave this chamber! But there is no such sentiment here. We will say to the creditor, you shall not imprison your debtor because he is poor. We say to him this: We open the door to you to sue for the recovery of your debt, and you may connect the investigation for fraud with the action for recovery. And if it is proven that the debtor is dishonestly keeping the money in his pocket that should be given up to his creditor, he may be imprisoned until that money is given up. So long as I entertain our notions of liberty, so long as I know that all men are liable to become poor, I will not give a vote the effect of which will be to allow the creditor to arrest and imprison a poor man at his discretion. It is giving him power enough and protection enough when you allow him to arrest on a charge of fraud and to imprison when that charge has been proven in court.

My objection to the amendment of the gentleman from Jefferson (Mr. Dunn) is this, it is not the adoption of the old law according to the letter, but it is the adoption according to the spirit. Under its provision, you commit the debtor to jail, and throw upon him, while he is lying within the walls of that jail, the burthen of proof that he has made a correct schedule of his effects, that he has delivered up all of his property for the benefit of his creditors. I am in favor of compelling a man to pay his just debts, where it has been proved that he has the ability to pay. The proposition I have offered shows that such are my principles. But when we are making an organic law—when we are laying down rules for posterity, not to be altered for the space of half a century—I do think that if this Convention will sufficiently reflect, they will, while they are securing the rights of the creditor, pay equal attention to, and equally secure, the rights of the debtor. The amendment now pending, which is my own, amended, by my acceptance, by the amendment of the gentleman on my right, (Mr. Howe,) comes as near to this equal protection as any proposition that can be submitted. As amended, the section would read:

"There shall be no imprisonment for debt except in cases of fraud."

I have now discharged my duty in presenting and explaining this amendment, and I will conclude by expressing the hope that the Convention will adopt it instead of the substitute proposed by the gentleman from Jefferson.

Mr. NEWMAN. It does seem to me, Mr. President, that the amendment proposed by the gentleman from Jefferson, is more appropriate than any other which has been offered since the article was reported from the committee. The original proviso is in these words—"except in cases of strong presumption of fraud." I would

have the charge of fraud established before the debtor should be imprisoned. I think that we should accomplish the object evidently aimed at by a majority of the Convention, and that it would be eminently safe to say, "there shall be no imprisonment for debt, except in case of fraud." As to the method of proof, that is a question of evidence, and will properly come up before the legislature for settlement. If a clear case of fraud is not proven, then I do not want imprisonment to take place at all; therefore I am not in favor of the term "strong presumption of fraud." I want it more than a presumption, however strong, I would require proof. As to the residue of the substitute, providing that the person of the debtor shall not be kept in prison after the surrender of his property, I approve of it.

My friend from Decatur (Mr. Robinson) is mistaken if he supposes that the substitute offered by the gentleman from Jefferson, preserves the spirit of the old Constitution. It differs materially from that. First, we establish the principle that there shall be no imprisonment for debt, except for fraud. Then comes in another and additional provision, that the person of the fraudulent debtor shall not be continued in prison after he has delivered up his property for the satisfaction of his creditors. I am in favor of that humane provision, but I am not in favor of the provision originally reported in the article before us; neither would I support the whole of the article in the old Constitution.

Mr. DUNN offered the amendment which he had previously read.

Mr. DOBSON inquired if the amendment which he had offered on yesterday but which was decided out of order, would not now be in order?

The PRESIDENT remarked that no proposition decided to be out of order, was now before the Convention.

Mr. DOBSON then moved to amend by striking out all after the word "debt."

The question being taken upon adopting the amendment, the Convention refused to adopt it.

The question then being upon the amendment of the gentleman from Jefferson, (Mr. Dunn,)

Mr. OWEN. Before the vote is taken upon this amendment I desire to endeavor to perfect the section by offering the following amendment:

"There shall be no imprisonment for debt, but a debtor, fraudulently concealing or refusing to surrender his property, may be imprisoned."

In the amendment offered by the gentleman from Jefferson, we have an indefinite provision. What is it that shall be held to constitute a fraud? Shall the contracting of a debt be considered a fraud? Or, shall the concealing of property? If the first, the person should be punished for obtaining goods under false pretences. Now, in order to make the proper distinc-

tion, I move the adoption of the amendment I have already read.

Mr. KILGORE. I move farther to amend by adding to the amendment of the gentleman from Posey, the following words—"and until he surrenders the same," so that the section as amended, would read,

There shall be no imprisonment for debt, but a debtor, fraudulently concealing or refusing to surrender his property, may be imprisoned *until he surrenders the same.*

Mr. OWEN. I will accept the amendment.

Mr. NEWMAN. I rise to a question of order. When the pending question is upon a motion to strike out an entire section, and to substitute a new one, is it in order to propose amendments to the original section?

The PRESIDENT. It is in order to make a proposition as perfect as possible, before a vote is taken upon striking out.

Mr. NEWMAN. This proposition to amend is the same in substance, as the substitute offered by the gentleman from Jefferson, (Mr. Dunn). The propositions are substantially the same, except in so far as the amendment relates to the fraudulent concealment of property.

Mr. BORDEN moved that the Convention adjourn.

Mr. COLFAX. Upon that question I ask for the yeas and nays.

Mr. BORDEN. If there is a feeling against an adjournment, I will withdraw the motion.

Mr. DUNN. The object of the gentleman from Posey can be accomplished by accepting my substitute, and I think its statement of the declaration and provision is the best. I prefer that the Legislature shall have full scope in this regard, and do as it may think best.

The question on Mr. Owen's amendment was then taken, and the same was, upon a division, agreed to, by a vote of fifty-six to thirty-six.

Mr. DUNN. I now move to strike out the entire section.

I would remark that there is a palpable contradiction of terms in the section as it now reads. It commences with the positive declaration that "there shall be no imprisonment for debt," and afterwards provides that there shall be.

Mr. OWEN. The intention and design of the amendment that I have proposed, is, that there shall be no imprisonment for debt, but that there shall be imprisonment for fraudulently concealing property.

The question was then taken upon Mr. Dunn's motion to strike out and insert, and, upon a division, the same was disagreed to, by a vote of fifty-five to forty-nine.

On motion by

Mr. EDMONSTON, the Convention adjourned until to-morrow morning at nine o'clock.

WEDNESDAY, Nov. 6th.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. CRESSY.

The journal of yesterday was read and approved.

CORRECTIONS.

Mr. READ of Monroe rose and addressed the Chair as follows:

Mr. President, I rise not to a correction of our journal—hardly to a correction of our reports. But if good jokes are to be interpolated in our debates, we have as many in this corner as in any part of the Hall, and I would be glad to know how they may go into our reported debates. A scene is represented to have occurred in another part of the Hall, of which the gentleman from Wayne (Mr. Rariden) is made the hero, which did not occur. This I know from the gentleman from Wayne himself, who, a half hour after I read certain extracts from Gen. Jackson's address, came to me and told me he had a notion to make the remark which I see is imputed to him in the report as published in the State Journal of yesterday. What was said is not reported; what was not said is reported. The only remark which was made, was by the gentleman from Switzerland, (Mr. Kelso,) who said: "now, if this isn't as good a trick as I ever had played upon me, I don't know." But if scenes which did not occur are to be represented as having occurred, I wish to know how, that in this corner we may have our part.*

The PRESIDENT. Does the gentleman find any fault with the journal and of the proceedings.

Mr. READ. No, sir; it is the journal of the debates that I speak of.

The PRESIDENT. That is a matter between the gentleman and the reporters.

Mr. CLARKE of Tippecanoe said, he was of the impression that the remark referred to was made by the gentleman from Wayne. He had a recollection of hearing some such remark, although it was probably not heard by the gentleman from Monroe.

Mr. READ. I am informed by gentlemen around me that no such remark was made.

Mr. COLFAX said he recollected that the gentleman from Wayne was sitting near him on the occasion referred to, and he distinctly heard that gentleman make a remark, containing some allusion to Moses; what the precise nature of the remark was, he was not able to say.

Mr. EDMONSTON. I rise, sir, to a privileged question. In the report of the debate which occurred on Monday of last week, in regard to a resolution proposed by the gentleman

*NOTE BY MR. READ.—[Mr. Rariden informs me that he did make the remark imputed to him, while sitting at the Clerk's desk—that probably not a dozen heard him.—D. R.]

from St. Joseph, (Mr. Colfax,) between myself and the gentleman from Delaware, (Mr. Kilgore,) I am represented as acknowledging myself as having fallen from grace. [A laugh.] What was said was this: the gentleman from Delaware put the question to me whether I had not been a supporter of Mr. Van Buren, and whether he had not advocated the doctrine of giving the right of suffrage to colored persons. I remarked that that was before Mr. Van Buren had fallen from grace.

Now, sir, so far from my falling from grace, I am gradually becoming more confirmed in the faith—still looking forward to that happy period when the democracy will all find themselves combined in one solid phalanx.

Mr. KILGORE. My worthy friend must be aware that it is not I who have set him wrong. I had not the pleasure of seeing the speech until this morning. I think the gentleman is quite orthodox. I would be the last man in the world to charge my friend from Dubois with falling from democratic grace; because he is, as I very well know, one of the most ultra democrats in the State.

Mr. GRAHAM of Warrick submitted the following communication:

INDIANAPOLIS, Nov. 6th, 1850.

To the Constitutional Convention:

The undersigned, having been elected the Printer to your honorable body, has obtained the paper from the Secretary of State to commence the printing of the Journal and Debates, which he holds himself in readiness to perform when the Convention may order the same.

In the mean time, he would most respectfully suggest that he is laboring under great inconvenience on account of the Convention not deciding the amount of printing they will require.

He has given bond in the penalty of \$5000 for the faithful execution of the work. Unless the Journal and Debates are printed, the printing for the Convention will not amount to \$300.

From the penalty in his bond, he thinks he was justified in anticipating that he would be entitled to all the printing connected with the duties of your body.

But he makes no argument in vindication of what he supposes to be his rights, leaving the whole matter to the unbiased judgment of the Convention, hoping that early steps may be taken to determine the amount of printing he may be required to execute, that he may make his arrangements accordingly.

(Signed,) AUSTIN H. BROWN.

The communication having been read,

Mr. GRAHAM said, that without expressing an opinion in regard to his own views and feelings on the subject, or as to the course he should take when the subject should come before the Convention, he would move that the petition be

referred to a select committee, and as that committee would probably be composed of legal gentlemen, I shall desire to be excused from serving upon it.

THE PRESIDENT. Of what number shall the committee consist?

Mr. GRAHAM. Of five members.

Mr. BORDEN. I think, sir, that it is due to ourselves that this question should be decided. If it is the intention of the Convention to have the journal of their proceedings published, they ought so to decide. If they intend to leave it to the Legislature, they ought to avow their determination, in order that gentlemen may know what to rely upon. I think it is due to the Printer, who has been elected by the Convention, that the decision should be made.

I have myself, as is well known to the Convention, advocated the position that the State Printer should do the printing; but I am not inclined to throw any obstacle in the way of deciding the matter. If it is the intention of the Convention to give the printing to the Printer who has been elected by the Convention, they ought so to say, and not leave the matter at loose ends, as it is at present.

I understand that there is one printing establishment now printing our debates; and in those published debates are many errors. I am, for instance, represented as expressing the opinion that the Convention had not the right to order the publication of the debates and proceedings. I never said that; all I said was, that the printing of the Convention was authorised by the Legislature; but that I had no doubt the Convention might fix the number of copies to be published of their debates and proceedings. I do think that it is better to come to a decision as to whether the State Printer shall publish our debates and proceedings or not.

Mr. FOSTER. I concur with the gentleman as to the propriety of coming to a decision in regard to this question of printing. My mind in regard to the matter has been long made up, that the Convention has power to determine all questions connected with its proceedings, and to take such action in relation thereto as they may deem expedient. I some time ago offered a resolution, which has been laid on your table, for the purpose of determining how many copies of the debates and proceedings should be published. There seemed to be some opposition to it, and the resolution still remains upon the table. I certainly think we should come to some understanding in regard to this matter, as has been suggested by the gentleman from Allen. The debates are now being published in a newspaper; but there is no provision for the publication in a permanent form. It has been the universal custom of all Conventions to have the control of this matter, and not leave it to the Legislature. And I fear that if it be left to the Legislature they will pass it over; and per-

haps neither journal nor debates will be printed in book form.

Now I give notice, and I do not do it by way of bravado, for I do say it is perfectly useless to employ a Stenographer at an expense of several thousand dollars, and not have the debates published in a permanent form—I give notice that I will move to dispense with the services of the Stenographer, without meaning any disrespect to that gentleman, unless the Convention determine to order the publication of the debates and proceedings in a permanent form, so that they may be of some benefit to our constituents. Sir, the course that has been pursued by Kentucky, New York, and other States where Conventions have been held, has established the precedent; and we, as I have remarked, have elected a Printer to do the work of this body exclusively, and it is our duty to say to him, so that he may know what to rely upon, whether we will have our debates and proceedings published in a permanent form or not, and if published, how many copies we will have. I wish this question to be decided; and I have no objection that it shall be referred to the select committee, not for the purpose of investigating who has the claim to the printing, whether the State printer or the printer who has been elected by this body, but to ascertain and state what number of copies shall be printed. I therefore move to take from the table the resolution which I have heretofore offered, and to refer it to the select committee, if one be appointed.

THE PRESIDENT. The gentleman's motion is not now in order. There is a motion already pending.

The question being put on the motion of the gentleman from Washington, to refer the petition to a select committee of five, it was, upon a division, ayes 70, noes not counted—decided in the affirmative.

Mr. FOSTER. I now move to refer the resolution to the same committee.

THE PRESIDENT. There is no resolution pending.

Mr. FOSTER. Excuse me, sir. I move to take from the table the resolution that I have mentioned.

THE PRESIDENT. The question will be on dispensing with the regular order of business for the purpose of taking up the resolution which the gentleman has indicated.

The question was put, and by unanimous consent the regular order of business was dispensed with, and the resolution was taken up.

On motion of **Mr. FOSTER**, the resolution was referred to the same committee.

The resolution is in substance as follows:

That the Printer to the Convention be authorized to print — copies of the debates and proceedings of the Convention in book form.

Mr. BORDEN had moved to amend the resolution by striking out the words "Printer to the Convention," and inserting "State Printer."

Mr. BORDEN said, he wished to make one further observation in relation to this subject. It would seem, said Mr. B., from the manner in which the debates have been published so far, that nothing goes upon the journal of debates but such resolutions and propositions as are debated, and that such as are not debated are not published at all. This will lead inevitably to the publication of two volumes. Now I observe that in other States were Conventions have been held, all the proceedings and debates are uniformly incorporated in one volume, and I do not know why it should not be so here. I do not see the necessity for having two volumes. And I call the attention of the Convention, at this time, to the subject, because I think it is due to those gentlemen on this floor who do not participate in the debate, that those propositions which they present should go into the published proceedings, as well as the propositions which are debated. This condition of things has been brought about, as gentlemen will recollect, by the adoption of a resolution introduced by the gentleman from Switzerland, (Mr. Kelso,) not now in his seat.

The question being taken on the motion to refer, it was agreed to, and the resolution was referred to the select committee.

Mr. BORDEN, from the committee on the practice of law and law reform, reported the following section:

Sec. —. All prosecutions shall be carried on in the name of, and by the authority of, the State, and the style of the process shall be "The State of Indiana."

The Section was read a first time, and passed to a second reading to-morrow.

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WEDNESDAY, Nov. 6, 1850.—*Continued.*

Mr. BARBOUR from the committee on county and township organization reported the following section, which was read and passed to a second reading to-morrow:

Sec. —. No county shall subscribe for stock, in any incorporated company, unless the same be paid for at the time of such subscription, nor shall any county loan her credit to, or borrow money for the purpose of taking stock in any incorporation.

#### ORDERS OF THE DAY.

The PRESIDENT announced the first business in order to be the consideration of article Second, reported from the committee on the rights and privileges of the inhabitants of the State.

Mr. HENDRICKS inquired if that portion of the article which had been amended on the motion of the gentleman from Posey (Mr. Owen) was susceptible of further amendment.

The PRESIDENT. What is the character of the amendment which the gentleman desires to propose?

Mr. HENDRICKS. The section as it now reads, is to this effect:

"There shall not be imprisonment for debt, but a debtor fraudulently concealing his property, &c.," I propose to make it read "There shall be no imprisonment for debt, but a debtor refusing to surrender, &c."

The PRESIDENT. If the gentleman proposes to strike out anything that has been already voted upon and adopted by the Convention, it is not in order.

Mr. HENDRICKS. Then, sir, I will move to amend by adding the following words:

"To such extent as may be prescribed by law."

Mr. OWEN. Will it be in order for any one voting with the majority to move a reconsideration of the vote by which a portion of the section has been stricken out, so as to give the gentleman an opportunity to introduce his amendment?

The PRESIDENT. The rule requires that such a motion shall lie over one day.

Mr. BORDEN. It may be done, I apprehend, by unanimous consent.

The PRESIDENT. Does the gentleman give notice of a motion to re-consider?

Mr. OWEN. No, sir. I withdraw the motion.

Mr. KILGORE. It seems to me that this matter may be easily disposed of. I believe that a motion was made yesterday, by the gentleman from Posey, (Mr. Owen,) with the view of making the section as perfect as possible. I ask if the object of the gentleman over the way (Mr. Hendricks) cannot be accomplished by proposing to amend by adding to that which has been inserted?

The PRESIDENT. That is the motion which the gentleman has now made.

The question being taken on the motion of the gentleman from Shelby, it was not agreed to.

Mr. OWEN moved to strike out the section and insert the following:

"There shall not be imprisonment for debt; but laws may be passed for the punishment, by imprisonment or otherwise, of a debtor who shall fraudulently conceal, or refuse to surrender, his property."

Mr. OWEN said, he would state to the Convention why he made this motion. It would be remembered that it was on his motion that the section was amended yesterday. It had been suggested to him since, by the gentleman from Hancock, he believed, and by other gentlemen also, that as the section now stood it was not positive and definite. It was not positive and definite, because it did not show what the remedy was, whether by suit to be prosecuted by an individual for the recovery of a



debt, or at the instance of the State, as a criminal prosecution. I believe (said Mr. Owen) that the section, as I now propose to make it, will have, in every respect, the same force, except that it separates entirely the two subjects. I say there shall not be imprisonment for debt, but I provide further, that a law may be passed by the Legislature making the fraudulent withholding or concealing of property a criminal offense. It seems to me that that is the proper mode of disposing of the subject.

Mr. DUNN of Jefferson. Is it in order to call for a division of the question?

The PRESIDENT. It is not in order. A motion to strike out and insert is indivisible.

Mr. DUNN. I think, sir, that the amendment of the gentleman from Posey (Mr. Owen) ought not to be adopted. The effect of it will be to deprive the creditor of all remedy or means for the recovery of his debt. It is but a poor consolation, when he sees his debtor pocket his money and refuse to pay him, to be told that he may be punished for fraud, by an action on behalf of the State. I think that we ought to protect the rights of the creditor. It was for that purpose that I introduced my resolution yesterday. I am in favor of imprisoning all the fraudulent scoundrels in the State.

[Cries of "consent."]

Mr. OWEN. I desire to say only a few words, if no other gentleman wishes to speak before the question is taken on my amendment. The gentleman from Jefferson (Mr. Dunn) says he is in favor of imprisoning all the dishonest scoundrels in the State; I am afraid, sir, if such a thing should take place, that our penitentiaries would be very much crowded. [Laughter.] But to look at the matter seriously. The question is not whether the dishonest debtor shall be imprisoned, but whether he shall be imprisoned upon the action and at the pleasure of the creditor, or at the instance of the State, and according to the provisions of the criminal law. Now, in my judgment, it is not a matter which ought to be left in the hands of the creditor, smarting, it may be, under losses—actuated, perhaps, by motives of revenge. The imprisonment should be, not for debt, not even for the sake of extorting the disclosure of hidden property, but simply as the punishment of fraudulent conduct towards the creditor. It is with these views that I have moved the amendment.

Mr. WALPOLE. The amendment, Mr. President, proposed by the member from Posey, (Mr. Owen,) will be of no service to the creditor. Almost from the organization of our State Government there has been a law, making it indictable and punishable for a person to assign or transfer his property to defraud creditors. I have not known of a prosecution under the law, and doubtless hundreds of cases of fraudulent transfers have occurred. I am of the decided opinion that should the amendment be adopted, it would encourage fraudulent trans-

fers, rather than suppress them. The gentleman's sympathies seem to be all on the side of the debtor that fraudulently transfers or conceals his property. Will he sustain fraud, and allow the unoffending creditor to be deprived of a remedy against the person of his fraudulent debtor? Such will be the effect of his proposition—a proposition that I cannot consent to, and hope will not be adopted. Our sympathies, as well as those of our legislators, for years, have run in one current to protect the debtor, without discrimination between the unfortunate and fraudulent.

Is not the creditor to be protected against fraud? Shall he have no remedy against the person of the debtor in cases of fraudulent transferring and concealing of property, which he should surrender?

I will go as far as any gentleman, to protect the unfortunate debtor from imprisonment for debt, in a word there should be no imprisonment for debt; unless the debtor fraudulently transfers or conceals his property and estate; then the exemption should be withdrawn, the creditor then should have the benefit of law to operate upon the person of such fraudulent debtor, until the property or estate, or as much as may be necessary, be surrendered to discharge the debt.

The state of public opinion requires this—with less it will not be satisfied.

The position of a law maker is not worth having when those holding such places pander to such influences as protect *fraud*. The gentleman says he is for making fraud an *indictable and punishable* offense. I have said what I suppose is well known to every member, that this is and has been the law for many years; that conviction under the *law* will result to the benefit of the State, but not to the creditor; it will not cause the debtor to surrender up his concealed property or estate, to satisfy the demand of the creditor; the debtor may still keep the concealed property or estate, notwithstanding the course taken. Let us then provide that there shall be no imprisonment for debt, except in cases of fraud. The creditor will be satisfied, the unfortunate debtor will be protected and satisfied, and no one will object unless it be the debtor who fraudulently transfers or conceals his property and estate.

Mr. DOBSON. It seems difficult to arrange a section on this subject to the satisfaction of the Convention. My original idea was that we should just insert in the new Constitution the short, plain section, no imprisonment for debt, for that practically expresses the public sentiment of this State.

I would remark further, that the amendment of the gentleman from Posey (Mr. Owen) will carry out that idea, no imprisonment for debt, and will also imprison and punish the debtor for fraud. I am opposed to imprisoning a man for debt at all, but fraud on the part of the debtor I would make a criminal offence, and

when he surrendered up his property I would discharge him.

The gentleman from Hancock (Mr. Walpole) says, that there is upon the Statute Book a law of that kind, and that it has not been enforced for five years.

Mr. WALPOLE (interposing). It has never been enforced to my knowledge, during that period.

Mr. DOBSON. Of course that is what I understood the gentleman to say. I would inquire of the gentleman if he has ever seen at any time, a man imprisoned, in Indiana, for debt.

Mr. WALPOLE. I have, but it was a long time since. It was the case of a very unfortunate debtor. [A laugh.]

Mr. DOBSON. Public sentiment has been growing more and more enlightened upon this subject for the last several years. When I first came into the State it was a common thing to imprison for debt. The corporation limits then were the bounds. The next step was to have the limits of the county for bounds; and that is the case I believe now. You might as well, after dropping a pebble in the water, expect that the extended circles produced by such action, will come back again to the centre, as expect public opinion to come back to the jail walls again. Thus we are retaining a principle upon the Statute Book which is not enforced. We hold out to the world that we imprison men for debt, when we never do it. There has been no imprisonment for debt, to my knowledge, for several years.

The gentleman from Jefferson (Mr. Dunn) desires to have all the debtor's property before he will let him out. When he surrenders all his estate then he is in favor of discharging him. I thought, sir, that it was the law of the land that the debtor should be secured a home-  
stead at least.

Mr. DUNN of Jefferson (interposing). I will explain to the gentleman from Owen, that I expressed myself in favor of discharging the debtor after he had surrendered up such property as was prescribed by law.

Mr. DOBSON. I was simply replying to what I supposed to be the gentleman's argument. I think, sir, there would be a better state of society if we should punish the debtor who committed fraud like any other man who should commit an offense against the law. The distinction should be made between an honest and a fraudulent debtor, and if the fraudulent debtor is to be punished at all, let him be punished at the instance of the State as he would be for any other crime; and not by the individual creditor—that punishment to be for the fraud, and not because he was in debt. There may be many dishonest individuals in the State—but the law is sufficient now to punish them, and if not it can easily be made so.

Mr. HOLMAN. The section as it now stands amended, proposes to give the creditor a remedy for the collection of his debt by imprisonment, when that debt is coupled with a fraud. The amendment offered by the gentleman from Posey (Mr. Owen) proposes that there shall be no imprisonment for debt as a remedial agent—but that fraud coupled with debt shall be prosecuted solely as a criminal offense. In England it was not unusual under the common law that offenses now punishable in this State only as criminal offenses, were left to the control of the prosecutor. For instance, in the case of a man guilty of an assault and battery; prosecution was instituted under the common law by information at the instance of the party injured, and the prosecuting witnesses might at any time compromise the matter as to the private injury sustained, and dismiss the prosecution. In that instance the law guaranteed the right of prosecuting in the form of a criminal complaint for the purpose of punishing and redressing private injury, and gave to the party injured the right to compound. I consider the principle under consideration somewhat similar. The idea of imprisonment for debt is abandoned. The time was when debt and inability to pay were regarded as criminal and punished as such. A more enlightened policy now prevails. There may be imprisonment for debt *coupled with fraud*, and that imprisonment be made use of only as a remedial agent, and not for the punishment of the fraud as a matter of merely criminal prosecution.

It has been well remarked by gentlemen, that an enlightened policy in regard to this question has been rapidly growing up amongst our people. For the last ten or twelve years a feeling of liberal and enlightened humanity has been increasing, not only in this State, but in the other States of the Union. I presume that in none of the States is debt and inability to pay regarded as a crime; and yet in most of the States and throughout the civilized world, *debt coupled with fraud* is placed, to some extent, on the same footing with criminal offenses, and the law with its coercive influence, to a limited extent, comes to the aid of the creditor in the enforcement of his claim against a fraudulent debtor. I am inclined to think that imprisonment simply for debt, unconnected with fraud, should never be tolerated, but where fraud is coupled with the indebtedness, manifestly it is to the interest of the people of Indiana that some remedial agent should be adopted calculated to reach the fraud and give the creditor a sufficient remedy. There are statutes making it highly penal to transfer property with a view of defrauding the creditor, or to obtain goods under false pretences, yet the enforcement of those statutes against the perpetrators of either of those offenses could produce no personal benefit to the party injured, the penalty imposed would go to the State, and the party injured



would be without remedy unless an execution could effect the object by the seizure of property, or the party committing fraud could be reached by process against his person. If it is intended that the debt shall be collected and the fraudulent debtor have means with which to pay, but nothing on which to levy an execution, his effects can be reached only by his imprisonment, and he would then be compelled to surrender the means under his control, in order to obtain his discharge. Favoring a law of this character, calculated only to reach the fraud, I think the section as amended should be adopted.

I do not think, sir, that the people of Indiana are prepared to countenance fraud, or give it protection by destroying the agents by which it may be reached, and I believe they are opposed to imprisonment for debt, unless that debt is coupled with some fraudulent act.

The amendment of the gentleman from Shelby (Mr. Hendricks) proposed that the debtor shall deliver up his property to *the extent* and in such manner as may be prescribed by law, and a section also has been reported providing that it is the privilege of the debtor to enjoy the necessary comforts of life. This is a safe and wholesome provision, and I have no doubt will be adopted, and it will secure to the debtor whether honest or not, a reasonable support for his wife and children. Humanity and the true interests of the State demand this, for the State is certainly interested in securing every citizen from want. But to say that no remedy whatever, except by execution against property, shall exist when *fraud is coupled with a debt*, as a direct remedial agent, is unjust, and unfairly overlooks the rights of the creditor, and is a measure which I trust will not receive the sanction of this Convention.

I am opposed to imprisonment for debt, but I am willing to give to the creditor a sufficient remedy against the dishonest debtor, who while able to pay the just demand against him, would hide himself behind the inability of the law to reach the fraud he may be willing to perpetrate upon the rights of an honest and unsuspecting creditor. But poverty should never be punished as a crime.

Mr. NEWMAN moved to amend the amendment of the gentleman from Posey by striking out the word "property," where it occurs at the end of the amendment, and inserting the words "estate, and the person of the fraudulent debtor shall not be continued in prison after he shall have surrendered his estate for the benefit of his creditor or creditors, in such manner as may be prescribed by law."

This change, Mr. N. contended, would give to the section a more enlarged signification than if it contained the word "property." It did seem to him, that gentlemen on the opposite side to themselves meant to get at the same thing they were contending for. They desired

that there should be a reasonable provision made in the statute of frauds for the preservation of the creditor from the fraudulent designs of a debtor. I contend, continued Mr. N., that it is better to adopt the section before us, if, on consideration, it shall be made to read, that, whenever the creditor conceals his estate, he shall be imprisoned; and that he shall be discharged only when he makes compensation for the injury done to the creditor; that is, he may be discharged in the manner prescribed by law upon surrendering such portion of his estate as the creditors may require, and fulfilling such duties as the law may impose upon him. If these things are done, I say, he may be discharged, whether he has acted fraudulently or not.

The unfortunate debtor, who may have acted fraudulently, should have the means of extrication, so that he may again mix with the world, and become, if possible, a good and useful citizen. And whenever he makes such a surrender as, in the eye of the law, may be deemed sufficient to satisfy the demands of the creditor—at the same time such an one as will not deprive his own family of the necessities of life—whenever, I say, he has thus complied with the terms of the law, he should be discharged. Gentlemen do not seem to wish that the fraudulent debtor shall be continued in prison without any means of discharge. They desire that he may go free upon a satisfactory compromise with the creditor, or after making such disgorgement of his means as society and the law shall say is right; and it appears to me that the amendment I propose will accomplish that object. The fraudulent debtor, be it understood, shall not go forth from prison holding a large amount of property, but a fair proportion of it shall be applied for the payment of his creditors. My amendment, which I think will effect this object, which I will read again, provides that the "person of a fraudulent debtor shall not be confined in prison after he shall have surrendered up his estate for the benefit of his creditor or creditors, in such manner as may be prescribed by law." If this amendment is inserted in the original section in connection with the amendment of the gentleman from Owen, as I have proposed, it will, I think, attain the object all seem desirous of accomplishing.

Mr. KILGORE moved to amend the original amendment by striking out all after the word "debt," in the first line, and inserting the words "except in the case of the debtor who fraudulently conceals or withholds his property or effects, he shall be imprisoned." That, he said, would cover the whole ground.

The amendment was ruled out of order.

Mr. PEPPER of Ohio. I had no desire, Mr. President, to say anything whatever on this subject. I have no doubt that it is the unanimous opinion of this Convention that no man shall be imprisoned simply for debt. That is the settled opinion of every gentleman here, I pre-

sume. The object seems to be to incorporate something in the Constitution providing that imprisonment for debt shall not exist, but that a fraudulent debtor shall not be released until he shall have delivered up his concealed property.

I think, sir, that the way in which we are going on will make a section that will not be, very suitable to the views of any of the members; and it strikes my mind that the better plan will be to re-commit the section to the committee on the rights and privileges of the inhabitants of the State. I move, therefore, sir, that the section be recommitted, with instructions to report a section embracing the doctrine contained in the following article, without being particular as to the language:

"There shall be no imprisonment for debt; but in cases of fraud, established by law, the fraudulent debtor shall not be entitled to the benefits of this act."

The PRESIDENT. The question now before the Convention is upon re-committing the section under consideration to the committee on the rights and privileges of the inhabitants of the State, with instructions.

Mr. NILES. So far as I can gather the views of the Convention, there seems to be no difference of opinion on two points: first, that an honest debtor shall never be imprisoned for debt; and secondly, that the creditor shall not be deprived of all civil remedy against the fraudulent debtor. The property of a debtor, which is fraudulently concealed or secreted, cannot be directly reached by ordinary process. The right, then, temporarily to imprison the person of the fraudulent debtor, is the only method of compelling him to pay his debts. Should this indirect remedy be refused, it is evident that no civil remedy would exist against him. We desire, then, in the fewest possible words, to protect the honest debtor from imprisonment, and to permit the only possible civil remedy against the fraudulent debtor.

Now, I wish to recall attention to the section as reported by the committee, and which, with the omission of the three words "strong presumption of," seems to me clearly to be just what we want. It would then read: There shall be no imprisonment for debt, except in case of fraud. As remarked a day or two since by my friend from Lagrange, (Mr. Howe,) I should greatly prefer that language to the amendments now under consideration; and were it now in order, I would move its adoption in that form. We should then fully protect the honest debtor, but would leave it discretionary with the Legislature to authorize such civil remedy against the fraudulent debtor as they might think wise and proper. We cannot presume that they would adopt harsh and vindictive measures, or give unreasonable power into the hands of the creditor.

Mr. READ of Monroe. There appears to be a great uniformity of feeling in regard to the

question whether there shall be any imprisonment for debt. I presume there is very little difference of opinion in this Convention in regard to the policy, propriety, and humanity, of imprisoning a man for debt.

The PRESIDENT. The question before the Convention is upon re-committing the subject under discussion with instructions. The gentleman from Monroe will please confine his remarks to the propriety of re-committing.

Mr. READ. I suppose it will be perfectly in order to present an argument against the reference, if I can demonstrate that something better can be done than to make such a reference.

I know of no necessity for referring the section for such a purpose, because I do not think it will answer the object contemplated by the mover. There is no imprisonment for debt now under the statute, except in cases of fraud, and I would be willing to restrain the Legislature, if it is thought proper by the Convention, in terms something like this: "No imprisonment for debt except in cases of fraudulent concealment or alienation of property." It is a wrong thing when the creditor is in pursuit of his debt to maintain in security the person of his debtor, if he has fraudulently concealed or transferred his property to avoid paying his debts, and protect him in the enjoyment of his liberty. The fact of a debtor being honest will always protect his person. I do not desire by this provision to divert the attention of the creditor from his debtor. When the creditor aims a blow at him, it must be through the administration of the law, or else it is a blow struck at the natural liberties of the people.

My theory of government is this: that when we become members of a civil government, we surrender our right to redress our own wrongs. One of those wrongs is, where a debt is incurred and attempt is made by fraud to avoid payment of it; and here the government stipulates to give us ample and speedy redress for our wrongs. I do not pretend that the power to incarcerate a debtor for a debt honestly incurred is a power that government should guarantee to us; but I do assert that the exercise of that power is one of the means for exposing a debtor who fraudulently conceals his property for the purpose of avoiding payment of debt. If there be an allegation of fraud, I hold the same process is good against the debtor for the collection of debt, and that he should be incarcerated until the allegation of fraudulent concealment shall be investigated. By this very means, which is connected with the administration of justice, if a debtor is pursued wrongfully and without cause, the man who wrongs him is made liable in a court of justice for all the injuries he may inflict on the debtor. How, I ask, can we fulfil the obligations of government, unless we provide ample means for developing frauds of this character. If you take



away the power of incarcerating the person of the fraudulent debtor, you deprive the creditor of the only mode in which he can obtain the restitution of his concealed property.

I propose then, sir, to leave this power of attaching the person of the debtor to the courts of justice. It has been heretofore, as it is now, left to courts of justice under the law and the Constitution. I have heard of no difficulty resulting in this State, so far, from the operation of those provisions.

There is another question involved, and that is, the humanity of this provision. There is not one man in twenty-five that ever wants to take the benefit of a law exempting the body from imprisonment under any circumstances; and will you, by passing such a law, mar this beautiful system of ours, which is so well calculated to disclose fraud. Will you defeat the ends of justice for the purpose of saving the personal liberty of one twenty-fifth part of the community?

What I would prefer above all things, sir, is that you change the present Constitution so that there shall be no imprisonment for debt, except in cases of fraudulent concealment or alienation of property. The proposition then stands, that there shall be no imprisonment for debt itself, but imprisonment only for debts on fraudulent concealment, &c. My object is to make the imprisonment one of the means for disclosing the fraud. I desire to give the honest creditor every means for finding out the fraudulent debtor; and this, too, for a reason I have not mentioned, and that is, because the current of popular feeling runs in favor of the debtor, and therefore, he is enabled, in many instances, to get clear. Therefore it is, I desire to make imprisonment for debt one of the means for disclosing fraud and preventing the escape of the individual who practices it. I do not care, sir, how ample you make the means of reparation, for the benefit of the upright creditor. If the debtor is reasonably and unjustly pressed, he has his remedy in the courts of justice. The law hitherto, in my opinion, has been too much relaxed in favor of the debtor.

Mr. RITCHEY. I hope that this section will not be referred again to the committee who reported it. I think we are as well prepared to act upon it now as if it were to be referred and reported back again and a new discussion had upon it. This question is to be decided upon discussion, and I believe it has been discussed now until nearly every member of the Convention has given his opinion, particularly in regard to imprisonment for debt. I desire, without any reference, to see a vote taken on these various amendments.

For myself, sir, I agree with the gentleman from Laporte, (Mr. Niles,) that all this Convention should do is to declare, in the new Constitution, very nearly in the language of the re-

port first presented by the committee, that there shall be no imprisonment for debt, except in cases of fraud, and then leave it for the legislature to provide remedies for the collection of debt, and the punishment of the fraud. I think that such a clause would be more appropriate in our Constitution than one more detailed or abstruse. I am not sure that I am willing to say that there should be no imprisonment for debt; but in cases of fraud, I am clearly of opinion there should be an incarceration of the person of the fraudulent debtor—and I think the provision, providing that there shall be no imprisonment for debt, should be connected with one providing that there should be no imprisonment, except in cases of fraud on the part of the debtor.

I object to the amendment of the gentleman from Posey, (Mr. Owen,) because it makes a fraudulent debt a criminal case, and the creditor who commences the prosecution for debt, has to wait until the meeting of the grand jury—if this Convention does not abolish the system—and if they indict the fraudulent debtor, then he has to wait the result of the criminal prosecution. Suppose the grand jury, after the matter is laid before them, return the debtor, then the creditor may have to wait six months for the meeting of the court that is to try him, before the affair can be settled. The grand jury must, of necessity, have an investigation of the affair, before the prosecutor can carry it into court. Now, I prefer, sir, that the creditor shall have his remedy at once, and that that remedy shall be had through the medium of a civil process. I prefer that there should be a process for the collection of debt so formed, that the question may be determined as soon as the creditor makes his complaint, whether the debtor shall be imprisoned or not. With all deference to the gentleman who moves this re-commitment, I think we are just as well prepared to vote upon it now as at any future period; and a vote taken now, will save the time of the Convention.

Mr. WATTS. I wish to say a word or two, sir, in opposition to the motion to re-commit, with instructions. I think this Convention should make a distinction between debts honestly contracted, and debts fraudulently contracted. If we are disposed to disregard all distinctions between debts honestly and debts dishonestly contracted, why, then, we may pass the motion to re-commit with instructions.

It would, sir, be but a poor consolation to me, after having been swindled out of a large portion of my means, to seek my remedy against the swindler in a court of justice, through an action of fraud. The swindler would possess my means to defend himself in the suit thus brought against him, and I, dispossessed of nearly all my means, would rather decline going to law and using up the balance of the property I might have left.

I admit, you cannot imprison an honest man now; nor can you at any time. You could not make a law in this State to imprison one. Public opinion would not sanction it; it would frown it down. No honest man could be got further than the jail door—for he surrenders up his effects under the insolvent law—that law leaving him a sufficiency to live upon, and, after that, you cannot imprison him. Nothing, sir, will make the fraudulent debtor disgorge his ill-gotten gains, but the fear of being shut up in jail. A man defrauds his creditor out of his property and you say he must go to a court of law to obtain it. Now, sir, of late I have been constrained to think that I never again will resort to a court to obtain justice. The only good resulting from going to court is, that it puts an end to litigation, and I will tell you how. A man resorts to court for a redress of his rights, and, through the medium of some technicality, he is thrown out of court, and has the privilege of going home and working harder than ever, to make up for his losses. This is what I call putting an effectual stop to litigation. [Laughter.] I am in favor of courts for that reason, considering that there is a manifest impropriety in going into courts of justice, for the sake of obtaining justice. [Merriment].

I trust that some more effectual and speedy remedy will be provided for the punishment of the fraudulent debtor, than that of entering into a suit at law. I hope the motion to re-commit will not prevail.

Mr. COOKERLY expressed himself as opposed to imprisonment for debt, except in cases of fraud. Not wishing to detain the Convention, after the lengthy debate that had taken place on the subject, he desired to know whether this subject had been re-committed or not? If it had, he wished to offer a resolution of instruction.

The PRESIDENT. A motion to re-commit with instructions, is pending now.

Mr. COOKERLY. I call for a division of the question.

The PRESIDENT. The question will be first taken upon re-committing the section under consideration.

Mr. PEPPER of Ohio. I desire, Mr. President, to say a word or two before the question is taken upon the motion to re-commit. The instructions, which I had the honor to offer, provided, first, that the honest debtor shall not be imprisoned for debt; and secondly, that the dishonest debtor, if the fact of his fraud is established by law, shall be imprisoned, for that dishonesty. I am not particular, however, as to the instructions.

The gentleman from Johnson (Mr. Ritchey) thinks it is not important to recommit. I think it is. After all that has been said upon the subject I think that the committee who framed the section first presented for our consideration, will have learned something in respect to the

opinions of the members of this Convention, and will be better prepared to frame a section embracing the views of a majority of the Convention, and in better style, and with less words, than it will be possible to make it if we continue to amend, and then pass it as amended. I think it is due, also, to the committee who first reported this section that it should be re-committed, and that the committee have time to reconsider this subject, and present to us a section in better shape. I am quite willing to withdraw the instructions, that the section be re-committed without instructions.

Mr. WALPOLE. I move to refer the section to a select committee, with instructions to report the same back, so that it shall read: "there shall not be imprisonment for debt except in case of fraud."

The PRESIDENT. The motion to refer to a standing committee has precedence.

Mr. WALPOLE. Then I will move to amend the motion by adding the following instructions: "and that said committee shall make no other corrections in the section as originally reported, except that of striking out the words 'strong presumption of.'"

Mr. FARROW. Is it in order to amend now?

The PRESIDENT. It is in order to amend the instructions.

Mr. FARROW. Then I move to amend the instructions as follows: add after the word "fraud," "Provided, The privilege of the debtor to enjoy the necessary comforts of life shall be recognized by wholesome laws, exempting a reasonable amount of property from seizure or sale for the payment of any debt or liability hereafter contracted."

A motion was made to lay the amendment to the instructions upon the table.

This motion was agreed to; and the question recurred upon the adoption of Mr. Walpole's instructions.

They were agreed to without a division; so the first section was re-committed.

Mr. BASCOM. Is it in order to amend the second section now?

The PRESIDENT. Yes, sir. The consideration of the second section is next in order.

The second section of the report was then read by the Secretary; it is as follows:

SECTION.—In all civil cases where the amount in controversy shall exceed the sum of twenty dollars, and in all criminal cases whatever, the right of trial by jury shall remain inviolate.

Mr. BASCOM. Mr. PRESIDENT: I offer the following amendment to this section: strike out all between the word "civil" in the first line, and the word "criminal" in the second line, and insert the word "and."

Mr. WALPOLE. I propose to amend the amendment by substituting these words: "in



all civil and criminal cases, the right of trial by jury shall remain inviolate."

Mr. BASCOM. I accept the modification.

Mr. PEPPER of Crawford. I propose to amend the amendment as follows: strike out the words "cases where the amount in controversy shall exceed the sum of twenty dollars."

The amendment to the amendment was rejected; and then Mr. Bascom's amendment was adopted.

Mr. RITCHEY. I would suggest a further amendment of the section by striking out the words "civil and criminal," so that it will read "in all cases whatever," &c.

The PRESIDENT. At this stage of the proceedings it will not be in order to strike out, the Convention having striken out the whole section and inserted new matter, which must stand as the judgment of the Convention.

The second section was adopted; and the consideration of the third section of the report being announced, it was read by the Secretary, and is as follows:

SECTION —. No man's personal services shall be demanded without just compensation. No man's property shall be taken by law, without just compensation first assessed by a jury of free-holders and tendered, together with the expenses of the proceeding, to the owner, by the person to be benefited. But such tender, if rejected, shall not bar the right of appeal.

Mr. KILGORE. I propose to amend the third section as follows:

Strike out all after the word "taken" in the second line and insert "or applied to public use without the consent of his representatives, or without a just compensation being made therefor."

Mr. HOLMAN. Is it in order to strike out and insert a new clause in lieu of the whole section, by way of amendment to the amendment?

The PRESIDENT. It is.

Mr. HOLMAN. Then I offer the following: strike out the words "without the consent of his representatives, or," and insert after the word "being" the word "first."

Mr. MORRISON of Marion said, I hope, sir, that this section will not be amended in any particular. I have carefully examined it, and am satisfied that it provides just what ought to be provided to protect the property of individuals from inroads which are frequently made upon them by persons acting under corporate powers; the language of the section is: "No man's personal services shall be demanded without just compensation. No man's property shall be taken by law, without just compensation first assessed by a jury of free-holders and tendered, together with the expenses of the proceeding, to the owner, by the person to be benefited. But such tender, if rejected, shall not bar the right of repeal."

This section, sir, is carefully worded, and in such a manner as to prevent those practices of oppression which have grown up under the operations of incorporated companies in this State. It has been customary for them to enter upon the premises of a private citizen and take away even the soil from the farmer, and the individual has been left without any means of protecting himself from such an encroachment. Now it is proposed in this section that they must first tender to the owner a just compensation for his property, together with the expenses of the proceeding, and if he does not accept of the money so tendered, it shall not bar the right of appeal. Both parties have this right of appeal. But formerly these companies might enter and destroy a man's property, and if the owner entered into litigation for his rights, it has often happened that before the suit was terminated, the company were found to be either irresponsible or they had left the country, and so the owner would be helpless as to his remedy. I think if gentlemen will look at this matter they will see that every such case of oppression which can possibly arise is provided for by this section. I hope, therefore, that the Convention will allow it to remain as it is, to protect our constituents from the consequences of oppression which have been so often felt and inflicted by those acting in behalf of incorporated companies.

Mr. KILGORE. My object in proposing this amendment was to leave this provision of the Constitution as nearly in the shape it was before as possible. I suppose that there is not a single section in the old Constitution upon which there has been more litigation than upon the one now under consideration, and the decisions of the courts thereupon are well understood, so that now if we propose a radical change in this provision, it could not but operate prejudicially to all the interests of the State, except the interests of the individual who chooses to remain wholly unwilling to surrender anything for the public good. The section is reported now, and as it now stands requires that the party who seeks to take private property shall first have the damages assessed by a jury of free-holders. To that clause I object as being anti-democratic. This compensation must be first assessed and tendered, together with the expenses of the proceeding, to the owner, before a single step can be taken. I do not know what is to be understood by the expenses here. The owner can certainly ask no more from the company than that his damages shall be paid to him. I do not see how he could ask for expenses, or what expenses could be incurred. If he gets his damages it seems to me that this is all he should ask for.

We have been latterly engaged in constructing works of public improvement in various parts of the State, and frequently we have had to encounter troublesome customers, demanding an exorbitant price for their land. Well, in as-

sessing the value of such lands, in the first place we ought to consider the probable advantage that would accrue to the owner by the construction of the work. But in the change which is here proposed, this matter is left wholly out of view. Before we have a right to take and possess property for works of public improvement, a jury is to be empaneled and the full value of such property is to be assessed and tendered to the owner, together with the expenses arising out of these proceedings, before we can take the first step toward giving to the owner the advantage of a thoroughfare through his property. This, I contend, is unfair. If the public is to be benefited by such a work of improvement, the owner, as a citizen, will also be benefited. Besides, every man owes something to the community, and if the value of the owner's farm is to be enhanced by it, the property taken can be nothing but an imaginary wrong to the owner. Surely, then, he should not ask that damages should be assessed and tendered, together with the full value of his property, before a single step can be taken in the construction of such a work. Take the case of the construction of the great thoroughfare between this place and Lafayette, and suppose all the owners of property upon the road are willing to give the right of way for a fair valuation, except one farmer who is disposed to resist. What is to be done? Must everything stand still till a jury can say what shall be the damages and expenses which may be incurred, notwithstanding the value of the property of the individual may be enhanced fourfold? We have had frequent adjudications of this question, and it has uniformly been held that in assessing the value of property taken, it is proper to take into consideration the advantages which are to accrue to the owner. I am willing, however, to leave this matter with the Legislature, to provide such regulations and restrictions as they may see proper in the charter of every such company. But let us not change the Constitution in this respect, for it might prove to be very troublesome.

Mr. BIDDLE. If I understand the order, the first question is upon the adoption of the amendment to the amendment, as offered by the gentleman from Dearborn (Mr. Holman).

The PRESIDENT. The amendment of the gentleman from Dearborn is out of order—being a substitute for the whole section: whereas the amendment of the gentleman from Delaware (Mr. Kilgore) proposes to strike out only a portion of the section.

Mr. BIDDLE. That raises the same point. I shall oppose the amendment of the gentleman from Dearborn, because I am satisfied with the section as reported by the committee, with some exceptions as to phraseology, which, I think, can be bettered. I am not particular whether payment shall be made before or afterwards, but I am opposed to any proposition by which property can be taken from an individual without

compensation, and I deny that the State can take property, in such a way, for any purpose whatever. What is the difficulty? It is because under the old Constitution, the courts have decided that the representatives may bind the citizens.

It is well known, Mr. President, by a law of the land, regulating criminal prosecutions, unless conviction follows, the witnesses and officers of the court shall not be entitled to cost: and we shall labor under the very same difficulty if the amendment of the gentleman from Delaware shall prevail.

I lay it down as an undamental principle, that no State authority can take away one cent of the property of the citizen, without compensation. I agree that the State may command the services and property of the citizen, against his will, but not against his will and without compensation therefor.

As the law now stands, any person may be taken the length and the breadth of the State, from one extreme to the other, without any compensation whatever, and their attendance may be compelled, and often is, by recognizance and attachment. And this law has been held by the Supreme Court as constitutional, for the reason, as I have before said, that the representatives may bind the citizen. It is my wish, therefore, to strike at this power, so that the State shall not have power to take from the citizen his property or command his service, which it is not lawful for one citizen to take from another. The moment that a State undertakes to govern without doing equal and exact justice to all, that moment such a government becomes oppressive. It is sufficient that the State shall take his property and command his services against the will of the citizen. This may be necessary to the State sovereignty. But to take his property and command his services against his will and without a just compensation therefor, is a flagrant violation of one of the first principles of justice.

Mr. HOLMAN. I offer the following amendment to the amendment: strike out the words "without the consent of his representatives or," and insert after the word "being" the word "first," and it will then read: "No man's personal service shall be demanded without just compensation. No man's property shall be taken by law or applied to public use without just compensation being first made therefor."

Mr. HOLMAN said, I am opposed to any man's property being taken and applied to public use without his consent unless a just compensation shall have been first made for the injury he will sustain. A reasonable construction of the section on this subject in the old Constitution is, that no man's private property should be taken or applied to public use without one of two things, either that it should be done by the consent of his representatives, or that a just compensation should be made for the same. I think that under no circumstances should one



man be deprived of his property and the public benefited without the party benefited being required to justly indemnify the party who is to be deprived of his property without his consent.

I am in favor of the amendment because it fully secures the citizen and at the same time the language of the old Constitution is almost literally retained. I am opposed to changing the language or phraseology of the old Constitution any more than is necessary to effect the necessary reform. Our people have grown up under the Constitution of 1816; they are familiar with its language and the courts have given it its proper legal constructions; its provisions are also familiar to our citizens, and neither the language nor the provisions of that instrument should be changed unless there may be a necessity for the innovation, and then only to the extent that experience has proved to be necessary.

The committee that reported the section under consideration have thought proper to make a material change both in the phraseology and spirit of the section on this subject in the old Constitution. I think the slight change proposed by the amendment fully remedies the evil, if any existed, under the Constitution we have met to revise.

Where the language in the old Constitution is sufficiently clear and explicit to express the purpose intended, and the principle itself so expressed is to be retained, I think prudence would dictate that the language itself should be literally retained. If changes are to be made let them be as limited as a just regard to the end to be accomplished will admit of.

I hope the Convention will manifest a desire to retain the language of the present Constitution where it can be done, and that we may not be carried away too far by a reckless spirit of innovation and a wild desire for unnecessary reform. I think the only just objection that existed to the section in the old Constitution relative to the appropriation of private property to public uses are sufficiently remedied by the proposed amendments.

Mr. PETTIT. It is because the language of this section is explicit in its character, and obliges the corporator to first pay the damages to the owner, that I approve of it as reported by the committee. My object is to address the Convention a few minutes with reference to the evils and impositions which have grown out of the examinations of the language of the section in the old Constitution, which this is to take the place of.

It is probable that a man of plain and straightforward intentions, could have understood this in the first place, but it has been refined upon by the decisions of the court, and frittered down until it means nothing at all. It has come to be no security at all to the citizen. The language of the section is, "that no man's particular services"—I confess that I do not know what is meant by "particular services," but the section

is: "That no man's particular services shall be demanded, or property taken, or applied to public use, without the consent of his representatives, or without just compensation being made therefor." Now, one would naturally consider that section to be sufficient guarantee against all cases of oppression of this kind—seeing that no man's services or property can be taken by the State, or by his fellow-citizens, without a just compensation being made therefor. Notwithstanding this provision, we have laws compelling a witness to go from end to end of the State, to testify in a criminal prosecution without compensation, unless the trial results in the conviction of the prisoner, a law which I look upon as being not only oppressive, but manifestly inconsistent with this provision of the Constitution.

Sir, if the object of punishing crime, or a violation of the law, is not sufficiently desirable to be worth paying the expenses of a trial, the practice should be dropped. There is no reason why a man, who happens to be unwillingly and unwittingly present, where a violation of the law has been committed, should be dragged all over the State as a witness, without pay. I say there is no reason in this, and therefore, I concur with the gentleman from Cass, (Mr. Biddle), in saying that this ought not to be done without compensation, even if it were done by the consent of his representatives.

But, contemplating this section in another light, I have thought that it secured to the citizen the pre-payment of the just value of his property, before it could be taken for public use. But I have been mistaken with reference to this provision, for the judges have made nothing at all of it. They have followed the decisions of the judges of the State of New York, who have decided that the State may go on and take any amount of property from the citizen, only promising to pay for it. The courts have gone so far as to say that this is sufficient; for it is not to be presumed but that the State is both honest, and just, and willing, and has the capacity to pay; because it has the power actually to sink the whole of the property of the State, in order to the payment of the public debts. The judges of our State have been following exactly in the wake of these decisions. They have said that our State, though floundering under the weight of millions of debt, and, though really not worth a farthing, shall have credit, and that her faith and credit shall be good. Well sir, I am sorry to say, for a moment, that the faith and credit of our State is not very good. But if this decision were only constitutional, it would not be so erroneous as perhaps it is. The courts of New York have, however, gone still farther; they have said that the Legislature may vest their sovereignty in corporations, so far as to authorize them to go on and take individual property, and condemn it for their own use, by merely promising to pay for it. To be sure the

Legislature have required corporations to provide a fund for the payment of this class of debts, but they leave it for the individual to get his pay out of the State if he can.

It is for this reason that I want to retain the precise language of this section, as it was reported by the committee. No more precise and unambiguous terms than these could be devised; so that neither the State, nor any other authority can take away a man's property or his services, without first tendering a full and complete compensation therefor. It is for the very reason that it is democratic, and just, and equal, that I want this section retained. If it is necessary for the public benefit that private property should be taken, those who are benefitted by it ought certainly to make payment to the owner. A single individual ought never be compelled to suffer for the public benefit. Where is the justice in giving power to an incorporated company, to go on and destroy the property of an individual, and to say to him, wait sir, till our road gets into operation, and we will pay you? Why make such an individual suffer for their benefit? Or, if the whole State make this work, and this principle be allowed, the State will not stop to indemnify the citizen.

There is no language, as I have said before, which can so completely secure this object, as that employed in the section reported by the committee. It meets my most hearty approbation. The language of the old Constitution was uncertain; and the decisions of the court have made it yet more uncertain.

"No man's personal services shall be demanded without just compensation." This is the first sentence of the section. This would cover the case referred to by the gentleman from Cass, though it does not provide that compensation shall be pre-paid. But the law under this provision would take care that all witnesses should be paid if the party were convicted, and, whether convicted or not, if the witnesses should not be paid within a reasonable time, say within three or six months after the trial, the provision would be, that the amount of their fees should be charged against the State Treasury. The language of the section would authorize a law to this purpose, although it would not authorize a law to provide that the fees of all such witnesses should be pre-paid, but only that the faith of the State should be pledged for their payment.

But the next clause of the section is peculiarly fitting. It secures every man, in his property, against the hand of the Legislature, or his representatives. It says, "That no man's property shall be taken by law without just compensation, assessed by a jury of freeholders."

The gentleman from Delaware (Mr. Kilgore) thinks this language is anti-democratic, because it excludes those who are not freeholders. But the reason of this is obvious; because in nine-

ty-nine cases out of a hundred it will be real property that is taken—property of the freehold. These men—freeholders—holding a similar kind of property, and being acquainted with its value, it is no more than appropriate that a jury of such men should be called for the purpose of assessing such compensation. It seems to me that no reasonable objection could possibly be raised against this provision. The section goes on to provide further "That these damages shall be first assessed, and tendered, together with the expenses of the proceeding; to the owner." This affords the citizen security in the following case: The agent of a corporation comes to me in these proceedings and says, "I want to condemn your land for the purpose of running a railroad through it; I want a strip of some eighty or a hundred feet, through your land or town lot." I reply, "No, sir, you can't have it." But he continues: "I can have it under your State Constitution, by first tendering to you the damages and expenses." "Very well," I reply again, "I submit to the authority of the Constitution; but what are the expenses of calling a jury of assessment, and all that sort of thing?" But the amount of these expenses may not be material to me. The honest sum of the damages are to be tendered, together with the cost of proceedings, by the person to be benefitted thereby, before he can have the privilege of passing his road over my ground. "But such tender, if rejected, shall not bar the right of appeal." This part of the section is not very material; but I see no reason for changing one single letter, section, line, or sentence of the section, and I call upon all those who propose to indemnify the citizen for the property so taken, to stand by this section. It is no bantling of mine; I did not report it. But still I say to gentlemen of the Convention, that in my judgment, no better section could have been devised. It will give protection and security to a vast portion of our fellow citizens if you will stand by it and sustain it.

Mr. STEVENSON. I concur, generally, in the sentiments just uttered by the gentleman from Tippecanoe (Mr. Pettit). I do not think that companies formed for the purpose of building railroads or other works of public improvement, could be allowed, under the old Constitution, to take the property of private individuals for the purpose of constructing their work, without making full and satisfactory compensation. But, sir, we shall find, upon a close examination, that there is some wisdom in the provisions of the old Constitution, notwithstanding the advancement in knowledge and power since its formation. I ask gentlemen who favor the adoption of this section, as reported from the committee, to suppose it incorporated into the Constitution, and ratified by the people, and I then wish to know how you will lay out and build a county or a township road, build a bridge, or construct any other public



work of the commonest necessity? Why, sir, before you can fell a tree, touch a stick of timber or a perch of stone—even before your county surveyor could run out the road—you must wait for the supervisor to assemble a jury of the freeholders of the vicinity, have them assess the damages to the owner over whose land the road was to be built, or whose timber or stone is to be used. The greatest inconvenience to the public, and no corresponding good to the citizen, will inevitably result from the adoption of such a provision. Your different roads must be built, your streets laid out and graded, and your bridges built, for there are not enough of these works already completed, so that in the future no more will be needed. Therefore, we need to adopt some provision that will secure greater facilities for the construction of works of public convenience and utility. I rose merely for the purpose of calling attention to this view of the subject, and to ask of gentlemen if they will vote for a Constitutional provision, under the operation of which you cannot proceed to lay off a county road, or touch a stick of timber for the construction of a bridge, until the supervisor shall have assembled a jury and assessed the damages to the owner, and until those damages are paid, or their amount tendered?

Mr. HOWE. I have but one or two words which I wish to say upon the question. I am opposed to the section as it now stands, and for these reasons:

In framing a new Constitution it is our duty, in my humble opinion, to look carefully at the teachings of the past, to pay a great regard to the lessons of experience, and to look at things from a practical point of view. If, in the past, any right, whether public or private, has been violated, to set about devising a remedy for that violation. The object of written Constitutions, of solemn organic laws, is to guard the right of the citizen, to define his relation to the government, and to restrict the tendency of the one to encroach upon the rights of the other. The formation of a Constitution is a purely practical matter and nothing else. Then let us look at the question now before us in that light. The paragraph which it is proposed to amend is this:

"No man's property shall be taken by law, without just compensation first assessed, by a jury of freeholders, and tendered, together with the expenses of the proceeding, to the owner, by the person to be benefited. But such tender, if it be rejected, shall not bar the right of appeal."

What will be the practical working of such a provision as that? It will surely be to prevent the proceeding on the part of the State, or by incorporated companies to whom the State has granted her right of eminent domain, with works of a public character, upon which the future growth and prosperity of the State so

greatly depends. The worst difficulties and obstructions will be thrown in the way of the construction of plank roads, of bridges, and of railroads. Mills, and other improvements, which have hitherto been built over all the State under the *ad quod damnum* law. The supreme court has repeatedly held it to be good, and millions of dollars have been invested under it in this State. This law is founded on the right of the State, called the *right of eminent domain*, delegated to individuals. Look at the proceeding of individuals and companies under the present *ad quod damnum* law, as it is called, and compare it with the effect which will result from the operation of this section. Under that law an individual who has built a mill and a dam may require, in order to secure his property, additional land. Heretofore he could apply to have it condemned, and by paying the assessed damages could obtain it, and thereby secure the interests of the community, which are always in consonance with public improvements. But now, with this provision in the Constitution, a jury of the freeholders of the vicinity must be summoned before he can enter upon the land. No matter how great the exigency, the damages must be assessed, and the amount tendered. But if the party refuses to accept the amount, he has the right of appeal, and the improvement and completion of the mill property is delayed for years until the decision of the appeal, and the chances are that the work must be abandoned and go to ruin. Suppose a large amount of money already invested in the foundation of a valuable mill; under this article if the party rejects the tender of the amount of assessed damages the mill and the dam may rot down for want of the necessary additional amount of land or water power for the improvement of the property. So with a railroad, a plank road, or any similar work.

Let us look at the matter in another light. Suppose no investments in public works and improvements to have been made in the State; suppose that we are to commence anew; the effect of this provision would be that if the tender of the amount of assessed damages is rejected, all proceeding in a work of public improvement is suspended until the appeal is decided, which may not be for years; for every gentleman knows how long such cases are often pending in the different courts. Again I call attention to the fact that the object of a Constitution is to guard those rights of individuals which are liable to be imposed upon. In regard to the taking of private property by the State, or incorporated companies, in nine cases out of every ten amicable settlements are effected between the owner and the company, or the State; but in the one case in every ten the party owning the land or other property, may be disposed to be unreasonable and hold out, and what is the consequence? Why, by refusing to accept of what his neighbors deem a

reasonable compensation he may effectually stop the improvement; for the only feasible route may lie for one or two miles across his land, and an appeal may be pending for years.

I do not know what influence has produced a report so discouraging to the spirit of public improvements. I ask gentlemen whether they can lay their fingers upon any case in the history of the State where individuals have been wronged and injured by the State, or by companies to whom the State has granted the right of making a public improvement. There is scarcely a case on record, or in the memory of gentlemen. View this matter practically, then, and we shall see that the effect of this provision may be not only to stop the progress of public works, but practically the exercise of the right of "eminent domain" which the State grants and has a right to grant to individuals or companies, is virtually abolished.

MR. MORRISON. I would ask whether, under the writ of *ad quod damnum*, there is not now the right of appeal from an assessment of damages?

MR. HOWE. There is an appeal from the judgment, but not from the assessment.

MR. MORRISON. Then how can the effect of this provision be so much worse than the effect of an appeal under the old writ?

MR. HOWE. I have explained the effect of the provision now under discussion as contrasted with the old practice.

MR. OWEN. MR. PRESIDENT: The gentleman from Lagrange (Mr. Howe) has well said, that this is eminently a practical question, and that we must look to its actual workings. The objection he makes is a proper and valid objection against the amendment proposed by the gentleman from Dearborn, (Mr. Holman,) but it is no objection at all to the section as it stands. It is worded so as to obviate the very difficulty of which he speaks.

"No man's property shall be taken by law, without just compensation first assessed by a jury of free-holders, and tendered together with the expenses of the proceeding, to the owner, by the person to be benefited. But such tender, if rejected, shall not bar the right of appeal."

The money shall first be tendered, but, if refused, then the company or person may take the property without being compelled to await the result of the appeal; while the party appealing may pursue his remedy, perhaps, to the Supreme Court.

We desired in this matter, to take a middle course. Had we left the provision as in the present Constitution, then a company might condemn and take possession of a valuable piece of property,—might afterwards become insolvent, and, not having been required to tender the amount of assessed damages before taking the property, what remedy would the owner have in such case?

The gentleman from Lagrange asks what cases of injustice to private individuals, under the provision of the old Constitution, are known. If he had lived in some parts of the State, where works of public improvement have been carried on extensively, he would have learned that such cases exist; nay, are frequent. There are cases where citizens have been damaged to the amount of five hundred, or even of a thousand dollars; for which they received no compensation whatever. We wished to steer between the provision of the old Constitution, followed by results like these, on the one hand, and the possibility of works of public improvement being arrested, on the other. Suppose we had said that no property should be taken, in case of an appeal from the assessment of damages, until the appeal is decided. That appeal might be pending in the courts for one or two years, and, in that case, important works of public improvement be wholly stopped, greatly to the damage of the public. We desired so to frame this section, as the gentleman from Tippecanoe (Mr. Pettit) has well said—and his remarks were so clear and so comprehensive as to leave little necessary to be added by me—that a public improvement might not be stopped, and, perhaps, abandoned, on account of the obstinacy, or unreasonable demands of a single individual; the owner, perhaps, of land stretching for a mile or two across the only practicable line where a particular railroad or other improvement, could be run. But we desired also so to frame the section, as that it might provide satisfactory remedy to every owner of property condemned; and that he might actually receive his money before his property was taken, unless, indeed, he saw fit to reject the tender of an assessment of damages made by a jury of his neighbors.

It is clear that, as the section is now worded, it is not necessary for a company desiring the right of way over a man's land, to wait the issue of an appeal from the award of a jury.

MR. CLARK of Tippecanoe. There is an aspect of this question which has been, in my opinion, entirely overlooked by gentlemen who have discussed it. They argue the question as though it were the sole province of the State, in the exercise of its sovereignty, to grant certain powers and privileges to incorporated companies. There are other duties which belong to the State to perform towards citizens in their collective, political, and social condition. Whilst we are careful to recognize individual rights, and protect them, we must bear in mind that the State is the representative of the collective body,—the guardian of the general welfare, as also, the protector of individuals. It must not be deprived of all sovereignty over individuals or their property, or, in many instances, it would be powerless to do what is required of a sovereign state to perform. Suppose this provision stands as reported by the committee, and



a war breaks out,—a war with a foreign country, or a domestic insurrection. It will become necessary, in a state of war, to take the property of individuals,—to take their cattle and grain as provisions for the army, or their horses and wagons to transport them; under the operation of this provision as reported, the State would be prohibited from taking one dollar's worth of property, without first summoning a jury to assess the damages, and without first tendering the amount of such damages. The section reads:

"No man's personal services shall be demanded without just compensation. No man's property shall be taken by law, without just compensation first assessed by a jury of free-holders and tendered, together with the expenses of the proceeding, to the owner, by the person to be benefited," &c.

The statement of the effect of that section which I have made, must not be overlooked. The State may at some time be called upon to protect herself, and to that end she is necessarily invested with authority over the property and over the person of the citizen; yes, over his life, if necessary. Will gentlemen say that the property and services of the citizen shall not be required of him without the preliminary of a jury to assess damages for the property, and without compensation for his services, when the public exigency may require both? We demand, for the public benefit, the personal services of a citizen in a variety of ways. We demand that he should pay his taxes, either in labor or in money. Shall we pay him for paying his taxes? We demand the personal services of the citizen at militia trainings. Shall we pay him for militia duty? We demand his labor for the improvement of roads in his immediate district. Shall we pay him for that labor? I say, again, that there is a multitude of public duties, for the performance of which the State demands the personal services of the citizen, and the individual member of the body politic is bound to render those services in return for the protection which the State guarantees and extends over his person and his property. I may be willing to go with gentlemen, and say that the State shall not surrender her sovereign authority to corporations, and declare that corporations shall not take private property without compensation in money being first made, but I will not tie up the hands of the State to the extent of this provision, which, I believe, would make her powerless for self-defence in times of public exigency. I know that gentlemen say that, on occasions of public danger and peril, the Constitution itself may be violated. Mr. President, I am not prepared to subscribe to that doctrine. Shall we create a necessity for the government to annul the Constitution? Shall we knowingly leave a question open and unsettled, whereby, in times of State emergency, this Constitution is bound to be disregarded and set aside? I call partic-

ular attention to this aspect of the case. The provision in the old Constitution, which corresponds to the one now under consideration, was framed with a view, evidently, of the possibility of great emergencies, when the State should have the right and the power to command the services of the individual, and to take his property for the public use.

I am no lawyer, but it is clear and plain to my mind, that, if we provide that no man's *personal* services shall be demanded, instead of providing that no man's *particular* services, as is the language of the old Constitution, we cannot require an individual to work out his tax on the road, or to perform militia duty. I take it that the word *particular*, in the old Constitution, means, not that general service which every citizen is bound to render, but something specific—something that is required of him as an individual, in contra-distinction to what is required, generally, of all citizens.

I think, Mr. President, that I have succeeded in pointing out several reasons why we should scrutinize this section, and not hastily adopt the report of the committee. There is good reason for the peculiar language of the old Constitution upon this subject; and here let me remark that governments have an experience as well as individuals. Many of the provisions of the old Constitution are the result of the common experience of all governments—and therefore we ought to be careful how we rashly destroy the old charts, and venture upon unknown paths.

Mr. EDMONDSTON. For the purpose of taking the sense of the Convention upon this matter, I move to lay the amendment and the amendment to the amendment on the table.

Mr. BRIGHT. I desired to submit a few remarks before that motion was made. I wish that the mover would withdraw it for the present.

Mr. EDMONDSTON. I will withdraw it.

Mr. BRIGHT. I desire the attention of the Convention for a moment. The language of the amendment under consideration is somewhat different from the language of the corresponding section of the old Constitution, both in respect to the personal services of the individual, and as to the compensation to be made for private property taken for public use. The old Constitution provides that no man's *particular* services shall be required without just compensation. The amendment now before the Convention provides that no man's *personal* services shall be required without compensation. I suppose that this difference in the language between the old and the new Constitution is intended for something. The construction given to this provision in the old Constitution was, that you could not require any *particular* or *specific* service of an individual, as distinguished from those general services which every citizen was expected and required to perform without compensation.

Under the new provision, the State could not require a man to attend a general militia muster, or to perform labor on the highway, without compensation. "No man's *personal* service shall be required without compensation," is the language of the section before us, and not his "particular" service. If, then, you adopt this section, there is no personal service that can be required of an individual. The government cannot even require him to act as one of a *posse comitatus*. And yet there are many personal services required of individuals which never have been paid for, and which, I presume, it is not the intention of those who framed this section, should be paid for hereafter. The language of the old Constitution has a settled construction, and I can see no reason why we should depart from it now. We clearly understand what it means, and there is no door left open for the admission of controversy as to its intent and practical effect. For these reasons, Mr. President, I prefer the language of the old Constitution to that of this section.

The next branch of the section is:

"No man's property shall be taken by law without just compensation first assessed by a jury of freeholders and tendered, together with the expenses of the proceeding to the owner, by the person to be benefited. But such tender, if rejected, shall not bar the right of appeal."

Every member of community holds his property, whether real or personal, subject to the rights and requirements of the State. It is a duty which the State owes to itself and to all the members who compose it, to maintain its sovereignty and its authority inviolate. It is a right inherent in sovereignty to take private property for public use without compensation being first made. The State is amenable to no one, save to a sense of right. Although this right of the State to condemn private property for public uses is undoubted, yet we provide that compensation shall be made, but not *when* to be made. And this is a point to which I invite the attention of gentlemen. The old Constitution does not provide a time when this compensation is to be made by the State. And now, shall we so frame this new organic law that a jury shall be empaneled, and damages assessed, and compensation tendered, before the property can be taken, and must the public interests suffer? Why, the case put by the gentleman from Tippecanoe is a strong one. Suppose the State involved in war, an invading army is marching upon our frontiers; the public service is in pressing need of horses or of cattle, or perhaps of stone and timber for the construction of fortifications, must the State wait until a jury has assembled and assessed the damages to the owner for the taking of this property? Surely, we have no precedents of individual hardships, suffered through the neglect of the State, to make ample remuneration for private property condemned for public uses, that we should go

to the other extreme and engraft a provision like this upon the new Constitution. I undertake to say that in ninety-nine cases out of a hundred where private property is taken, the owner receives more than a fair and just compensation. But, be this as it may, no instance can be found where compensation has not been made according to law. The State was never so poor, involved as she has been in embarrassment and debt, that she could not pay every dollar of compensation awarded as damages for the conversion of private property to public uses. It is of comparatively small moment to the citizen whether this compensation is made now or at another time, before or after the property is taken; but it is of great consequence to the State that the progress of her public works should not be retarded for a day. It is a matter of comparatively small importance whether the compensation for the property be made at the time it is taken, before it is taken, or afterwards. The construction of the old Constitution has been well settled, and if gentlemen will allow me, I will read from the sixth volume of Blackford's Reports, a part of the opinion of the Supreme Court in a case arising under the Statute of 1832, respecting the Wabash and Erie Canal. It will be observed that the construction insisted upon by the court, is the same that I have stated.

The court say:

"It is presumed that, at the present day, no one will question the right of the Legislature to apply the property of individuals for public use, when 'urgent necessity' or the 'general interest' may require it. Chancellor Kent, in the second volume of his Commentaries, page 139, says: 'The right of eminent domain or inherent sovereign power, it is admitted by all publicists, gives to the Legislature the control of private property for public uses, and for public uses only.'"

And to his own high authority, and those he quotes, may be added that of *Blackstone* 1, Comm. 139. Whether this right is subject to any restrictions by the common law, or the law of nations, (and it probably is,) need not be examined on the present occasion. With us there is no doubt on the subject. Our Constitution requires—

"That no man's particular services shall be demanded, or property taken and applied to public uses, without the consent of his representatives, or without a just compensation being made therefor."

Again: The Supreme Court of this State, in the same case, says:

"Indeed, if such laws be not valid, the unquestionable right, inherent in every sovereign power, of applying private property to public use—the spirit of the social compact—that individual interest must bow to the public good, in many instances would be of but little service to the community. In the construction



and preservation of locks, dams, levees, and other improvements, accidents from various causes, which no human sagacity could foresee, and no human power prevent, are constantly occurring. To repair injuries arising from these causes, and to check the progress of destruction, instant exertion is necessary. If, in such emergencies, nothing could be done until a bargain could be made for materials, or their value ascertained by the slow process of appraisal, the right of the public to promote the general welfare by the use of private property would be, indeed, but a crippled and feeble prerogative."

In the language of the Supreme Court there is a great deal of force. The power of the State, which is wielded solely for the public welfare, ought not to be crippled by awaiting the slow process of the empannelment of a jury of freeholders, the assessment of damages, and the tender of the amount thereof, before it can proceed in a work of great public importance. There is no danger but that the individual will receive abundant and sufficiently prompt compensation for the damages he has sustained; there is no danger that the State or a company will be so poor that they will be unable to pay the amount of damages, if awarded under the law. The individual has at least this consolation, which takes away every feature of hardship from the case. The right of property does not vest in the State or the company until the compensation is made. The title to his land does not pass out of him until the payment of the amount of damages assessed.

But, Mr. President, another remark, before I refer to an amendment which I desire to present. The language of this section is:

"No man's property shall be taken by law without just compensation, first assessed by a jury of freeholders, and tendered, together with the expenses of the proceeding to the owner, by the person to be benefited. *But such tender, if rejected, shall not bar the right of appeal.*"

I call particular attention to the last sentence of this section. Now, I had thought, in the words of the homely old adage, that "what was sauce for the gander was sauce for the goose." If it is to be left optional with the individual to accept the tender of compensation or to reject it and appeal to the courts for a higher award, then it ought also to be optional with the State or the company not to tender the award of damages to the individual, if the State or the company considers the amount too exorbitant. But not so thought the committee who have reported this section. They have placed the advantages all on the side of the citizen; he can appeal from the assessment, but the State cannot; the property may be assessed at ten times its real value; it may be so exorbitant a price that the courts would, upon appeal, promptly set the award aside; but there is no redress for the State.

Mr. President, it is our duty to protect and guard the interests of the State as well as those of the citizen. There is no danger, as I before remarked, but that ample remuneration will at all times be made for damages occasioned by a public work to a private estate; the State is never disposed to take advantage of the citizen—may I not be allowed to say, what is notoriously true, that the reverse is the case? But, under the provisions of this section, the amount of damages must be tendered; the party may decline the tender, but there is no remedy for the State, if, in its estimation, the damages are too high. The real damages in a case may be one hundred dollars, and the jury may assess them at one thousand dollars—and, sir, such strange cases have often happened—but the State must tender the money, no matter how palpably unjust and exorbitant. The language of this section, which it is proposed to fix in the organic law of the State, is: "without just compensation, first assessed and tendered." The tender must be made before the State can enter upon possession of the property.

Now, sir, if an individual shall have the constitutional right of appeal because an assessment is deemed too low, I submit whether justice does not require that the State should be secured in the same right of appeal if it deems the assessment too high?

Mr. President, for one, I prefer the language of the old Constitution, with a slight amendment, which I shall propose. I wish to see it provided in the new Constitution that "No man's particular services shall be demanded, or property taken or applied to public use, against his consent, without a just compensation in money, irrespective of extrinsic benefits, being made therefor." The only evil which could arise under the provision of the old Constitution was, that individuals whose property might be taken for public purposes were paid for it, not in money, but in imaginary and illusory benefits which were supposed by the assessing jury to result from the construction of the public improvements over or near his property. It has been held by the courts, in States having constitutional provisions similar to those contained in our present Constitution, that the State or a company proceeding under a charter from the State might have property condemned for public use, and when the damages were assessed, the jury might take into consideration the benefits which the individual had conferred upon him by the building of the public work. I am glad to find that very recently this construction of the constitutional provision has undergone revision; and in the State of New York, from which we take most of the decisions having relation to internal improvements, it is now held that compensation for damages must be paid in money. If a State or corporation, to whom has been granted her right of eminent domain, takes two or three acres of a man's land,

they take something that is real and valuable—something that is substantial and visible—and he should be paid therefor in money; he should be paid whatever that land is worth in market, and not receive compensation in the imaginary and uncertain profit that may arise from the construction of the work. The great evil under the provision in the old Constitution resulted from this mode of paying assessed damages. I know, personally, of an instance where property, estimated to be worth two thousand dollars, was taken from an individual for the purposes of a public improvement, and the damages were assessed to that amount; but the owner had the misfortune to own other land adjoining the public work, and lying on each side of it, and after the damages to his property were assessed, that this additional ground was benefited by robbing him of a part of his estate, to an amount equal to the damages assessed. Such a construction is radically wrong; if you take a man's property—that which is real and intrinsically valuable—compensate him in money, and without regard to the benefits supposed to be conferred upon any other property he may own by the construction of a public work, why, sir, you might as well, with as much propriety, take a citizen's horses or his cattle in time of war, and when, after peace was declared, he laid his claim before the government for compensation, say to him, "you must consider yourself repaid by the result of the campaign; your compensation is in your part of the general advantage gained by resisting the enemy!" You take five acres from a man's farm, or half an acre from his town lot for the purpose of a railroad, and you take that which is valuable and productive to him; what justice is there in replying to his claim for damages, "Sir, your adjoining ground is greatly enhanced in value by its proximity to this railroad?" He does not wish to sell his adjoining land, and it will produce him no more now than before the road was cut through it. It ought, therefore, to be provided, in accordance with what I am glad to see is becoming the settled construction in New York, which has hitherto taken the lead in internal improvements, that compensation for private property taken for public use shall be assessed at its value in money and paid in money, irrespective of extrinsic and illusory benefits supposed to be conferred upon him because he has the misfortune to have a little ground left contiguous to the public work. Otherwise, you provide that the citizen may be robbed of that which is real, and paid in that which is not of intrinsic value.

If it would be in order, Mr. President, I would propose an amendment.

The PRESIDENT. It is not in order, but the gentleman from Jefferson may read his amendment for information.

Mr. BRIGHT. It is as follows:

"No man's particular services shall be demanded, or property taken, or applied to public use, against his consent, without a just compensation in money, irrespective of extrinsic benefits being made therefor."

The PRESIDENT stated the question to be upon the amendment of the gentleman from Dearborn (Mr. Holman);

Pending which,

On motion, the Convention adjourned until nine o'clock to-morrow morning.

THURSDAY, Nov. 7, 1850.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. LONG.

THE CONVENTION PRINTING.

The PRESIDENT laid before the Convention a communication from the Auditor of State with reference to the Printing of the Convention, and the compensation therefor.

On motion by Mr. BORDEN, it was

Ordered, That the communication be referred to the select committee appointed yesterday, upon the subject of the Printing for the Convention.

THE JUDICIARY.

Mr. PETTIT, from the committee on the organization of the courts of justice, submitted a resolution which was read and passed to a second reading on to-morrow.

Mr. PETTIT, in behalf of a majority of the same committee, also submitted a report, which was read a first time and passed to a second reading on to-morrow.

Mr. PETTIT, in behalf of a minority of the same committee, submitted a report, which was also read a first time and passed to a second reading on to-morrow.

Mr. NAVE, as a member of the committee on the organization of the courts of justice, said he desired to present the following minority report or dissent from the report of the majority, embracing a plan for the organization of the judiciary of the State; and he hoped the Convention would allow it to be entered upon the journal.

The paper was read by the Secretary, and is as follows:

"I dissent from the report of the majority of said committee, just read, in the following particulars, viz: 1st, Said committee propose the appointment of the Clerk to the Supreme Court, when said Clerk should be elected by the qualified electors; 2d, Said committee propose to give to the Supreme Court original jurisdiction, when said Court should only be clothed with appellate jurisdiction; 3d, Said committee also propose to district the State into twenty circuits, thereby increasing the expense greatly of the administration of the law, and set-



ting by the organic law, a subject that properly belongs to the representatives of the people, to be by them fixed from time to time as necessity may demand."

The PRESIDENT. Under a resolution of the Convention, the minority of a committee can only report articles or propositions.

Mr. NILES. I wish to set myself right in regard to one point. I wish to say to the Convention that I was in favor of electing the Clerks by the people, and dissented only in that one particular from the report of the majority.

Mr. NAVE (to the President). Cannot my paper be received in the form of a protest?

The PRESIDENT. The gentleman has no right to protest against the report of a committee. Under the first resolution of the Convention upon this subject, the Chair decided that a minority had only the right to set forth reasons for their dissent from the majority. But under a subsequent resolution of the Convention, the minority is placed upon the same footing with the majority, having only the right to report propositions.

Mr. NAVE. Then I will withdraw the paper.

#### CORRECTION.

Mr. GORDON rose to a privileged question. He desired a correction to be made in the Journal of the Convention for Thursday, October 31. Pending the question upon the adoption of the amendment of the gentleman from Franklin (Mr. Shoup) to the first section of the article reported by the committee on State officers other than the Executive and Judiciary, so as to extend the tenure of the office of Secretary of State from two to four years, upon taking the yeas and nays upon this question, he (Mr. G.) voted in the negative; but in the printed copy before him which he supposed was copied from the Journal, his name was not recorded at all.

It was also stated below that that amendment was rejected, whilst the figures above were,—yeas 76, nays 56. He was inclined to think from this that the amendment was adopted; and he desired a correction of the Journal in both particulars.

Upon examination of the Journal by the Secretary, it was found that the printed copy of the yeas and nays had been correctly taken from the Secretary's list; but that the incorrect printed statement below the list was not copied from the Journal of the Convention.

The PRESIDENT. The Journal shows that the amendment was adopted. The Chair would remark that we cannot be responsible for the inaccuracies of the reporters.

#### IMPRISONMENT FOR DEBT.

Mr. OWEN, from the committee on the rights and privileges of the inhabitants of the State, asked and obtained leave to make the following report under special instructions to

the committee to amend their former report, and asked that it be incorporated in the first article of the amended Constitution, to wit:

"There shall be no imprisonment for debt, except in case of fraud."

Mr. OWEN asked if this report could not be now taken up and ordered to be engrossed?

The PRESIDENT said, he supposed the whole Article would have to be taken together upon the question of engrossment.

#### RIGHTS.

The PRESIDENT announced the consideration of the order of the day, namely: the consideration of the third section of the article submitted by the committee on the rights and privileges of the inhabitants of this State, on the 26th of October. It is as follows:

SEC. —. No man's personal services shall be demanded without just compensation. No man's property shall be taken by law, without just compensation first assessed by a jury of freeholders and tendered, together with the expenses of the proceeding, to the owner, by the person to be benefited. But such tender, if rejected, shall not bar the right of appeal.

To this section, Mr. KILGORE had offered the following amendment:

Strike out all after the word "taken," in the second line, and insert "or applied to public use without the consent of his representatives, or without a just compensation being made therefor."

The question being upon the following amendment to the amendment offered by Mr. HOLMAN,

Strike out from the amendment the words "without the consent of his representatives or," and insert the word "first" after the word "being" and before the word "made" in the third line, so that it will read "without a just compensation being first made therefor."

Mr. KILGORE said: Mr. PRESIDENT: The proposed amendment is intended at once to destroy the object I had in view in offering the amendment first submitted. Indeed, the section as reported by the committee, would be less objectionable than it would be if the amendment of the gentleman over the way (Mr. Holman) should be adopted.

The great inconvenience which the public would have to encounter is this, that all incorporated companies would have to tender the value of the damages before the property could be taken. This is one of the objections which I make to the original section. The article, as proposed to be amended by myself, would require a just compensation to be paid before the property could be taken or applied to the public use. But how are we to arrive at a conclusion that will be just and satisfactory, both to the public and to the party claiming damages? Who is to fix the value of the property? The public would certainly not be disposed to pay an ex-

orbitant price for the property, and the individual might ask an exorbitant price. How is the matter to be settled? The amendment of the gentleman from Dearborn (Mr. Holman) requires that a just compensation shall be first paid; that is the company shall first tender a reasonable compensation, which the adverse party would be compelled to accept; so that the first party would be required first to pay the value of the damages before they could proceed. Hence the amendment would be much more exceptionable than the language of the original section.

I have no interest, sir, as a director of the Bellefontaine Railroad. So far as that work is concerned, I am able to state that we are through with our difficulties. We have secured the right of way—in most instances, amicably. But I have in view, not only the interests and rights of other corporate bodies, but the interests of the State, and of the whole country, when I say that we should be careful about what is to be inserted in the Constitution.

Gentleman have spoken of the construction which has been given to the words of this section in the old Constitution, by which its whole force and effect has been taken away! Why, sir, the courts have said which of these opposing interests should give way; they have decided that the public may acquire and possess property for the public good, and that a public work may not be delayed till the value of such property shall be ascertained; for the reason that a great public injury might be the result. Suppose a canal lock had given way, or a railroad bridge was broken down; and it became necessary to take timber for the re-construction of such lock or such bridge; would it be right that everything should stand still till the parties might ascertain what amount of damages should be tendered? Would it be right and proper that everything should be made thrs to stand still until they could come to the true value of the property before the property could either be taken or applied? Would it not be much more reasonable and right, that the public should first take the property, and after ascertaining what amount would be necessary to prepare the bridge or lock, then to pay for it. No man, it seems to me, has a right to ask pay for his property in such a case, till after it shall have been appropriated or applied.

Mr PETTIT (interposing). Will the gentleman allow me to make one suggestion here?

Mr. KILGORE. Certainly.

Mr. PETTIT. It does seem to me that the company, or the State, need not be delayed by the example which the gentleman gives. It would certainly be fair and equal for the State, or the corporation, wanting timber for repairs, to take their money and go at once to the farmer and purchase, just as an individual might do, if his barn were burnt down. He could go to

his neighbor and buy the lumber which might be required to rebuild it.

Mr. KILGORE (resuming). The gentleman takes the case of an individual interest, and compares it with the State, or any public interest. But suppose the owner of the property would not be willing to sell at a fair price; and I have often found this to be the case, that, after a public work had been established, and prosecuted far towards completion, the directors have been met by farmers who would ask three prices for the timber necessary to prosecute their work. The farmer, knowing that the company were bound to have his timber, at some price, would be willing to extort upon them. If the State requires the property of the citizen to be applied to public use, I ask if it is right to sustain that citizen in demanding an exorbitant price? Would it not be better to let the Legislature prescribe the manner of assessing his damages, and the time when the same shall be paid—leaving the whole matter open, just as the old Constitution has left it? Surely experience has proved that there can be no danger in doing that.

I repeat now what I intimated on yesterday, that gentlemen seem to desire to keep corporations, particularly, under the most severe restrictions: But so far as corporations are concerned, I have but very little to say in defence of them. This provision, however, would not only affect the interests of corporations, but the interests of the State also. Gentlemen can see how the rule applies detrimentally to the construction of railroads, turnpikes, plank roads, and every work of public improvement in which the State might engage. Under this provision the State will have no right to timber for the construction of bridges, nor to gravel for the public highways. It is to operate as much to the prejudice of the State as to the prejudice of corporations.

I believe in the old maxim, that it is right to take individual property for public good. The public interest should be always considered as above private interest. If private interests were to be respected in all cases of public improvement, it would be hard for any public work to be carried on. And there is no better way to get rid of the difficulty than to allow the Legislature to point out the manner of assessing the damages and the time of payment; so that the State may not stay her hand in taking possession of private property and applying it to public use.

Exceptionable as the present section is, so far as I am concerned, I would not very strenuously object to it, with the modification suggested by the gentleman from Jefferson, in relation to personal services. With the word "freeholder" stricken out, I repeat that I would prefer it to the form which is now proposed to be given to it by the amendment of the gentleman from Dearborn (Mr. Holman).



Mr. MORRISON of Marion said, I have before expressed my desire that the section should remain as near as possible in its present shape. I have yet heard no argument which could change this impression. The suggestion of the gentleman from Tippecanoe (Mr. Pettit) was a full and complete answer to the argument of the gentleman from Delaware, (Mr. Kilgore,) with reference to the idea that a bridge company or a canal company should have the right to take private property by a forcible hand, without having first made a just compensation to the owner. For, if a railroad company, or any other corporation, wanted my horse upon the same principle which is supported by the gentleman from Delaware, they might go, by their agent, and demand my horse to make up their team; if I refused because I would not receive what they thought a fair price, they might take him at any rate upon the appraisement of a jury; or if my neighbor wanted another man's horse, and tendered a price which the owner would not choose to accept, upon the same principle of appraisement, he, also, could be compelled to sell his horse to my neighbor, and get another one for himself.

How frequently has it been the case that a farmer who has saved with great care, a spot of valuable timber for the use or the ornament of his premises, has lost every stick of it by the unequal advantage which the law gives to the proprietors of some public enterprise, enabling them to take and possess property upon the valuation of an interested jury. Now, sir, this is not right. Our farmers should be entitled to a jury of free-holders to value the property; and they should be made sure of the payment of a just compensation, before their property may be taken.

The gentleman from Delaware (Mr. Kilgore) desires that the Legislature shall have the power to prescribe the means of assessing the damages, and the time of payment. But I do most strenuously object to that; for the gentleman knows very well that no corporation can be formed without some law being passed for their advantage. But very few corporations are called into existence for the public good; but they are generally formed for the advancement of private interests, and whenever you set them up as guardians of the public interests, you will find that every effort made by them will be to fill their own pockets. This has been my experience in the operations of these companies, and it is also true that these corporations have become so numerous that the Legislature can hardly protect the rights of the citizen against their encroachments.

But why would the gentleman strike out the word "freeholder," for who so well knows what is the value of timber, stone, or land, condemned by corporations, as farmers, or the owners of land, who are similarly situated? and who so likely to protect the interests of farmers from

those who are endeavoring continually to clutch many of the most valuable ingredients and products of the soil, and even the soil itself? But if you permit the contractor for the corporation to select a jury from all classes of men, he will be able to get just such a verdict as he may desire. Hence, the necessity for the appeal, and that security be given or pre-payment made. Under this view of the case, Mr. President, I think the Convention would not be acting very circumspectly in this matter by striking out these words.

In all the new State Constitutions, as far as I have observed, the most cautious guards and restrictions have been put in with reference to this very matter, and I think in view of the number of incorporations which we have already, and in view of the prospect for many more companies to be formed for private benefit, that it would be protecting the public interest to restrict their powers; for the highest public advantage is the advantage of the citizens generally. For these reasons I am against giving to incorporated companies any advantages which they do not pay for.

Mr. MURRAY. I have a little practical knowledge upon this subject. It is often the case that a contractor upon a public work has two or three hundred hands employed and under pay, and I would ask if it is reasonable to require such a man to stand still with all this force and not allow him to move one inch till a jury can fix upon the value of the property upon which he must operate? Sir, if this restriction is to prevail, it will be impossible for the State to construct a railroad, or a canal, or any other great work of public improvement. The exorbitant price which will be demanded for right of way, and for timber, would put an end to the progress of public improvements, either by the State or by incorporated companies. It seems to me that in consideration of the great public advantage of these works of improvement, when the interest of the individual conflicts with the public interest, that the individual ought to surrender, in some degree, to the general good. And especially ought this to be required at the present day, when these works are found to conduce so much to the public good. I should be very unwilling, always, to enter upon any private property and take it for the benefit of any public enterprise, nevertheless I know practically that there are numerous cases in which the public good requires that this thing should be done—that the assessment of the value of private property should be made by a jury. I hold that individual advantage should not stand in the way of any great public advantage.

Mr. ALLEN. The difficulty suggested by the gentleman can be easily obviated by the company or corporation securing the right of way before they commence the work.

I think it requisite and proper that incorpo-

rated companies should be allowed to take private property without first paying or tendering its assessed value to the owner. I know, from the experience of the people in our part of the State, that some additional restraints of law upon this subject are necessary. The history of our own State works has demonstrated this. There are many individuals known to me who have suffered severely in consequence of these public enterprizes, and have acquiesced in their losses rather than resort to the slow and tedious process of a lawsuit. I know of many cases in the community where I reside where they have entered upon and taken the property of individuals, the value of which was so small, that it would not justify a resort to a legal process for indemnity, so that they might as well have been left wholly without a remedy, and yet their property to a considerable amount in value had been taken, and for which gentlemen contend they had a remedy; but, sir, they would not resort to the remedy given them because they knew the remedy would cost so much as to be utterly worthless; they knew that if they prosecuted these trespassers upon their property, they would resort to any finesse to avoid and to put off payment until they would cause more perplexity about it than the value of the amount of damages would be worth when recovered. Sir, I have known thousands of dollars worth of property taken in this way from individuals with impunity, and when they complained were told that they had a remedy. These, sir, are some of the reasons why I would incorporate into the Constitution the principle establishing the right of the citizen to have his damages assessed and tendered to him, before his property could be taken away from him. I desire to protect the people in future from all such unreasonable and unrighteous aggressions.

Mr. TAGUE said—Mr. PRESIDENT: After so much has been said, I would merely remark that I am willing to accept of the section as it now stands with a very slight amendment. I have been surprised to find so many members here advocating the rights of the State, and the rights and interests of incorporated companies, and forgetting the interests of individuals. For my part I prefer to look as much to the protection of the individual, as to the protection of corporations, especially since it is obvious that an individual cannot ordinarily contend in an action of law upon an equal footing against a wealthy company, with a capital of a hundred thousand dollars. Not one man in ten has obtained justice who has sought after it in this way, at the hand of an incorporated company. Whenever one of these companies get possession of a man's property, it has been the case heretofore, that rather than pay the value of it, they would appeal from court to court until the costs would amount to more than the property in dispute was worth, and at last the suitor would not get enough to pay his lawyer fees. It is in

this way that incorporated wealth has the advantage of the individual citizen.

Mr. President, if the Convention will indulge me to say a word (by way of digression) with reference to the order of business—  
[Cries of "go on" "go on."]

Mr. President, we have been here now almost five weeks, and much discussion has taken place upon various subjects. I think, sir, we have been here already too long; and I am of opinion that if we continue here five or six weeks longer without some change in the order of business, the Convention will be found so much involved in the details of business before them, that we shall feel ourselves to be no nearer the close of our labors than we now are. It is my notion, sir, that a change should take place in our proceedings here; although I am aware that several resolutions have been offered upon this subject and promptly voted down. My reason for advocating a change in the order of business is this: thirty-four years ago the citizens of this State met by their delegates in Convention; and in three week's time they produced the Constitution which we have since lived under—which, I believe, it has been conceded on all hands, is a tolerably good one. Well sir, we have been sent up here to make a few amendments to this Constitution, which was made by the former Convention and handed over to the people in eighteen day's time: and here we have been almost five weeks trying to make the amendments and I do not yet see any place of starting. We have not yet set a single stake. I would like to be able to see some place of beginning—some starting point. But instead of this we are all tangled up amidst propositions and conflicting notions upon various subjects; and the probability is that if we sit here even six or eight weeks longer we shall be no nearer the close of our labors than we are now, unless some change takes place in the order of business. I will therefore ask the indulgence of the Convention, to suspend the consideration of the regular order of business, in order to enable me to offer a resolution relative to this subject.

[Cries of "consent," "consent;" and "no consent," in various parts of the House.]

I am a poor reader, Mr. President, and would like that the resolution should go up and be read at the table. [Cries of "consent."]

The resolution was now read by the Secretary, for information, and it is as follows:

*Resolved*, That the President of this Convention appoint a committee of nine on each article of the Constitution, whose duty it shall be to consider and report to this Convention, on all such matters as may be referred to them by said Convention; and that the Convention now take up the Constitution and have it read by the Secretary at his desk; and that this Convention then proceed to amend each section as they think proper.



The motion being entertained by the Chair, and the question being taken thereon,

The Convention refused to suspend the rules.

Mr. NAVE. Mr. President, after what has fallen from the gentleman from Hancock, (Mr. Tague,) I cannot forbear to make the reflection how strange it is, that gentlemen will rise in their places here and make speeches against time, abusing the Convention because they have not done anything. The true policy for us to pursue, it seems to me, is, to discuss all questions presented for our consideration with all fairness and calmness, and with all the patience and deliberation which their importance demands.

The section before us embraces two most important questions. The first branch of the subject presented for our consideration, is, that no man's personal services shall be demanded without just compensation. That is, no individual citizen of the State of Indiana shall ever be called upon to render any service whatever, without just compensation. Let us inquire for a moment what effect this provision would have upon the administration of justice. It seems to my mind, that, if we incorporate this provision in our bill of rights, the people will be deprived of one of the most important means for the suppression of vice and immorality. In the old Constitution the words of this section are: "No man's peculiar services," &c. The word "peculiar" is technical in its meaning, and it is the same as to say: No man's services, except for the benefit of society, shall be demanded, &c. Then, where society demands service, the individual, as a good citizen, should surrender his natural right in the case for the benefit of the whole. He should be willing to appear before the tribunals of justice as a witness, or do whatsoever else the public good might demand of him. But this proposition prescribes that no man shall be called upon to subserve the public good in any way without a just remuneration. For example, we suppose an infamous crime has been committed in some neighborhood: according to this provision, an individual called upon to testify before the Grand Jury as a witness in the case, cannot be had unless he is paid for that service. Is it not plain that such a provision would hold out inducements to every loafer about the grog shops to make himself a standing witness in all such cases, for money to buy his grog? And I would ask further, whether such a provision would not greatly increase the expenses of the administration of the law? I believe, sir, it would increase those expenses three fold. It seems to me a most unreasonable and preposterous proposition, imposing a most onerous burden upon the people. It seems to me that it would be laying the foundation for a growing evil, which would become more and more burthensome, until the whole people would cry aloud for a change in the Constitution.

I am opposed to this change, and in favor of the section as it now stands in our bill of rights, which is equivalent to the amendment to this clause proposed by the gentleman from Jefferson.

The second branch of this section is: "No man's property shall be taken by law without just compensation, first assessed by a jury of freeholders, and tendered, together with the expenses of the proceeding, to the owner by the person to be benefited. But such tender, if rejected, shall not bar the right of appeal." If we adopt this branch of the section, Mr. President, it will virtually put a stop to the progress of internal improvements in the State. It will be the same as to say that no public improvements shall hereafter be made in the State of Indiana. It would be a provision directed against the interests of all incorporated companies which may be formed for the purpose of constructing railroads, plank roads, turnpikes, and bridges. I should think, that, under such a provision, a man of any sense would never take stock in any such enterprise until the right of way should be first secured along the whole line through which the road had to pass. The prohibition is, that no set of men shall make a highway over any man's land, without first tendering the amount of damages, to be assessed by a jury of freeholders. Sir, I ask you if the provision of the old Constitution is not far better than this? I ask you, sir, if, in the assessment of such damages, it is not right and proper to take into consideration the additional value which the public improvement will confer upon the property of the land holder? For example, we suppose that a plank road company have constructed a road over some portion of the lands of the gentleman from Posey; and previous to this location we suppose the piece of land to be worth one thousand dollars, and that the construction of this road has enhanced its value to two thousand dollars; I ask if such company should be required to pay damages to that gentleman for doubling the value of his property? Is there any principle of justice upon which he can ask for damages? None whatever. I hold, therefore, that the Supreme Court have settled this principle correctly, and upon the foundation of the eternal principles of justice. The argument, that the damage is commonly so small to each land holder, that it is not worth contending for in an action at law. But this argument falls to the ground; because the law does provide a remedy for every trespass; and whoever will not resort to his proper remedy must be supposed himself to rest satisfied that he has received more than an equivalent for his damages, on account of the advantage of the improvement, as well as the additional value which it has given to his property.

Mr. BASCOM. In my county we have had some difficulty with corporations contending

with individuals for the right of way. I believe it is the desire of the people there, that this principle should be settled. We believe that the landholder should be first compensated for his property, and I think it would be well to adopt some such section as this. It is not the interest of the State nor the interest of these soulless corporations that we should be most careful to guard. These corporations have no regard for the rights of individuals, if, by oppressing them, they can put money in their own pockets. On the contrary, it is my wish to guard the rights of the individual citizen. I hold that, in most cases, where corporations are organized for the construction of splendid works of improvement, their first object is not for the benefit of the public generally, so much as for filling the pockets of the corporators. I hold, also, that corporate bodies can have no just right to claim the land of an individual citizen, or take his property of any description, without first making him a just compensation therefor. Nor do I conceive it necessary to give any power or privilege to those companies for the construction of the public works, beyond what are allowed to individual citizens. Therefore it should certainly be required of them that a jury of freeholders should assess the damages, and that the money should be first tendered to the owner of the property. I think they could not justly ask anything more than this. I think they should possess no power to take away the property of the individual, beyond that which the law confers upon one individual to take away the property of another individual. I cannot see the reason why a corporate company should claim exclusive rights, and powers, and privileges, beyond and above those belonging to the individual citizen of the State. I am opposed to the principle of monopoly in any shape; and especially am I opposed to placing extraordinary powers in the hands of incorporated companies. Therefore, it is my judgment that they should first remunerate the citizen—first give him the full value of his property before they can dispossess him. This would be such a near approach to justice, that, I think, there could be no reasonable complaint against it. I have no objection to the amendment of the gentleman from Jefferson, (Mr. Bright,) so far as regards the payment of the assessed value in money; but I must insist that this value should be first tendered to the owner by the person to be benefited by the taking away of the property. Because a public highway comes along over a man's land, there is no reason why that should authorize a trespass on the part of the proprietors of the road, by taking timber, or stone, or soil—this constitutes no reason why this landholder alone should be taxed for the benefit of the public, or to benefit the treasury of a great State. I hope, therefore, that the section will be adopted as originally reported, believing that its provisions

will advance and protect the best interests of the State as well as the individual citizen.

Mr. NILES. Mr. President, as I am a member of the committee which reported this section, and was compelled to dissent from the action of the majority, I hope that I may be indulged in a few remarks before the vote is taken. From present indications, I am fearful that the views which I hold will not be acceptable to the majority of this Convention. If I correctly understand the amendment and the amendment to the amendment now pending, I am opposed to both of them, as I certainly am to the original section. And should it, at any time, come in order, I shall offer a substitute for the committee's section, which I will now read as part of my remarks. It is, that no man's particular services shall be demanded or property taken and applied to public use, without just compensation being made therefor. This is the section, as we find it in the present Constitution, except the words "or with the consent of his representatives." As that seems to be very clearly the sentiment of the Convention, I am willing to go with the gentleman from Cass (Mr. Biddle) and others, so far as to say that no man shall be compelled to serve as a road supervisor, as a juror, or as a witness for the State in a criminal prosecution, without being entitled to reasonable pay. I prefer the old word *particular* to the word *personal* used by the committee, as it will distinguish between such services and those general services which all good citizens owe to the State in protecting the interests and preserving the good order of society. As to the right to take private property for public use, I desire to leave it upon the broad basis of simple justice. What more can be desired? If its spirit is carried out by the Legislature, by courts and juries, what provision could be more sound and wholesome, than the one I have suggested?

It has often been said in this Hall, and in my judgment, with great propriety, that it is the business of a Constitutional Convention, not to legislate or adopt specific and restrictive provisions, but to incorporate into the organic law, broad general principles, which are sound and safe now, and which will remain sound and safe for the next generation and in all coming time. We should adhere as far as practicable to that rule. No safer general rule for the government of our action could be adopted. I object, then, to the section reported by the committee and to the pending amendments, because they embody restrictive legislative provisions which may work badly in practice, and must tend to gross injustice.

Gentlemen insist that hard cases upon individuals have arisen under the present Constitution, and that private property has sometimes been taken for public use, under circumstances of great injustice. All that may be very true. But how have such cases occurred? Either at



the instance of the State itself or of corporations created by special acts. No one doubts that under the present system, the State has suffered from hasty and inconsiderate legislation. By a method of log-rolling, to use a cant term, bills have often been passed through the General Assembly without being once read, without their true character being understood, without the yeas and nays being entered upon the journal, and without men being placed in a position to be held responsible for their acts. In such a way, power may sometimes have been given to corporations which ought not to be intrusted to any man or set of men. I take it for granted that the new Constitution will prevent such evils, by providing that corporations shall exist only under general laws, which must be enacted deliberately, with the consent of not less than a majority of all the members elected to the House, and upon a call of the yeas and nays; and these general laws will probably be left subject to prospective modification or repeal. Then I would ask whether, with such guards thrown around their action, and when we require the members of the General Assembly to swear, in effect, that no man's property shall be taken for public use without just compensation, there can be danger in committing the legislative details to them? Will it not be far more safe for all interests than to undertake here to incorporate legislative provisions into the organic law of the State?

It has been said in this debate, that these corporations are organized more for purposes of private gain than for the public good. But, I apprehend that, on a moment's reflection, it will be admitted that the highest public interests are involved in their success. Look, for example, at a single plank road, in the county of Laporte, only sixteen miles in length. That one road has added three or four cents to the value of every bushel of wheat and corn raised in the county. I can speak confidently for the small portion of the State which I in part represent, when I say that, instead of looking with suspicion upon public improvements, we will be glad to have persons come among us and invest their money for such purposes. I should regret exceedingly, to see any provision incorporated in the Constitution, which would indicate jealousy of such improvements, or which would place corporations, organized for such purposes, at the mercy of a few unreasonable individuals.

It has been intimated by gentlemen, that the owners of property will not unreasonably stand in the way of public improvements. But we know the contrary from experience; and it is on account of the few unreasonable men that it is necessary that the right exist to take private property for public use. Many members of this Convention will remember the action of New Hampshire on this subject. There, they went so far at one time, as to say that no corporation

should take private property even for public use, without the owner's consent. It was found that a few men stood for years in the way of all public improvements, and, while the rest of New England was being intersected with railroads in all directions, New Hampshire had nothing of the kind. And, except for abandoning such a doctrine, that State would soon have been left little else than a barren waste of granite rocks. I should regret to see anything of that spirit prevailing here. These public improvements are doubling the value of the property of all our fellow-citizens. They are an essential element in the march of civilization, and I trust that this Convention will do nothing to impede their progress. One of the evils likely to arise under the section reported by the committee, was well illustrated by the gentleman from Jefferson. I trust, sir, that in this particular, we will confine ourselves to the plain, palpable duty of a Constitutional Convention, and leave the whole matter upon the broad platform of simple justice.

Mr. OWEN. I have but a few words to say in reply to the observations of the gentleman from Laporte. In some of his remarks I cordially concur. For example, in a general way, I believe that these public improvements are quite as much in favor of the public interests, as they are in favor of the interests of the corporators. As in the case the gentleman has cited, so it is in regard to a plank road, now nearly completed, from the town in which I live, New Harmony, to Mount Vernon, on the Ohio river. I believe that those of us who subscribed to the stock of the road, did so far more from considerations connected with the great advantages to be derived to the community around us, than from any belief that we would obtain a large dividend on the stock. So far, then, I agree with the gentleman.

In regard to another matter, I dissent from his remarks; and I think that, upon a further review of the subject, he may be induced to change his opinion. He says that, at the present time, when we pass acts of incorporation singly, it often happens that too ample privileges are conferred by these acts, but that he supposes, under the general acts of incorporation, which will hereafter be adopted, no such abuse will prevail. But let us consider that, if there be a question of but one act of incorporation, then few men, comparatively, will be interested in the passage of the law; while, if it be a general act of incorporation, then all who desire to become members of incorporated bodies under the act, may unite their interests and obtain almost what they desire. Is not this combination of interests a dangerous thing, unless we guard it here, and say it shall not claim too much? We must be careful, then, in regard to this matter. It was considered one of the most important topics that came before the committee, and it was carefully debated there du-

ring two whole days, before it was finally reported upon, in the present section.

Let me ask what the restriction, imposed upon corporations by this article, amounts to, in practice? It says, there shall be cash payments. Is that so great a hardship? When we enter a store and buy goods and pay down for what we receive, is that regarded as a case of hardship? How much delay will there probably be, in organizing a jury of free-holders? They can be convened in a day or two, and give their decision in a few hours. It is not likely, at the farthest, that there will be necessity for a delay of more than a week; and is the delay of a week so fatal that we must endanger the rights of citizens, in order to avoid it? The provision says that, if a company desire the privilege of a right of way through any man's land, they must first tender the amount of damages assessed by a jury of free-holders. Is there wrong done in this? If a man or a company desire to obtain a thing, they ought to have the money ready to pay for it; and, if they have it ready, what hardship in tendering it? They offer to the owner the amount decided upon by the jury, and if, after tendering the money, the owner is not satisfied, then the law may permit the company to take possession without payment: the owner following up his appeal.

Here, then, is simply a cash payment, and the possible delay of a week. Is it not, I ask again, worth while to make such a sacrifice as that, in order to protect the rights of the citizen? It cannot truly be said, that such a sacrifice as that will retard internal improvements,—those improvements to which our State is yet to owe much, and to which all the States of this Union owe, or will owe, a large portion of their prosperity.

Mr. BARBOUR. I understand this proposition, that a part of the section is retained—that relating to the assessment by a jury of free-holders—and if this clause is to be retained in this section, I have one objection to it. I think that the mode of assessment should be left to the discretion of the Legislature. The section provides that an assessment is to be taken by a jury of freeholders, in the first instance, and then the amount assessed is to be tendered, together with the expenses of the proceeding, to the owner, by the person to be benefited. In other words, putting the entire expense of the assessment, which may be fifty or a hundred dollars, upon the company or State who may desire to make use of the property for public purposes. I object entirely to this mode of proceeding.

The company or State should be allowed, in the first instance, before an assessment is made, to tender what in their judgment would be a fair compensation. In case the tender be refused, and legal proceedings follow to adjust the compensation, if the owner of the property fails to recover more than was tendered to him,

he should pay the cost of the proceedings for his unjust claim.

We all know that claimants for damages done by public improvements, never claim too little, and as a general rule, a little more than they ought to have. The consequence would be, that an assessment would be made in every case, and the company or State subjected to a heavy expense.

If you allow a tender to be made in advance of any assessment, and if that tender be just and sufficient, it is right and proper, if an assessment follow, that it be at the expense of the claimant. If the tender should prove insufficient, then the company or State should bear the expense. This is my view of this branch of the question.

I should prefer that these articles be left out of the Constitution, and left to the good sense of the legislative authority. But if a provision of the kind be retained in the Constitution, I desire to see it modified in accordance with these views.

Mr. PETTIT stated, that as he had already made a speech upon this subject yesterday, he would not further debate it. He would simply ask for the yeas and nays upon the question.

The yeas and nays being ordered, were taken with the following result—yeas 120, nays 9:

Those voting in the affirmative were,

Messrs. Allen, Anthony, Badger, Balingall, Barbour, Bascom, Beach, Beard, Beeson, Berry, Bicknell, Biddle, Blythe, Borden, Bourne, Bowers, Bracken, Bright, Bryant, Butler, Chapman, Chenoweth, Clark of Hamilton, Clark of Tippecanoe, Cole, Colfax, Cookerly, Crawford, Crumbacker, Davis of Parke, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, &c., Duzan, Edmonston, Fisher, Foley, Foster, Frisbie, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Graham of Warrick, Gregg, Haddon, Holiday, Hamilton, Harbolt, Hardin, Hawkins, Helmer, Hendricks, Hitt, Hogin, Hovey, Howe, Huff, Johnson, Jones, Kent, Kendall of Warren, Kinley, Lockhart, Maguire, March, Mathis, May, McClelland, McFarland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Murray, Niles, Nofsinger, Owen, Pepper of Crawford, Pettit, Prather, Rariden, Read of Clark, Read of Monroe, Ristine, Ritchey, Robinson, Schoonover, Shannón, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Scott, Spann, Steele, Stevenson, Tague, Terry, Thomas, Thornton, Trimble, Vanbenthusen, Wallace, Walpole, Wheeler, Wiley, Wolfe, Wunderlich, Yocum, and Zenor.—120.

Those voting in the negative were,

Messrs. Farrow, Hall, Holman, Kilgore, Nave, Newman, Smith of Ripley, Watts, and Mr. President.—9.

So the pending amendments were laid upon the table.



The question recurring upon the adoption of the third section, submitted by the committee on the rights and privileges of the inhabitants of the State—

Mr. NILES moved to amend by striking out all after the word "section" and inserting, "No man's particular services shall be demanded, or property taken and applied to public use, without just compensation being made therefor.

Mr. CLARK of Tippecanoe moved to amend the amendment offered by the gentleman from Laporte, (Mr. Niles,) by adding the following:

"But the General Assembly shall enact no law which may authorize any incorporation to take the property of any man without just compensation first made to the owner in such manner as may be prescribed by law."

Mr. MAGUIRE. I believe it is in order to perfect the original section offered by the committee, and I propose to add to it the following:

"*Provided, however,* That any company or association desiring to construct a railroad or any other public improvement, shall have the right to locate such railroad or other improvement before the assessment is made for damages."

I desire to make a single remark, only, in connection with this amendment; and that is, that it appears to me, by the terms of the original section, that you cannot enter upon land at all, for you cannot make a location until after the assessment for damages, and you cannot ascertain the amount of damages until you know the land on which to locate. I throw out this proposition for the consideration of the Convention, and if they think well of it, it can be embodied in the section.

Mr. BIDDLE. I shall vote against the amendment of the gentleman from Tippecanoe (Mr. Clark) to the amendment of the gentleman from Laporte, (Mr. Niles,) considering that the amendment offered by the gentleman from Laporte will accomplish the object desirable to be attained. He has adopted the section of the old Constitution on the subject, simply striking out the words "without the consent of his representatives," so that the representative shall not have the power to take the property of the citizen without compensation. This will leave the question whether the payment shall be first made, or afterwards, to subsequent legislation, as the interests of the State and the citizen may demand; but it will take from the representative the power to demand his services or take his property without compensation.

Mr. BORDEN. I think, Mr. President, that we have spent time enough in the discussion of this question, and with a view of getting a vote on the main proposition—the one reported by the committee, which I am satisfied the majority of the Convention are in favor of—I move to lay the pending amendments upon the table.

The PRESIDENT. The gentleman from Allen can only move to lay the amendment of

the gentleman from Marion (Mr. Maguire) on the table.

Mr. BORDEN. At the request of several members, I withdraw my motion.

Mr. CLARK of Tippecanoe. I hope, sir, that the vote will not be taken on this question until the members of the Convention thoroughly understand it, or at least until we have had opportunity to discuss the character of the provision. Now, all the arguments I have heard against this authority being granted to the State, during this debate, have been directed against that exercise of sovereignty which the State has or may depute to corporations. It is alleged that this power has been improperly extended to those legal associations. This may be true. Abuses, no doubt, have occurred from careless legislation in this, as in other classes of laws. But for this reason are we to divest the State itself of all right of sovereign domain, or so restrict its exercise as greatly to embarrass or impede the exercise of the necessary purposes of government? I do not think the Convention is prepared to deny the State itself the possession of such power. This has never been denied to any sovereignty. No State can exist without this sovereign authority. If you take away this right, you take away the right of the State itself to exist; and I apprehend that gentlemen do not wish to go that far.

We should be exceedingly careful in restricting the sovereignty of the State, which is its authority to exercise the functions of government according to the design of its institution. The right of self-defense in a government, may be said to be a natural, an essential right. It must have the sovereign power to maintain its own existence, on precisely the same principle that an individual is supposed always to have the right of self-defense. This sovereignty pervades and sanctions the powers of the government in all its various ramifications. How many occasions may arise in which its exercise will be essential for the preservation of society, it is almost impossible to foresee. In a city, the public authorities may be compelled to order a house to be blown up or pulled to pieces, in order to stay the course of a destructive fire. Here every one perceives how preposterous it would be, to think of summoning a jury to assess the damage, before the sovereignty could exercise authority over individual property. Again, is there not great truth in the remarks of the gentleman from Hendricks (Mr. Nave)? If the State is compelled to pay all witnesses, all officers' fees—if no man's personal services is to be commanded, in the prosecution of public offenses by the State, may we not prevent the punishment of crime by the vast expense imposed on the State? If, in these matters, every duty performed by the citizen is to be paid for, may we not so overburthen the Government as to defeat its purposes altogether? There are duties which all citizens are occasion-

ally called on to perform; services which the necessities of the State demand alike from all; obligations which all citizens owe to their Government, the common defense of all. These are personal services, and would be embraced under the provisions of the section reported by the committee. Can we safely provide that all the duties required from the citizen, to be performed for the State, shall be paid for in advance? We must invest the State with the power and the means of maintaining itself, or it must cease to exist.

**Mr. MAGUIRE.** Believing that the object of the amendment I offered, can be effected by the Legislature, I withdraw my motion.

**The PRESIDENT.** The question now before the Convention is upon the adoption of the amendment of the gentleman from Tippecanoe, (Mr. Clark,) to the amendment offered by the gentleman from Laporte (Mr. Niles).

**Mr. LOCKHART.** I am entirely satisfied with the amendment offered as a substitute for the original section, by the gentleman from Laporte, (Mr. Niles,) and I will therefore move to lay the amendment offered by the gentleman from Tippecanoe, on the table.

The question being taken upon the motion of the gentleman from Vanderburgh, (Mr. Lockhart,) it was decided in the affirmative.

The question then recurring upon the amendment offered by the gentleman from Laporte, as a substitute for the original section,

**Mr. BRIGHT** moved to amend by inserting between the words "compensation" and "being" the words, "in money irrespective of intrinsic benefits."

**Mr. B.** said, I desire, Mr. President, to trouble the Convention with a few remarks in reference to this proposed amendment. I believe, sir, with the gentleman from Laporte, that we ought not here to perform the duties of the Legislature in relation to this subject, and that we should as far as possible, adopt the provisions of the old Constitution which refer to the subject. If gentlemen will turn to the seventh section of the first article of the Constitution, they will find it is in the language of the present amendment, except so far as regards the compensation in money, irrespective of extrinsic benefits. This then is the addition I propose to make, and I do it for this reason: a true and liberal construction of the Constitution as it is, would show, in my opinion, that the compensation is to be made in money. The language of the Constitution is, "that no man's services shall be demanded or property taken for the public service, without compensation being made therefor." Now, sir, if the language of this instrument had not been interfered with by judicial construction, there is hardly a gentleman on this floor that would, for a moment, doubt that the compensation was intended by the terms of the Constitution to be made in money.

How different has been the construction of this clause of the Constitution? A construction has been made which I conceive to be in utter violation of the instrument itself. The language of the Constitution is plain enough—the compensation of the individual shall be in money. He shall be compensated in money for his property or services, taken for the public use.

In 1836 when we entered into our mammoth system of internal improvements, the Legislature, fearing perhaps that this compensation being in money would be made to a greater extent than was desirable, engrafted in the law of 1836 what I have always considered to be a violation of the Constitution. They provided in that law how the compensation was to be paid, and how the damages were to be assessed that an individual might sustain. They also provided that in all cases of assessment of damages, as it is provided in the section before us, that the assessing jury shall take into consideration the benefit resulting to the claimant from the construction of the work. Thus, instead of leaving the question entirely open for the sole action of the jury, they passed an unconstitutional rule by which those damages were to be ascertained. The jury are to make compensation for what an individual's services or property may be worth, taking into consideration the extrinsic advantages that may result to him from the proposed improvement. Such a rule of course operates to the disadvantage of the individual whose property is taken possession of, for he has to pay for an improvement which results to the benefit of his neighbors. The individual whose property is to be taken is a part of the body politic—a component portion of the community, and if the community are to be benefited by any improvement made upon his property, he of course is entitled to a proportion of the benefits, as well as his neighbors. If, then, you take from the individual his property, and then deduct from his compensation the supposed value the improvement may confer on the remainder of his property, you confer on the other portion of the community an advantage which he does not enjoy. He has to pay for their benefit. The individual may not desire to sell his property, he may wish to keep it, yet you take it from him and compel him to pay for the improvement that is proposed to be made, giving as a reason for so doing that the improvement will add to the value of his adjoining property. It is an unjust and an unauthorized construction of the article of the Constitution relating to the subject.

**Mr. President,** it is proposed to make a distinction in regard to this matter between corporations and the State. So far as this question is concerned I do not see why any difference should be made between corporations and the State—for the State no more than individuals can take the property of individuals except for public purposes. No member of the com-



munity can be compelled to part with property except for public use. It is a power of sovereignty which the State should be careful in exercising, and it is a power which the State delegates frequently to corporations, and they exercise it in the same manner that the State exercises it. A corporation cannot be invested by the State with the power to take private property except for public purposes, for corporations are created for public purposes or at least should be the design of their organization.

We have a law relating to public roads under which individuals may combine together and construct roads; yet these roads must be constructed for public purposes and not for private gain. As the power is the same whether exercised by the State or delegated to a corporation and exercised by them, I hold there should be no distinction drawn in this matter, for the benefit of the State.

I hope, sir, that the proposition I have offered will be engrafted in the Constitution. It is the proposition which was originally intended by the framers of the present article in the Constitution pertaining to the subject, to be carried out; so that every individual whose property may be taken for the public use shall be fully compensated for his damages in money without regard to the advantages that may result to the remainder of his property from such improvement. If you will say to the citizen that he shall have compensation for damages done to his property by any new public improvement without reference to any extrinsic benefits supposed to be conferred on him by such improvement, you meet my views of what should be adopted as a Constitutional provision.

Mr. BARBOUR. Mr. PRESIDENT: I am opposed to the proposition of the gentleman from Jefferson, (Mr. Bright,) and shall be obliged to vote against it. I do not think that the effect of such a provision would be to secure equal justice to the citizens of the State. Individuals living in the vicinity of railroads, plank roads and canals, will be benefitted, and sometimes at the expense of the people of other portions of the State.

To illustrate more clearly the view which I take of this proposition and its practical operation, I will suppose a case. A. and B. are citizens of Indiana, having farms lying on the line of a contemplated public improvement—say a canal. It runs along on the line of A.'s farm, but does not touch his land. But the canal is cut directly through the farm of B.—perhaps lengthwise. Before the canal was projected the two farms were worth two thousand dollars each, but by the construction of this public work by the State, A.'s land is enhanced in value one thousand dollars, so that it is now worth three thousand dollars. On the other hand, B.'s farm is not enhanced in value and is still worth but two thousand dollars, and he has damages assessed to him to the amount of one

thousand dollars in consequence of the canal running through the farm.

The proposition of the gentleman from Jefferson is to tax C., who has a farm one hundred miles from the line of the canal, to pay this one thousand dollars to A., in order that his farm may be as much benefited by the canal as that of B. A., living on the line of the canal, has his property benefited to an amount equivalent to the damage sustained, because he has greater facilities for transporting his produce to market, while C., is not benefited to the amount of a dollar, because he lives so far from the canal that he takes his produce to market by another route.

That, sir, in my estimation, is the state of the case under a provision like the one embraced in the pending amendment. If a man, through whose land a railroad or any other public improvement is made, is benefited to twice the amount of his assessed damages, the amount of damages awarded must be paid in money, irrespective of the benefits derived—the accruing benefits must not be taken into account. In the case which I put, neither party is injured; both, on the contrary, are positively benefited. Shall we, aside from the benefit, tax the people of the State to pay the one an additional amount of money so that both may be equally benefited?

But the gentleman from Jefferson says that the individual, through whose property a public improvement may be built, should receive the amount of his assessed damages in money, irrespective of the benefits accruing to his other property because he may not desire to sell it, and therefore its enhanced value is not an immediate and tangible benefit. I reply, sir, that it is no matter whether he desires to sell that property or not, it is enhanced in value and the owner so much the richer.

I hope the amendment of the gentleman (Mr. Bright) may not prevail.

Mr. WALPOLE. I differ, sir, with the gentleman from Jefferson, with regard to the propriety of his proposition. In order that I may be understood, I will read the following motion, which I would make if in order. I would move to recommit the third section of the report of the committee on the rights and privileges of the citizens of the State, to the same committee, with instructions to so modify said section as to substitute the word "particular" in the first line of the section, also amend by proper words, so "that the Jury in assessing damages, shall not make any abatement for supposed advantages to result to the citizen, in contemplation of the construction of any public improvements to be made by any incorporated company.

I would suggest to the gentleman from Jefferson, whether he accomplishes his object by the language of his amendment?

Mr. TAGUE. I move to lay the amendment and the amendment to the amendment on the

table, and to recommit the section to the committee which reported it.

**SEVERAL VOICES.** No, no, withdraw the motion.

**Mr. ZENOR.** **MR. PRESIDENT,** I believe that question is divisible; is it not!

**The PRESIDENT.** It is.

**Mr. ZENOR.** I then call for a division of the question.

**The PRESIDENT** stated the question to be upon laying the amendments on the table.

**Mr. RARIDEN.** Is the motion to lay both amendments upon the table?

**The PRESIDENT.** That is the motion.

**Mr. RARIDEN.** I would like to vote to lay the amendment to the amendment on the table, if I knew "how to get at it."

**Mr. TAGUE.** **MR. PRESIDENT,** Upon this question I call for the ayes and noes.

A sufficient number demanding the yeas and nays, the same were ordered and, being taken, resulted as follows:

**AYES.**—Messrs. Allen, Anthony, Bascom, Beeson, Berry, Borden, Bracken, Chapman, Dick, Duzan, Edmonston, Foster, Garvin, Gootee, Graham of Miami, Graham of Warrick, Haddon, Harbolt, Jones, Kent, March, Mathis, McClelland, McLean, Miller of Clinton, Miller of Gibson, Milroy, Mooney, Moore, Morrison of Marion, Owen, Pettit, Ristine, Shoup, Smiley, Smith of Scott, Tague, Terry, Trimble, Walpole, Wheeler, Wiley, and Wunderlich—43.

**NOES.**—Messrs. Badger, Barbour, Beach, Beard, Bicknell, Biddle, Blythe, Bourne, Bowers, Bright, Bryant, Butler, Carter, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Cole, Colfax, Cookerly, Crawford, Crumbacker, Davis of Parke, Dobson, Dunn of Jefferson, Dunn of Perry, &c., Farrow, Fisher, Foley, Frisbie, Gordon, Gregg, Hall, Holliday, Hamilton, Hardin, Hawkins, Helmer, Hendricks, Hitt, Hogin, Holman, Hovey, Howe, Huff, Johnson, Kendall of Warren, Kilgore, Kinley, Lockhart, Maguire, May, McFarland, Miller of Fulton, Milligan, Morgan, Murray, Nave, Newman, Niles, Pepper of Crawford, Prather, Rariden, Read of Clark, Read of Monroe, Ritchey, Robinson, Schoonover, Shannon, Sims, Snook, Smith of Ripley, Spann, Steele, Stevenson, Thomas, Thornton, Todd, Vanbenthusen, Wallace, Watts, Wolfe, Yocum, and Zenor—33.

So the motion was disagreed to.

**The PRESIDENT.** The question is now upon the amendment to the amendment.

**Mr. WATTS.** I move to lay the amendment to the amendment on the table.

**Mr. RARIDEN** remarked that this was the proper motion.

The yeas and nays being demanded upon the motion of **Mr. WATTS**, the same were ordered, and, being taken, resulted as follows:

**YEAS.**—Messrs. Badger, Balingall, Barbour, Bascom, Biddle, Borden, Bourne, Bryant, Butler, Chenowith, Clark of Tippecanoe, Davis of

Parke, Dick, Dunn of Jefferson, Farrow, Fisher, Foley, Frisbie, Gordon, Graham of Miami, Haddon, Hall, Hamilton, Harbolt, Hawkins, Helmer, Howe, Johnson, Kent, Kendall of Warren, Kilgore, Kinley, Maguire, Mathis, McLean, Miller of Clinton, Miller of Fulton, Milligan, Milroy, Mooney, Morgan, Morrison of Marion, Nave, Newman, Niles, Pettit, Rariden, Read of Clark, Ristine, Robinson, Shannon, Sherrod, Shoup, Sims, Snook, Smith of Ripley, Smith of Scott, Steele, Tague, Thomas, Wallace, Walpole, Watts, Yocum, and Zenor—65.

**NAYS.**—Messrs. Anthony, Beach, Beard, Beeson, Berry, Bicknell, Blythe, Bowers, Bracken, Bright, Carter, Chapman, Clark of Hamilton, Cole, Colfax, Cookerly, Crawford, Crumbacker, Dobson, Dunn of Perry, &c., Duzan, Edmonston, Foster, Garvin, Graham of Warrick, Gregg, Holliday, Hardin, Hendricks, Hitt, Hogin, Holman, Hovey, Huff, Jones, Lockhart, March, May, McClelland, McFarland, Miller of Gibson, Moore, Murray, Nofsinger, Owen, Pepper of Crawford, Prather, Read of Monroe, Ritchey, Schoonover, Smiley, Spann, Stevenson, Terry, Thornton, Todd, Trimble, Vanbenthusen, Wheeler, Wiley, Wolfe, Wunderlich, and **Mr. President**—63.

**Mr. BORDEN** remarked that he did not vote to lay on the table, because he was opposed to the proposition itself.

**Mr. MURRAY** desired to give a reason for his vote. It was due to the committee with whom he was associated, to say that he made objections to the report when it was under discussion, but after some amendments tacitly consented to the report. Reflection and discussion had confirmed his objections—he was satisfied they were valid.

**Mr. KENT** moved to re-commit the section to the committee on the rights and privileges of the citizens of the State, with certain instructions.

**Mr. WATTS** asked if this motion was not also divisible.

**The PRESIDENT.** The motion to re-commit may be separated from the motion to instruct.

**Mr. WATTS.** Then I will ask for a division of the question.

The question being divided and being taken first upon re-committing, the Convention refused to re-commit.

**Mr. PETTIT** moved to re-commit the section to the same committee from which it was reported, with certain instructions.

**Mr. WATTS.** I rise to a question of order.

**A MEMBER.** The Convention has just refused to re-commit the section.

**Mr. PETTIT.** Yes, but my motion is in order, for it is to re-commit for a different purpose.

**Mr. RARIDEN.** **MR. PRESIDENT:** I can see no necessity for re-committing this section. It is obvious to every member that the matter now



in controversy between gentlemen is the simple question "shall we provide in the new Constitution that the amount of damages assessed to the owner of property taken for public use shall be paid *before* the property can be taken?" That, sir, is the question, and it is nothing else. There is no variety of opinion in this Chamber as to the rights to which individuals are entitled.

A motion was made to adjourn, but was disagreed to.

Mr. BERRY offered the following:

Add after the word "therefor" "and when taken for the benefit or use of incorporated companies shall be first paid."

Mr. WOLFE. I am decidedly opposed to that amendment. It will not do to adopt such stringent provisions with regard to the right of way; it will be in effect to arrest the construction of all public works in the State. What gentleman on this floor does not know how much the State depends upon her public works and internal improvements for the prosperity of her people? I believe that the Convention is too well aware of the deleterious effects of such an amendment as the one just offered, and I move to lay it upon the table;

Which motion was agreed to.

On motion by Mr. PETTIT, the Convention adjourned until nine o'clock to-morrow morning.

#### FRIDAY, Nov. 8, 1850.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. ———.

The Journal of yesterday was read and approved.

Mr. COOKERLY moved a suspension of the regular order of business to enable him to introduce a resolution.

The motion was not agreed to.

Mr. KENT, from the committee on matters pertaining to criminal law, submitted the following report:

MR. PRESIDENT:

The committee on criminal law, to whom was referred a resolution, have had the same under consideration, and have directed me to report the following section for the consideration of the Convention.

Your committee ask to be discharged from the further consideration of the subject:

SEC. —. Every person who shall give or accept a challenge to fight a duel, or who shall knowingly carry to another person a challenge to fight a duel, or who shall agree to go out of the State to fight a duel, shall be ineligible to hold any office of trust or profit.

The report was concurred in, and the section was read a first time and passed to a second reading to-morrow.

Mr. BORDEN, from the committee on the practice of law and law reform, submitted the following report:

MR. PRESIDENT:

The committee on "the practice of law and law reform," to whom were referred sundry resolutions on the subject of a reform in the practice and proceedings of the courts of this State, have had these subjects under consideration, and instructed me to report the section herewith submitted, to be incorporated in its proper place in the amended Constitution.

The resolutions are herewith reported back with the recommendation that they be laid upon the table.

And the committee respectfully ask to be discharged from the further consideration of the subject.

The report was concurred in.

The section reported is as follows:

SEC. —. The General Assembly, at its first session after the adoption of this Constitution, shall provide for the appointment of three commissioners, whose duty it shall be to revise, reform, simplify, and abridge the rules and practice, pleadings, forms, and proceedings, both civil and criminal, of the courts of this State. And they shall provide for the abolition of the distinct forms of actions at law now in use; and that justice may be administered in a uniform mode of pleading, without reference to any distinction between law and equity.

And the General Assembly may also make it the duty of said commissioners to reduce into a systematic code, the General Statute Law of this State; and said commissioners shall, from time to time, report the result of their labors to the General Assembly, with such recommendations and suggestions as to abridgment and amendment as to said commissioners may seem necessary.

Provision shall be made by law for filling vacancies, regulating the tenure of office, and the compensation of said commissioners.

It was read a first time and passed to second reading to-morrow.

Mr. NEWMAN, from the committee on special and local legislation, submitted the following report:

MR. PRESIDENT:

The committee on local and special legislation and uniformity of laws, to which was referred certain resolutions of the Convention, have had the same under consideration, and have directed me to report the same back with the recommendation that they be laid on the table.

The committee have also directed me to report the following article for insertion in the amended Constitution:

The report was concurred in, and the resolutions were laid on the table.

## ARTICLE —.

Sec. —. The General Assembly shall not pass any local or special laws in any of the following enumerated cases. That is to say:

Regulating the jurisdiction and duties of justices of the peace and constables; for the punishment of crimes and misdemeanors; regulating the practice at law and in chancery; providing for granting divorces and changing the venue in civil and criminal cases; changing the names of persons; for laying out, opening, working on, and repairing highways, and the election or appointment of supervisors; vacating roads, town plats, streets, alleys, and public squares; summoning and empanneling grand and petit juries, and providing for their payment; regulating county and township business; regulating the election of county and township officers, and their compensation; for the assessment and collection of taxes for State, county, township, or road purposes; providing for maintaining common schools, and the preservation of school funds; in relation to fees or salaries; providing for opening and conducting elections for State, county, or township officers, and where electors may vote; providing for the sale of real estate by executors, administrators, or guardians; for the creation of private incorporations; for the incorporation of colleges, seminaries, schools, churches, religious, scientific, or benevolent societies; providing for the incorporation of railroad, plank road, turnpike road, canal, and bridge companies; in relation to municipal corporations, such as Congressional townships, school districts, cities, boroughs, towns, and villages.

And all laws in all such cases shall be general and of uniform operation throughout the State.

Concurred in; read a first time and passed to a second reading.

Mr. GRAHAM of Warrick, from the select committee, to whom the subject of printing the Journal and Debates of the Convention was referred, made the following report:

MR. PRESIDENT:

The select committee, to which was referred a communication from Austin H. Brown, Printer to the Convention, with a pending amendment upon the subject of printing the Journal and Debates of the Convention, have had the subject under consideration, and believe that there can be no difference of opinion, either as to the duty or propriety, in relation to the publication of the Journal and Debates. It is clearly due, alike to the people and the members of the Convention, that the former may be able to know the action of their Delegates, and the latter have the means, at all times, to place their labor in its proper light. Your committee is further of opinion that the Legislature of the State would not have directed the Governor to employ a Stenographer, if it had not intended that the proceedings of the Convention should

be published in such form as to comprise a lasting part of the history of the State.

The committee, therefore, report the following resolutions, and recommend their adoption:

C. C. GRAHAM,  
SCHUYLER COLFAX,  
SAML J. ANTHONY,  
W. C. FOSTER:

1. *Resolved*, That the Printer to this Convention be directed to print seven hundred and fifty copies of the Register of Debates, to be distributed as the Convention may hereafter direct; *Provided*, That such printing be done by him at thirty-five cents per thousand ems, for composition, and forty cents per token for press work.

2. *Resolved*, That the Printer to the Convention be also directed to print five hundred copies of the Journal of this Convention, at the same rates as are now allowed by law for the printing of this State.

The undersigned, while concurring in the above report, desires to add, that, in common with other members, he has held and uniformly voted that the State Printer had a claim to the printing of this Convention. But a large majority of this body having concluded differently, having repeatedly attested that conclusion by votes to that effect, and having elected a Printer to this Convention, he deems it his duty to yield to that decision, and not to continue an opposition to the resolves of the majority, which might be considered factious. Believing, therefore, that the Printer of this body is, like the Printer of the Legislature, as clearly entitled to print every portion of its proceedings, as he is to print the reports from committees and resolutions—and believing further, that if the Convention does not order the printing of its Debates and Journal, the Legislature will not, he has concurred with his colleagues of the committee in their report and resolution.

SCHUYLER COLFAX.

Mr. KILGORE said he understood that the gentleman who was now, by the authority of the Convention, publishing the debates in the "Daily Journal" of this city, was also publishing them in book form. If this was the case, any number of copies that the Convention desired to order he thought might be obtained from him, at much less expense than by ordering a re-publication by the printer to the Convention. He was of the opinion that this resolution had better be laid upon the table until gentlemen should have an opportunity to inform themselves upon this point. There was clearly, as it appeared to him, no necessity for printing the debates twice over.

Mr. WOLFE moved that a select committee of five be appointed, of which the gentleman from Delaware (Mr. Kilgore) should be chairman, to procure the necessary information in regard to this matter.

SEVERAL VOICES. Oh, no; it is not necessary.



**Mr. MILROY** asked for the reading of the resolution submitted by the gentleman from Switzerland (Mr. Kelso) some weeks ago, and adopted by the Convention. The resolution was read, as follows:

*"Resolved, That a record of the proceedings of this Convention shall be kept in the following manner, to-wit: All that class of legislative matter usually contained in the journals of the Legislature shall be journalized under the direction of the Principal Secretary. He shall prepare, or cause to be prepared, an index to said journal, and if the printing of said journal be ordered, he shall superintend the same. He shall also prepare, or cause to be prepared, a manuscript copy, to be deposited by the President and Secretary in the office of the Secretary of State, in pursuance of the 14th section of the act entitled "an act to provide for the call of a Convention of the people of the State of Indiana, to revise, amend, or alter, the Constitution of said State."*

There shall also be kept a journal of debates under the direction of the Stenographer; but said journal of debates shall not contain that class of matter usually embraced in Legislative journals, further than may be actually necessary to identify and give a correct understanding of the subject matter under discussion."

**Mr. WOLFE.** I am in earnest, sir, in making the motion for the appointment of a select committee, because if we can get the book from the present publisher at a cheaper rate than we can have it printed by the printer to the Convention, I think we ought to do so.

**The PRESIDENT.** Does the gentleman move to refer any resolution to the select committee?

**Mr. WOLFE.** No; sir, I desire only that a committee shall be appointed to wait on the publisher of the "Daily Journal" and ascertain from him whether he can supply the Convention with the number of copies they want.

**Mr. GRAHAM** of Warrick. This subject has been discussed from time to time and more than once laid upon the table and taken up again. It has occupied from first to last a good deal of time: and I think we should make some disposition of it, without wasting any more time over it.

All that I can say in regard to the cost of printing the register of debates is that a practical printer has made a calculation that the work can be done for twenty per cent. less than the prices now authorized by law to be paid to the State Printer.

**Mr. FOSTER.** Twenty-five per cent. cheaper.

**Mr. GRAHAM.** Now I think it is due to those who are interested in the work that the question should be settled at once.

I trust the Convention will either adopt the report of the select committee, or else lay the subject on the table, and let it remain there.

**Mr. FOSTER** remarked that he had been as-

sured that the work could be done twenty-five per cent. cheaper than the rates authorized by law to be paid to the State Printer.

**The PRESIDENT.** The question is on concurring in the report of the committee.

The yeas and nays were demanded, and they were ordered.

**Mr. BORDEN** said, he was still of the opinion that the State Printer ought to do this work but he would not resist the manifest wish of the Convention. He should be obliged to vote against this resolution, however, because although he was willing that the debates and proceedings should be published, he knew very little about printers' prices; and the Legislature having elected a Public Printer, and established the prices to be paid for all work done by him, when the course indicated by them was followed, and the work given to the Public Printer, he knew what he was doing; but when they departed from that course, and relied upon the statements of printers who were struggling to obtain the work, it was impossible for him to say whether they would not be obliged to pay much more for it than it was worth. It was possible that it might be done for less than the established prices for public printing, and he understood the gentleman from Monroe (Mr. Foster) to say that it could be done for less; yet he should be constrained to vote against the proposition, for the reason that he was not himself convinced of that fact, and, also, for the reason that he still believed that the State Printer ought to have this printing.

**Mr. COOKERLY.** I wish to inquire of the chairman of the select committee whether he has ascertained what the work will cost.

**The PRESIDENT.** The Chair will remark that the resolution fixes the price.

**Mr. COOKERLY.** Well, sir, I should like to know whether the price thus fixed in the resolution is founded upon reliable information.

**Mr. COLFAX.** As I have been called upon by several gentleman to speak in regard to this report, I will add a few remarks to it.

It will be seen by the note that is appended to the report that I occupy a position somewhat different from that of the other members of the committee in regard to this subject. The question as to who should do the printing of the Convention was argued on several different days, and it is well known to gentlemen who took any interest in the matter that I declared my opinion to be that the State Printer had a rightful claim to the printing of the Convention, and I so voted some six or eight times, upon the yeas and nays, recording my vote with the gentleman from Allen (Mr. Borden) and others, with whom I concurred in sentiment. The Convention, however, decided differently by a very large majority. They decided that the State Printer had no claim *ex-officio* to do the work of the Convention, and they thereupon went into the election of a Printer.

The question now, as I view it, assumes a different aspect, so far as I am concerned, for I am never disposed in a body of a deliberative character to make a factious opposition to the clearly expressed will of a majority. That will having been repeatedly and definitely expressed in this case, I believe it to be my duty to conform to the decision that has been made by the Convention, and thus acquiescing, and believing, as I do, that the printer to a body like this is entitled to all the printing that it orders, and has the same right to the printing of the Journal and the Register of Debates that he has to any other branch of the same work, I could not do otherwise than concur in the report of the committee.

In regard to the question that was referred to the select committee, that committee had the Printer to the Convention before them, in order to ascertain from him what the printing would cost. He stated that his charge would be thirty-five cents per thousand ems for composition, and forty cents per token for press work. The prices allowed by law to the public Printer are: for composition, forty-five cents per thousand ems for plain matter, (such as this printing would be;) and forty-five cents per token for press work. Thus, according to the rates proposed by the Printer to the Convention, there will be a saving of ten cents per 1000 ems on the composition, and five cents per token on the press work.

The committee made a calculation to see what difference there would be in the cost of work, if done as thus offered by the Printer to the Convention, and they found that there would be a difference of about twenty per cent. in favor of his bid. The printing of the Journal will, of course, be done at the established prices.

There is one other reason which influenced me, as a member of the committee, in coming to the conclusion at which we arrived, and it is this: if the Convention does not authorize the printing of the Debates in book form, and it is, so far as I am concerned, a matter of little consequence whether they do or not, (except that the people expect the Debates of this Convention, like those of all other similar bodies, to be so published as to become part of our permanent records,) it is, to my mind, a settled fact, that the Legislature will not; and there are obvious reasons why they will not. They will say, that if this body, the body more immediately interested in having their proceedings properly presented to the public, do not care to have them published, why should they publish them? But another and a controlling reason is, that if you wait until the Legislature meets, it will be almost impossible, as the new Constitution is probably to be submitted to the people in April, to have the Debates and proceedings set up, printed, bound, and distributed through the State, before that vote is taken, and the whole

matter of the adoption or rejection of the new Constitution settled.

These are the considerations which influenced me in writing with the committee in the conclusion at which they have arrived.

Mr. WATTS. I would ask the gentleman from St. Joseph, whether the printing in book form can be done without re-setting the types, and whether they have been already distributed? Would it not be better to see the Printer and ascertain this fact?

Mr. COLFAX. I will say, in answer to the gentleman from Dearborn, (Mr. Watts,) that the same type can be used for the book as for the newspaper, except where corrections and alterations are to be made. It has, however, according to printers' phrase, to be "imposed" anew, which, with the corrections, would cause an extra expense of an amount that I have not now the data to calculate.

I will state another thing, and it is this: I am quite certain that Mr. Defrees, whom we have employed to print these debates in his paper, has no right to claim the printing in book form; and he thinks so, too, for he has made no claim for it, and sent in no proposition. I believe the only persons who have any claim whatever to it, are the State Printer and the Printer to this Convention. The Convention have decided that all their printing shall be done by their Printer, whom they have elected. And if we do not order that officer to do it, my mind is quite clear that no unofficial printer has any claim whatever upon it. We must, therefore, it seems to me, either order the Printer of this body to do the work, or conclude not to have the book printed at all.

Mr. NAVE. The argument of the gentleman from St. Joseph has convinced me that the Convention ought not to order the printing of the debates, as proposed in this resolution. He gives it as a reason why we should order the printing, that, if the Convention does not do so, the Legislature—the immediate representatives of the people of Indiana—will not. If they will not, in my opinion, we should not. I deny the power of the Convention to order the printing; and consequently I am opposed to the resolution which has been reported by the committee; because we have no power to tax the people of Indiana one cent; nor is there any officer connected with this Convention who has the power to draw upon the Treasury of the State; nor has the Auditor the right to indorse any certificate emanating from an officer of this Convention, for the purpose of drawing money from the Treasury of the State. Why? Because we, the delegates of the people of Indiana, are sent here for an entirely different purpose. We are sent here to amend the Constitution of the State or to adopt a new one, and not to involve the people of Indiana in debt. We have no right conferred upon us to do any such thing; and therefore I cannot, for one, consent to order



the printing of the journal or of the debates of the Convention; because, in my opinion, we have no power to direct an officer of the State government to pay over money on an order for any such purpose; and if the Legislature will not order the printing of the debates and of the journal of this Convention, it is an evidence that the people have no desire that they should be published. The argument of the gentleman from St. Joseph is conclusive, to my mind, that we should not adopt the resolution.

Mr. COLFAX said, he would ask the gentleman from Hendricks (Mr. Nave) to do him the justice to say that the reason he had assigned was, that it would be impossible to get the published proceedings and debates before the people in time to give them any aid in forming their opinions, if the publication were delayed until after the adjournment of the Convention.

Mr. HOWE moved to amend the resolution by adding thereto the following: "That the copyright be obtained, upon the application of the President of the Convention, for the State."

Mr. BORDEN. I have no objection to the motion of the gentleman; but I believe it has been decided by the Supreme Court that a copyright cannot be obtained by the State. Any person who may happen to be present may take down the reports and publish them. If they belong to any one, I suppose they belong to the gentleman who makes the report of our speeches. I doubt whether the copyright could be obtained by the State.

Mr. HOWE. If there be any doubt about it—as of course there is about every new question—it should be referred to a committee. It is certainly a matter of some importance. At the first blush, my idea is, that the copyright belongs to the State. It is true that any one who chooses, other than our Reporter, may sit here and take notes, and publish as much as he can obtain in that way; but the full and complete register of debates will be the property of the State, the State having employed a Stenographer to prepare a report at the public expense; and being the property of the State, she may undoubtedly apply for the copyright.

Mr. KILGORE. I wish to say a single word in reply to the remarks of the gentleman from St. Joseph. I have had no conversation with Mr. Defrees in relation to this matter. I believe, sir, that he does not claim the right to do the printing of the Convention any further than his contract to print the debates in his paper is concerned; and on the other hand, I do not think that the Convention Printer has a right to claim the printing of everything that may transpire in the Convention. Whatever printing the Convention may order, he has a right to claim; but I object to the Convention authorizing him, further than they have, to do the printing of the debates. My information that Mr. Defrees is publishing them in book form is from a reliable source. If, therefore, the Con-

vention desire a number of copies of the debates, they can procure them from him; and the State may procure from him whatsoever number of copies may be required to be deposited in the State Library. My object is to save unnecessary expense; and we shall necessarily increase the expense if we now order the printing of the debates by the State Printer, or the Printer to the Convention. It is better, I think, to leave the matter where it is, in the hands of Mr. Defrees, and let him manage the printing in book form, and then to purchase from him as many copies as may be required. I think we should not be lavish of the public money, or rather that we should not rashly contract debts that we have no power to pay. We cannot appropriate money for any purpose. That is a matter that belongs to the Legislature.

Mr. NEWMAN. I rise simply for the purpose of inquiring of the chairman of the committee, if any estimate was made by the committee of the cost of printing the Journal and the Report of the Debates, and if so, to request him to inform the Convention what the probable cost will be?

I have been induced to ask the question, because I know that this information will influence many members as to the vote they are about to give.

Mr. GRAHAM. I will inform the gentleman that the committee made the investigation referred to. A book containing eight hundred pages will cost about eighty cents per volume.

Mr. NEWMAN. Does that estimate include the binding of the volume?

Mr. GRAHAM. I meant to say that the cost would be about eighty cents per volume exclusive of binding, which may be some ten or fifteen cents additional.

Mr. NEWMAN. How many copies is it proposed to print?

Mr. COLFAX. Seven hundred and fifty copies is the number recommended by the committee.

A MEMBER. Seven hundred and fifty copies of the Debates or of the Journal? It is quite important to know which, as some are in favor of printing a large number of the one and but few of the other.

Mr. COLFAX. Seven hundred and fifty copies of the Debates and five hundred copies of the Journal.

Mr. NEWMAN. Is it calculated that there will be but eight hundred pages of the volume of Debates?

Mr. GRAHAM. It is not supposed that there will be more than that.

Mr. OWEN remarked, that the volume of the proceedings and debates of the New York Convention occupied but about one thousand pages with the entire journal of that Convention, which was incorporated with the debates. He did not believe the debates of this Convention would fill that number of pages.

Mr. FOSTER. How long was the New York Convention in session?

Mr. OWEN. Four months, I believe.

Mr. RARIDEN inquired the number of members of the New York Convention.

Mr. HOWE. I will strike out the words "or otherwise" from my amendment, so that the copy-right may be secured on application of the President of this Convention.

The question being taken upon Mr. Howe's amendment, the same was disagreed to.

Mr. MOORE moved to amend the report of the committee, by striking out the words "and record of debates," so that the Journal of the Convention only should be printed.

The PRESIDENT. I would suggest to the gentleman, that the question upon the adoption of the report will be taken, first upon the resolution to print the Debates and then upon the resolution to print the Journal, so that the gentleman will attain his object by voting against the first resolution, and will not need to encumber the Journal with an amendment to which another may be added.

Mr. MOORE. I will withdraw my motion.

The question being upon the adoption of the resolution authorizing the publication of seven hundred and fifty copies of the recorded Debates—

Mr. McCLELLAND moved to amend by striking out the words "recorded debates" and inserting the words "copies of the amended Constitution."

Mr. SHERROD. I presume that almost every member of the Convention is opposed to the spirit and letter of this amendment; and I move, sir, to lay it on the table.

Which motion was agreed to.

Mr. BORDEN. Upon what does the question now turn?

The Secretary re-read the first resolution reported from the committee.

Mr. BRACKEN. Mr. President: I am inclined to think that we have already spent quite time enough in the discussion of this question of printing, and I am glad that the yeas and nays have been demanded at this time. I am also inclined to think that quite enough of the time of this Convention has been taken up for the benefit of outsiders.

A VOICE. What remark was that?

Mr. BRACKEN. If any gentleman flutters it will be regarded as an acknowledgment that he is "hit," if not wounded. [Laughter.] I think that the proposition submitted by the committee for the publication of our proceedings, is cheap enough; it has been shewn that the compensation to be allowed is lower by some twenty per cent. than the prices allowed by law, and paid to the State Printer, for the same kind of work. I have no doubt about the power of this Convention to contract for and order its own printing; that question was de-

cided long ago, by an overwhelming majority of this body.

But I regret to say, it appears that some dozen members of this body are determined to keep up a perpetual debate upon this topic. The debate upon the subject of printing these reports of debates has already cost the State four times the amount of all the printing. When the Legislature provided for the appointment of a Reporter, and the payment of the expenses connected therewith, the power was unquestionably conferred upon this Convention to provide for the printing of its journals and debates. I do hope that the whole question of printing will be settled this day, and finally. I do not wonder that some gentlemen betray such a holy horror at the prospect of their sentiments going out in book form. I should want some speeches and some sentiments covered up and concealed if I were they; I, too, should be ashamed of, and unwilling to have them go out, to be carefully perused by the people of the State. There are gentlemen who will be held to a strict accountability for what has been done here.

Without taking up more time, I will repeat the desire that we may not again hear of this printing question after this morning.

Mr. GREGG. The gentleman who has just resumed his seat seems to have desired to make some personal allusion—perhaps to myself, as I have covered more ground on this subject than, perhaps, any other member upon this floor. But I do not rise for the purpose of setting myself right; for, upon this question, I have always been right.

It is very well known, sir, that I introduced a resolution, early in the session, declaring it inexpedient to publish the debates of this Convention, and that the services of a Stenographer should be dispensed with. But I was voted down by a fair majority, and it is a principle with me always to acquiesce in the will of a fairly ascertained majority.

As to the proposition now before the Convention, I hold that, having accepted the services of a Stenographer—having had all our debates, up to this time, reported *in extenso*, and published in a daily paper, they should also be issued in a form convenient for sending out to the people of the State. The prices proposed to be paid, in the report of the committee just made, are reasonable enough. I desire that copies of this book of debates should go out to the country and reach all parts of the State. And in this I may be a little malicious, for if all that is said and done here shall go to the country, this Convention will prove to be the greatest slaughter-house of politicians ever erected in the State, and the self-forged weapons are now being piled up, mountain high, in the form of the Stenographer's folios! [Great laughter.] This huge volume of debates will hereafter be known by the title of FOWLER'S



**BOOK OF MARTYRS**, [immoderate laughter,] illustrated and embellished by the portraits of about one hundred and forty of the victims, which, as I understand, are being taken by a competent artist of this City. [Roars of laughter.]

The question being upon the adoption of the first resolution reported by the committee, (being to publish seven hundred and fifty copies of the volume of debates,) the yeas and nays were demanded, and, being ordered, resulted as follows:

**YEAS.**—Messrs. Allen, Anthony, Bascom, Bicknell, Biddle, Bracken, Bright, Bryant, Carter, Chenowith, Colfax, Davis of Parke, Dobson, Dunn of Perry, Duzan, Edmonston, Foley, Foster, Frisbie, Gibson, Gordon, Graham of Warrick, Gregg, Hall, Holliday, Helmer, Hendricks, Hovey, Huff, Jones, Kent, Lockhart, Maguire, May, McFarland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Morgan, Morrison of Marion, Murray, Niles, Owen, Pepper of Ohio, Rariden, Read of Monroe, Ristine, Robinson, Schoonover, Shannon, Sherrod, Smiley, Snook, Smith of Ripley, Steele, Thornton, Todd, Vanbenthusen, and Mr. President—62.

**NAYS.**—Messrs. Badger, Balingall, Barbour, Beach, Beard, Beeson, Berry, Blythe, Borden, Bourne, Butler, Clark of Hamilton, Clark of Tippecanoe, Cole, Cookerly, Crawford, Crumbacker, Dick, Dunn of Jefferson, Farrow, Fisher, Garvin, Gootee, Graham of Miami, Haddon, Hamilton, Hardin, Hitt, Hogin, Holman, Howe, Kendall of Warren, Kilgore, Kinley, March, Mathis, McClelland, Milligan, Moore, Nave, Newman, Nofsinger, Pepper of Crawford, Prather, Read of Clark, Ritchey, Shoup, Sims, Smith of Scott, Spann, Stevenson, Tague, Terry, Thomas, Watts, Wheeler, Wiley, Wolfe, Wunderlich, Yocum, and Zenor—61.

So the resolution was adopted.

The question then being upon the adoption of the second resolution relative to the printing of five hundred copies of the journal,

**Mr. READ** of Monroe. **Mr. President**, I propose that hereafter a correct journal of the proceedings of the Convention be kept and incorporated into the record of debates. By a most unwise and ill considered resolution, which was adopted some weeks since, the Convention directed the Reporter to omit the journal of the Convention in his reports, and publish the debates by themselves. The effect of this is that, although we have been some days discussing the report of the committee on the rights and privileges of the people of the State, the reader of the debates is not given the report itself. The basis and cause of all the discussion is not given. Every report, every resolution and amendment should be given in its proper place, and then the reader could see the exact progress of the debate from its inception to its close.

And now the journal is to be printed in one volume, and the debates, which alone give interest to the journal, are to be published separately in another volume. This is all wrong. In the State of Illinois alone, of all the States in the Union, has this course of printing the debates separately from the journal, been adopted. In Kentucky and New York the journal is incorporated with the debates to which it gave rise. In Ohio, where the system of reporting the debates and proceedings was most admirable, and at the same time the most economical that I have anywhere seen, an accurate journal was kept by the Reporter, and interwoven with the debates, making a most interesting and valuable volume of only seven hundred pages, for a session of two months. But the system adopted by this Convention is radically defective—it is separating the bone from the flesh and sinews. Let us retrace our steps, or at least let us hereafter have the debates and proceedings published together, that the one may explain the other.

I offer the following amendment, to come in at the proper place: "and that hereafter the debates and journal be kept and published together."

**A MEMBER** moved to strike out from the amendment the word "hereafter."

**Mr. READ.** I will accept the amendment.

**Mr. DOBSON.** If this amendment is adopted, shall we not have three books, the journal, the debates, and lastly the journal and debates together?

**Mr. READ** of Monroe. Not at all, for the debates in book form has not been ordered until this morning, and the journal can be incorporated into the debates already published in the newspapers, and hereafter the journal would be kept in its order with the debates. I move to re-consider the vote just taken, in order to move to amend the resolution as I have proposed.

**Mr. DOBSON** remarked, that if the Convention re-considered that vote it might have to travel back for three weeks to re-consider other votes. By a resolution adopted some three weeks since, the Stenographer was directed to report nothing but the debates—omitting the journal. I ask the gentleman from Monroe who will go back to the commencement and incorporate the journal with the debates already published?

**Mr. READ.** Upon reflection and some conversation with gentlemen who have investigated the business part of the matter, I will withdraw my amendment. I am informed, that having traveled so far on the "wrong track," it is now too late to go back and incorporate the journal with the debates.

The question then being upon the resolution relative to printing the journal,

The same was agreed to, and five hundred copies ordered.

## RIGHTS AND PRIVILEGES.

The Convention then proceeded to the consideration of the "order of the day," being the report made by Mr. Owen, from the committee on the rights and privileges of the inhabitants of the State.

The PRESIDENT. The following section was under consideration, and undisposed of, when the Convention adjourned:

"No man's personal services shall be demanded without just compensation."

Mr. BERRY offered the following amendment:

Strike out all after the word "man's," and insert—

"Services shall be taken without compensation. Private property shall not be taken by law, against the consent of the owner, for any other purposes than the defence of the State, and the right of way for public improvements, and, when taken for these purposes, it shall be paid for in money, irrespective of intrinsic benefit, in such manner as shall be directed by the General Assembly."

Mr. READ of Clark. So many amendments and amendments to amendments have been offered since we first took up this section, that I think it necessary to explain the position in which I stand with regard to the section and the amendments, in a few brief remarks. In the first place, I cannot approve of or support the amendment of the gentleman (Mr. Berry) just up. And I cannot support it from the fact that, while in a few rare instances, it might operate justly and equitably, as a whole it is unjust and inexpedient.

Every gentleman on this floor, who understands the policy and the practical effect of rail roads, upon the growth and prosperity of a State—who has well calculated the immense advantages accruing from rendering increased facilities for the farmer and the manufacturer to transport their products to market, and from the development of the vast hidden resources of the State, resulting from the construction of plank roads and railroads, knows how important it is that no unjust and unnecessary restrictions should be placed upon the enterprising spirit of the people. They know that, in a great number of instances, these roads enhance the value of wet and swampy lands, and of lands remote from a market town, far beyond any supposed damages accruing to those lands from the building of the road over them. In a great majority of cases, lands which were worthless and unsaleable, have been brought into market, improved and made valuable, which, but for the construction of these roads, might have lain wild and uncultivated for a half a century to come.

Then it is proposed, that a man, whose land has been enhanced five-fold in value, by the construction of a work of public improvement,

shall be paid for the half-acre or five acres of his land taken for the use of this work, in money, and without any regard to the immense benefit conferred upon him by the taking of that land. Mr. President, this is not right. It is an invitation to leech the State Treasury—it is a premium upon avarice. It is pursuing a policy towards the State which never will be, because it never can be, pursued toward an individual.

But I am in favor of providing that every man shall be compensated for any damages he may sustain by the construction of a road or other public work over his land, or for the conversion of any of his property to the public use. But I mean to use the word *compensated* in its literal and proper signification. If, after a railroad is built over a part of a man's land, and his land is worth one hundred dollars less than before that road was laid out, then I would pay him in money, and promptly, the one hundred dollars. But if he owned eighty acres of land, which, before the road was built, he could get but ten dollars an acre for, and if, for the purposes of the road, ten acres are taken; and if he can then sell the remaining seventy acres for twenty dollars an acre, in consequence of its nearness to that road, I do not believe the law should require a jury, in assessing the amount of his damages, to take no account of the benefits that have accrued to him. I wish to be distinctly understood, however, that I am in favor of providing that no citizen shall have his property taken for public use, without just compensation, but whether that compensation is to be made before, at the time, or after the property is taken, is a matter to be left for the Legislature to determine. I do not wish to legislate upon it here. But, I wish to inquire, why this prejudice against railroads? It is not a system of internal improvements, carried on by the State, that we advocate; it is the enterprise of liberal citizens of the State in building these magnificent works, that we wish to encourage and protect.

I ask every gentleman who may have had an interest in railroads, if the dividends upon the stock is not a secondary consideration? The great object is the enhancement of the value of individual property all along the line of the road, and for miles back from the line on either side, and in this way the aggregate prosperity is vastly augmented. Take, for example, the great railroad south from this city, to the Ohio river, at Jeffersonville. I cannot be accused of being influenced in this matter, by being interested in the construction of that work, for the right of way has been given all along the line. On the contrary, I wish to extend those just facilities liberally all over the State. The railroad from this city to Jeffersonville runs through a great extent of low and swampy land, which otherwise would have lain unproductive for another generation. Not less than fifty thousand acres of this swamp land will be brought into market



and made valuable and productive, solely on account of lying on and within a few miles of this road. The State Treasury has been, and will continue to be, enriched to a vast amount, and all because individual enterprise has associated together for the purpose of constructing this great work of public improvement. Then, I say, we should, above all things, avoid hindering or obstructing this spirit.

I would here draw a marked distinction between the policy of building these railroads and plank roads by the State, and by private individuals. I desire never to see the State undertake to build another road or canal; the principle is all wrong; the disastrous results following it in this and other States, have proved how pernicious is the principle. But, on the other hand, I desire to encourage, by every just means, the construction of great works of public improvement by individual enterprise. This is the true policy of the State. Encourage it and we shall be a prosperous people; our waste and unsaleable lands will become productive, and swell the revenues of the State, and we shall advance to that station and position among the great States of the Union, to which we are destined. But you fetter and obstruct this individual enterprise, discourage the construction of railroads and plank roads, by rendering it difficult, if not impossible, to obtain the right of way at a fair compensation, and the State, if she does not retrograde, will not advance in her career of prosperity; she will stand still; we shall still plod on over the mud roads and the corduroy roads of the country, while the internal improvements of other States, the greater facilities of communication, and transportation of produce, fostered by a wiser policy, will attract the emigration and settlement of the intelligent, the enterprising, and the wealthy, and our noble and fertile State will be left far behind, lagging in the rear of the high civilization and progress of the age.

But how does the amendment of the gentleman (Mr. Berry) act; what will be its effect? He proposes that when locating a road through a low and swampy tract of land, that the owners of such previously worthless land shall be enriched by compensation for so much of that land as shall be taken for the road, without any regard being had to the enhanced value of the adjoining property. No matter, is the virtual language of the amendment, no matter, though the owners of land along the route of a public improvement are made rich by the location of it over their ground, they must be compensated in money for all the land taken, without reference to the great compensation made him by that company in the enhanced value and productiveness of adjoining property.

The whole community is benefited by the construction of railroads and plank roads when done by private enterprise, and it is the duty of the representatives of the people, whether as-

sembled in a legislative or a conventional capacity, to foster and encourage this enterprising spirit by all just and legitimate means. But the effect of the amendment now pending is, as I have said, to foster avarice. A man's land by being crossed by a railroad is enhanced in value ten or twenty per cent. Under other circumstances he could have been induced—nay more, he would have been willing to pay for this improvement; but now he sees that in addition to this enhanced value of his land, he can demand and enforce the collection of one hundred or perhaps five hundred dollars for the damage! done to that portion of his land taken for the line of the road. His next neighbor, who would also have been willing to pay the company liberally rather than not have the road come near or cross his farm, sees what his neighbor has done, and concludes that he may as well secure an additional hundred dollars also—and so every one is prepared to take advantage of the legal provisions upon the subject; provisions founded upon a mistaken fear that companies formed for the construction of works of internal improvements are naturally inimical to the rights of individuals.

We should carefully distinguish between the old system of internal improvements by the State, and the one now starting into life, the system of public improvement by private enterprise. And I believe that the effect of making this distinction will be to create a more liberal feeling towards the latter. We have seen the State plunging into a mammoth, I might say an infernal, system of internal improvements; we have seen her brought to the edge of the gulf of ruin: true there are now a few streaks of light in the horizon arising from the growing spirit of individual enterprise, but the State is still staggering under a load of debt and embarrassment. No one doubts that in the old system, which is parent to our enormous State debt, there were the most profligate expenditures of the public money. But now the people of the State are embarking in the construction of a network of public improvements, railroads and plank roads, on a far more magnificent scale than was ever projected by the State; they are embarking in the system of constructing by companies of private individuals.

And now there is danger that the reaction from the old system of internal improvements by the State, will be so great that, instead of drawing directly from the State Treasury for the construction of a railroad, we shall absolutely throw obstructions and create difficulties in the way of private enterprise proposing to build railroads unaided by the State! Let us guard against the tendency to extremes; let us, by all legitimate means, foster and encourage private enterprise. Let not the representatives of the people, assembled in Convention, thwart the wishes and enterprise of the people. Whatever special legislation is to be done on the subject,

let the Legislature do, year by year as the representatives come up fresh from the people, instructed in their wishes and desires.

If this amendment (Mr. Berry's) be adopted, it will, I repeat, be injurious to the interests of the State, because the dividends declared to stockholders are but an inconsiderable part of the profits and good arising from the construction of plank roads and railroads. They develop the resources of the State, increase the facilities of communication and commerce, and put a value upon millions of acres of land which otherwise had lain unimproved and comparatively valueless—add to all this, the revenues of the State are greatly increased by the additional amount of taxable and productive property. Every gentleman at all conversant with the practical bearings of the subject knows that fact.

But, sir, I call attention to the fact that it is not thus with other incorporations. It is not so with banking incorporations and insurance companies. The principal benefit arising from these is to the stockholders, in the shape of annual and semi-annual dividends. The prevalence of banks does not enhance the value of land; they do not open up and develop the resources of new and unimproved sections of the country; the low and swampy lands of the State are not brought into market and rendered productive by the establishment of one or a dozen insurance offices; the people have no greater facilities of communication; commerce has no new channels in which to flow and prosper. No, sir; on the contrary, the benefits arising from this class of incorporations, are almost exclusively confined to the profits and dividends realized by the stockholders.

For proof of this position, you have only to observe the difference between the subscriptions to the stock of railroads and plank roads on the one hand, and banks, insurance companies, &c., on the other. The stock of the latter is always eagerly taken up by capitalists; and there is rarely any opportunity offered for public subscription. But does not every gentleman know the difficulty there is in procuring subscriptions to railroad and plank road stock? To secure sufficient subscription to such stock, it is always necessary to spend much time among the people, explaining the results of such improvements, and convincing them of the direct and indirect benefits certain to result to them from the construction of these great arteries of commerce and social communication through the country.

With these views, Mr. President, and for these reasons, I shall go against the amendment of the gentleman near me (Mr. Berry). That it may be made more clear what the pending question is, I will state it as I understand it:

The pending question is upon an amendment to the amendment of the gentleman from La-

porte, (Mr. Niles,) providing that in lieu of the latter amendment, that "private property shall not be taken by law against the consent of the owner for any other purposes than the defense of the State, and the right of way for public improvements; and when taken for these purposes, it shall be paid for in money, irrespective of extrinsic benefits, in such manner as shall be directed by the General Assembly."

Now, sir, it is to the words, "it shall be paid for in money, irrespective of extrinsic benefits," to which I particularly object, and against the adoption of which, into the organic law of the State, I most solemnly protest. I will give no consent of mine to any such provision, the practical effect of which will inevitably be to destroy the spirit of individual enterprise, and to arrest the construction of those noble lines of railway and plank roads, which are now stretching in every direction over our broad and fertile State.

In conclusion, I will remark, lest I be misapprehended, that I am in favor of compensating every individual for any damages he may sustain in the conversion of his property to the public use. I am, however, unwilling that we should declare in this Constitution, that he should thus be compensated without any reference to the real benefits conferred upon his property by those works of public improvement.

I trust that the amendment will be rejected.

Mr. RITCHEY. I agree with the gentleman last on the floor, that so many propositions have been made, so many motions to amend, that it is difficult to understand our relative positions at this stage of the debate. So many of those propositions, upon the merits of which members had expressed their views, have been voted down, that it becomes necessary for gentlemen again to state their positions, and how they stand with regard to the pending question. I can hardly bring myself to a thorough comprehension of our present latitude and longitude.

But, sir, for the very reasons for which the gentleman from Clarke (Mr. Read) said he should go against the amendment of the gentleman from Franklin, (Mr. Berry,) I am in favor of it, and shall vote for its adoption in preference to any proposition yet offered upon this floor.

It will be remembered, that on yesterday we voted down the amendment proposed by the gentleman from Jefferson, (Mr. Bright,) declaring that damages assessed by a jury for private property converted to public use, should be paid in money, irrespective of extrinsic advantages; that is, without taking into consideration the benefits conferred upon other property of the same owner, by reason of the construction of the public work near it. I regretted the disposition which the Convention saw fit to make of



that proposition. I believe it was a wise and necessary one.

The gentleman from Clark says, that in many instances railroads and plank roads are constructed through unproductive lands, lands lying remote from a market, and low and swampy ground, which, before the construction of these roads, were valueless and unsaleable, are brought into market, and become productive and valuable lands, from their contiguity to these works. He would have the owners of these lands paid for so much of their land as is taken for the construction of the road, in whole or in part, in the benefits conferred upon their adjoining property. He considers that if a man has one hundred acres of land, and ten of it is taken for the construction of a railroad or a plank road, that the owner should consider himself compensated for the loss of the ten acres by the enhanced value of the remaining ninety. Why, sir, why not carry this principle out to its practical and legitimate application, and tax the owners of land over which these roads pass, for the benefits thereby conferred upon their property? If the gentleman's doctrine is sound, if this position is tenable, those individuals should pay these incorporated companies, or the State, as the case may be, for the benefits accruing from the construction of public works over or near their property? If the building of a railroad within five miles of a man's farm, enhances its market value one thousand dollars, why not, if the gentleman's position is a correct one, tax that man at least five hundred dollars?

Let me tell you, sir, some of the effects of the law of 1836. I will relate a case which, so far as it goes, will illustrate the fallacy of the principle, that damages for property actually taken for public use, may be set off by benefits resulting to other property of the same individual from the construction of public works.

On this Central Canal [a laugh] which runs, or was to have run south from this city to the Ohio river, a few miles from this place is the farm of Col. Wisherd, a gentleman well known to old residents of the State, and to many members of this Convention. The farm consists of a tract of some one hundred and sixty acres of land, and one of the most valuable tracts, both for location and fertility, in the State. I do not know of a more desirable quarter section in the country. This canal was located through the farm, cutting it diagonally in two equal halves. It became necessary to construct a lock upon the place and the work was commenced, and preparations made for that purpose. But, as is well known, the construction of the canal was suddenly stopped, and has never been recommenced, and in all human probability never will be. Now look at the position of that once beautiful estate. A deep cut is made in the centre of the farm, and huge heaps of stone cover the ground all around. There is the great ditch, and there are the heaps of stone, and there they

will remain, for it would take no inconsiderable sum of money to fill up the one and remove the other. When the land was condemned for public use, the jury that was empanelled to assess the damages to Col. Wisherd, from the digging of the canal through his farm, awarded that the enhanced value of his adjoining land, resulting from its lying upon the line of so important a work, compensated for the damage done! This was under the provisions of the old Constitution. Where is that great canal now! Just where it was then—on paper. Where are the benefits and the enhanced value of his adjoining land which was to abundantly compensate him for the great damage done to his farm? Just where all such accruing advantages and benefits always are—in the imagination. In this case, when Col. Wisherd applied to the courts of the State for redress, under the construction of the provision in the old Constitution and the instructions of the judge, the jury brought in a verdict of "no damages," accompanied with the observation, that if the law allowed it, they would have taxed him five hundred dollars for the benefits which he would receive from the location of the canal! There lies the farm, for many purposes ruined, and there is the big and unsightly, if not unhealthy, ditch, a perpetual nuisance. He is forever debarred from receiving damages, and has no alternative but to submit to this instance of great public injustice.

And, sir, such cases will occur again, unless we adopt a different provision in the new Constitution. It is not so much that the State is like to encroach upon the rights of the citizen or that the agents of the State are disposed to trample upon private rights; it is that the system, the principle, declared in the organic law in this particular, is wrong.

Since the amendment of the gentleman from Jefferson (Mr. Bright) was rejected I hope that the amendment of the gentleman from Franklin (Mr. Berry) will be adopted. I do not know, however, that we are prepared to vote understandingly upon the pending question. There have been so many amendments offered and several having been voted down it is not easy to see the precise shape in which the original section would be left if this amendment were adopted. But I hope that the gentleman's (Mr. Berry's) suggestion will be heeded and the principle of his proposition adopted and engrafted in the new Constitution. Let us provide that when private property is taken for public use the damages assessed shall be paid in money and without deduction or abatement on account of any benefits supposed to be conferred on the owner by the construction of the work. This will be just to the public and just to the individual citizen. On account of the confusion in which we now are, from the action of the Convention upon so many amendments, I will move to refer the original section together with the pending amendments to a select committee, who, having heard

this full and general debate, will be prepared to report a section upon which a large majority of this body can unite.

Mr. RARIDEN. Mr. President, I can see no necessity for that reference. It will only serve to take up time, without any good result- ing to compensate therefor.

I began yesterday to make a few remarks which I deemed pertinent to a motion then made to refer, but being thought out of order at the time, did not conclude them.

I began to say, sir, that there are but two debateable questions with regard to this subject; there are but two points of difference among members; and whenever those two points are settled, members will be prepared to adopt a section upon this subject.

The first question is that raised by this question, in whatever form it may be presented to the Convention: Shall a corporation that wishes to possess itself of the property of an individual for public use, be allowed to take possession of that property until the damages are first assessed by a jury, and the amount paid or tendered in money? That is one question.

The other question is this: Shall those persons who are appointed to assess the damages done to private property by the taking of any part thereof, take into consideration the benefits which they may estimate as accruing to the owner of the property by reason of the construction of the railroad or other public work, so that the damages he shall be entitled to claim may be awarded *minus* the value of the benefits estimated to accrue?

These, Mr. President, are the only questions now dividing the Convention; and when they are settled—as I think they can be very soon—there will be no controversy with regard to this section of the report of the committee on the rights and privileges of the inhabitants of the State.

I hope the question will be put directly, as the gentleman from Jefferson put it: "Shall these corporations be arrested and restrained from progressing with their works until damages to private property are ascertained and paid or tendered in money?" That is the first question; and then I hope to see the next put directly: In ascertaining damages to private property, shall the jury take into consideration the benefits conferred upon other property of the same owner, and award the damages *minus* the value of the estimated benefits?

Now, I want to see these questions decided without the unnecessary delay of a reference of the section to a select committee. Can we not get at the opinion of this body without a reference?

Mr. BADGER. Before the question is taken I wish to say a few words.

I desire to see the section, as it would read amended by the gentleman from Laporte, (Mr. Niles,) adopted by the Convention. I desire

this for several reasons, a few of which I will very briefly give.

And first, sir, that amendment (Mr. Niles') is very nearly in the language of the old Constitution.

Secondly, it embodies the sentiments which I hold in regard to the subject, and I consider it to be the doctrine upon this subject that will be held by the people of the State.

I appeal to Delegates for an answer to one question: are we here to legislate in the abstract, or are we here to revise and amend the organic law? For which purpose are we assembled in this Convention? Every gentleman can answer this without reflection. Then, sir, shall we legislate; shall we engraft in the new Constitution provisions which come strictly within the scope and sphere of the legislative department? Is this our business? Unhesitatingly we answer, no!

Mr. President, in looking over the corresponding section in the old Constitution there is one word which attracts my attention; one word to which, in this connection, I am particularly attached. It is this:

"No man's *particular* services shall be required."

I suggest to the gentleman from Laporte (Mr. Niles) the propriety of taking that word and inserting it in his amendment, so that the section as amended would read,

"No man's *particular* services shall be required, &c."

I do this by way of compromise between the two parties on this question.

With regard to the other branch of the section providing that,

"No man's property shall be taken by law without just compensation first assessed by a jury of free-holders and tendered, together with the cost of the proceeding, to the owner, by the person to be benefited. Provided, that such tender, if rejected, shall not bar the right of appeal."

I ask gentlemen if, in view of the internal improvements that are growing up all over the State, based upon the sure foundations of individual enterprise and the commercial wants and resources of the State, they desire to clog the wheels of this mighty engine of prosperity and high civilization? Are gentlemen disposed to discourage the commencement and arrest the progress of these noble lines of communication which constitute the arterial system of our political body, by such restrictive provisions as are here proposed? Will they do it? This is the question, plain but direct. If not, let the question be taken on the amendment of the gentleman from Laporte, without further delay, and let us adopt it as the best proposition elicited in the course of this debate. Leave it all to future legislatures to declare when, how much, and in what manner, damages for private property required for public use shall be assessed and



paid to individuals. It certainly is not within our province that we should do it; we are not here to legislate in detail, but to revise and amend the fundamental law of the State. And the more brief and concise we can make it, the better, and the more readily will it be received and approved by the people.

Mr. President, this is the first time I have undertaken to address the Convention, except one speech of about the length of your finger, and then they stole my thunder, and credited the account to Judge Borden. [Great laughter.]

But now that I am upon the floor, one or two remarks and no more.

The gentleman from Wayne (Mr. Rariden) remarked, very justly, that the question before us is this: "Shall this Convention declare that damages assessed for private property taken for public use, shall be collected and paid over to the individual *prior* to the release of the right of way, or subsequently?" This is the turning point.

My own impression is, that, when gentlemen look at the onward progress of internal improvements constructed by private enterprise, they will not consent that this progress, so healthful and so full of the brightest promise of future prosperity and power, shall be checked by such obstacles and discouragements as long law suits for the right of way and all that, before the enterprise of the community can march apace. Gentlemen may boast of feelings callous and unaffected by the infant struggles of this giant of improvement yet in its cradle; they may appear indifferent to the multiplication of railroads and plank roads, but in reflective moments all will agree upon their great utility, and upon the policy of encouraging and fostering the system. And I think that all will concede that to future legislatures should be left the power to decide the details as to the manner of assessing damages, and the time of their payment.

I trust that the amendment offered by the gentleman from Laporte, will be adopted as it came from his hands, and that all other amendments, hail from whence they may, will be voted down.

Mr. NILES. One word to the Convention in reference to the suggestion of the gentleman from Putnam. I used the word partly because it was in the old Constitution, but mainly because it seemed to be a word fit to distinguish between the services which a man should be paid for—such as serving as a road supervisor, or a juror—and those general services which all good citizens are expected gratuitously to render—as, for example, assisting in the suppression of a riot, or the prevention of the commission of any crime. In other words, the general duty of aiding to preserve good order in society.

Mr. EDMONSTON inquired whether it would be in order to offer an amendment.

The question was then taken on the proposition to re-commit the section and the pending

amendments to a select committee, and it was rejected.

The CHAIR stated the question now to be on the amendment to the amendment offered by the gentleman from Franklin.

Mr. WATTS. I do not understand that there is any motion to strike out.

The PRESIDENT. Yes, sir, there is such a motion.

Mr. WATTS. Then I take back my understanding. [A laugh.]

The PRESIDENT. The motion is to strike out the word "personal," and insert the word "particular."

Mr. BASCOM wished that such a provision should be made as to prevent a man from being placed under obligations to perform public duties week after week without being fairly remunerated. The performance of these duties, in many cases, bore very heavily upon poor men, and it was right that they should be properly rewarded. If the proposition was to change the word into "personal," he was in favor of it.

Mr. KINDLEY said, he had objections to the report of the committee, as well as to the amendments which had been offered. It was the duty of the Convention to frame organic laws. Now it would be admitted on all hands that it was exceedingly difficult to frame a law—even if gentlemen always had that one object in view—the "greatest good to the greatest number"—that would not in some cases produce evil, or operate in such a way as, under peculiar circumstances, to bring about an actual injury. Such a law man could not make, because of the imperfection of human nature. Even the laws of nature, so far as we understood them, were not always uniform. The river, which usually passed within given bounds in its progress to the ocean, would sometimes overflow its banks and do great damage to property. It was the duty, then, of the Convention, to provide for the enactment of such laws as would secure the greatest possible good to the greatest number, and when they did this, they would make proper provision for the remuneration of every man who was called upon to perform public duties. The present age was an age of enterprise, and if the progressive spirit of the people was to be checked by any Constitutional enactment, it would be better for the interests of the people of the State that they should not have met in that Convention. These internal improvements by means of railroads were, if he might use such a figure, the very arteries of the country, and it was as essential that they should be sustained, as that the blood should circulate through the veins so as to sustain animal life. He should therefore move that the section be so amended as to make it read that "no man's property should be taken without just compensation."

The question being taken on a division, as to striking out the word "personal" and inserting:

the word "particular," it was agreed to—ayes 71, noes 20.

The PRESIDENT stated the question now to be on the amendment to the amendment offered by the gentleman from Franklin.

Mr. HOLMAN moved the following amendment to the original section—

To strike out the words "by a jury of freeholders" in the third section, and also the words "together with the expenses of the proceeding."

The section as proposed thus to be amended was read.

Mr. OWEN moved to amend the amendment of the gentleman from Dearborn. In one particular he believed it was very good, but it left out some minor details. There was one objection that he had made to the section as it stood, and which he believed to be available, and that was that although this was a good provision, it might, in some cases, operate disadvantageously. He proposed to alter the amendment so as to make it read:

"No man's particular services shall be demanded without just compensation; and no man's property shall be taken without just compensation, nor, except in case of the State, without such compensation being first tendered to the owner."

Mr. HALL moved to re-commit the article to the committee which reported it, with the view of incorporating the amendment of the gentleman from Owen.

Mr. READ was of opinion that if this matter were again referred the Convention would have to travel over the same ground over which they had already been traveling. He was decidedly opposed to a re-committal, and he hoped the Convention would not agree to it.

The question was then taken on the motion to re-commit, and it was rejected.

Mr. DUNN wished if possible to bring the House to a direct vote on the amendment of the gentleman from Laporte. He believed that the State had no right to take any man's property for any other use than that of the public. She cannot give to a corporation the power to take private property for the private benefit of the corporation, and when the State delegates to a corporation the power to take private property for the benefit of the public, it is the State and not the corporation that takes the property. He could not, therefore, see the propriety of the distinction contained in the amendment offered by the gentleman from Posey (Mr. Owen).

He would, therefore, move to lay the amendment on the table.

The motion was withdrawn at the request of Mr. WALPOLE.

Mr. BRIGHT. I would like to inquire as to what restrictions the gentleman from Hancock refers to.

Mr. WALPOLE. I refer to the restriction sought to be imposed upon us, that in condemning property, the increase of the value of the property on account of the improvement, shall not be taken into consideration; that the assessed value of the property, without this consideration, shall be first paid in money.

Mr. BRIGHT. This is a subject which received my early and attentive consideration; it is a matter upon which, I may be allowed to say, I have bestowed a great deal of thought and careful examination before I came to this Convention, and without reference to my action and votes here, I carefully and fully investigated the subject in justice to a client, who had retained me to obtain compensation for damages sustained in the taking of his property for the construction of that very railroad in which the gentleman from Hancock (Mr. Walpole) and others think I am so much interested. Although I was perfectly satisfied with the language of the provision of the old Constitution as it is; still, under the false construction of the language by the courts at that time, justice, in my opinion, was not done to the individual whose property was taken for the construction of the road. As I remarked on yesterday when I had the floor, the old construction of the Constitution has been reviewed, and with the present construction, as held by the courts, I am entirely satisfied, it restores that provision (relative to the right of way for public improvements) of the Constitution to the interpretation intended by its framers. It was to make that construction of the Constitution in this regard certain that I proposed my amendment. Let me say, Mr. President, that, personally, I have very little interest in the Madison and Indianapolis Railroad.

Mr. WALPOLE. It was to the gentleman's interest as a *representative* that I alluded.

Mr. BRIGHT. Mr. President. I have no interests to represent upon this floor which will conflict with the rights and interests of the State at large. I do not consider myself as holding a seat in this Convention for the purpose of exclusively representing Jefferson county. I am here to represent and support the interests of the whole people of Indiana—not the interests of a section as opposed to the general welfare. I am not the representative of a local or personal interest; I come up here to aid in the formation of a Constitution, which shall be, as I trust, the beneficent organic law for this generation of the people of the State, and for the generation to come, as well as for myself and my children. I am a constituent part of the people—an unit in the great aggregate—and I cannot, if I would, separate my interests or the interests of my immediate constituents from the interests of the people of the State. We are all interested together and alike in the formation of a good Constitution; we shall all



be benefited by its wise provisions, or injured by its bad ones.

I advocated the proposition contained in my amendment offered on the day before yesterday, because I believe it to be correct in principle, and because I am convinced that it can be demonstrated to the satisfaction of all reasonable men—men whose minds are open to conviction—that it is correct in theory, and just to all parties in its practical operation. What is it? It is that when private property shall be taken for public purposes, the owner shall be compensated in money for its assessed value, irrespective of any extrinsic benefits supposed to be conferred upon adjoining property. That is the substance, though not the exact language of my amendment. And, sir, I contend that that is the meaning and intent of the corresponding provision in the old Constitution, though for a long time a different construction was given to it by the courts—a construction which has recently been reviewed and discarded. If gentlemen will take the trouble to read the section of the old Constitution, without any reference to the construction that has been put upon it, they will certainly come to the conclusion that it is intended to provide that individuals, whose property has been taken for public use, shall be compensated therefor without reference to benefits supposed to be conferred upon them by the construction of the public work. It was never intended by the framers that extrinsic and imaginary benefits should be thrown into the scale in adjusting the balance due to the owner of property taken for public use. When the language is that he shall be compensated, every man would understand that he was to be paid the market value of his property, and that he should be paid no more and no less.

But in 1836, the Legislature provided by law that where private property was taken for public use, instead of being paid for that property in money at its market value, he should be compensated for the property of which he was deprived by the enhanced value of his adjoining property. If he owned, by chance, only the property of which he was deprived, then he was, according to the law of 1836, to be paid its real value in money; but, sir, if he had the fortune, or to speak more accurately, the misfortune, to own a piece of adjoining land, then the jury, in estimating the damages done by taking a part of his property, were required to take into consideration the benefits supposed to be conferred upon the adjoining property by the construction of the public work; and, as the gentleman from Wayne (Mr. Rariden) states the question, award the damages *minus* the supposed value of the benefits. Such a law is unequal and unjust in its operation. It is unjust in its operation because it compels the individual who may be the owner of property adjoining the line of a public improvement to

defray more than his just proportion of the burthens of government. If two individuals, respectively, own property adjoining the line of a railroad, and a part of the land belonging to one is taken for the construction of the road, but, by requiring a jury in assessing the damages to take into consideration the benefits supposed to be conferred upon him, the individual whose property is taken loses the general benefits the road might confer upon him, because they are made an offset to the value of the property actually taken from him. On the other hand, his neighbor, whose property lies on the line of the road, but none of which was taken for its construction, reaps all the general advantages resulting from the nearness of his property to the road, without sustaining the loss of a dollar in damages. Therefore, I say that the principle of the law of 1836 was an unjust one, and its practical operation unjust.

On the other hand, if you adopt the provision contained in the proposition which I had the honor to submit, and compensate the owner of property taken for public use, without reference to what other property he owns, you do no injustice to any one, but secure an equalization of the benefits of public improvements.

Every work of this kind is for the benefit of the people, and the prosperity of the State. Why, then, benefit all the people of the State, by the construction of a work of public improvement, except the man over a part of whose property the work is built? In this view of the case, the law is manifestly a bad one.

Mr. President, the gentleman from Hancock (Mr. Walpole) tells us that the existing corporations of the State have been benefited by the law of 1836, and by the construction given to the provision of the old Constitution, and that it is but just that the new companies springing into existence over all the State, for the purpose of building railroads and plank roads, should have the same facilities secured to them for obtaining the right of way. But, sir, if the practice in this regard has heretofore been wrong and unjust, it is no good reason why it should be continued in the future. We should not persist in a wrong because companies hereafter to be formed, cannot, if compelled to act upon just and equitable principles, obtain the right of way and construct their roads as cheaply as the roads already in operation. We must provide a remedy for an ascertained wrong. If it is desirable that roads and other works of internal improvement should be undertaken and prosecuted,—it is equally desirable to protect the rights of the citizen, and justly to remunerate a man whose real estate has been taken from him for the construction of these works. Not remunerate him for real and productive property, in imaginary and illusory benefits, supposed to be conferred upon other property, which he may have the misfortune to possess.

Why, Mr. President, under the operation of

the law of 1836, where individuals were deprived of their property, and paid in imaginary benefits, injuries to the amount of hundreds and thousands of dollars, were inflicted upon citizens. The incident mentioned by my friend from Johnston, is a strong one, and applicable to the point in discussion. In that case a quarter section of valuable and beautiful land was destroyed, and the owner paid, not even in the benefits accruing to his property, but in the benefits which it was supposed would be conferred on the remainder of his property from its lying upon the line of the great Central Canal! And yet, that canal is not completed to this day, nor will it ever be. Is not this a case of gross injustice done by the State to a private individual, and a case for which he has no redress? Now, sir, if in that instance the State had paid the owner of the property damaged by the cutting through of a canal, and the construction of a lock on his premises, in money and without regard to his other property, justice would have been done.

The adoption of this resolution will not prevent or discourage the formation of companies for the construction of works of public improvement. I contend that the association of individuals into stock companies for the purpose of building railroads and plank roads, is based upon a vastly more substantial basis than the opportunity of securing the right of way without justly compensating individuals for property taken. The spirit of the age in which we live, and the demands of commerce for new channels and greater facilities, is what incites private enterprise to the construction of these noble lines of railway that are radiating in every direction from the centres of commerce and population, and binding all portions of our great State together in iron bands. Then, sir, these works will go on, notwithstanding any securities and guards we may throw around the rights of citizens. Where there is a demand for a plank road or a railroad, the right of way will be obtained, the timber, stone, and all materials furnished, the road will be opened up through forests and swamps, and, before the community are fairly satisfied of its serious contemplation, the iron horse will be thundering past their dwellings. No, sir, believe not the doctrine that the spirit of internal improvements, based upon private enterprise, is so fickle in its character—so weak and unsubstantial in its basis, that it will not progress unless it can secure to itself the right of taking private property, without a just compensation.

Mr. President, in conclusion, let me say that I trust this Convention will adopt the provision. I am not particular in what form, that the owner of private property, taken for public purposes, shall be paid therefor in money, and irrespective of supposed benefits to be conferred upon any other property he may own. It is true that in the State vests the right of eminent domain, and she has the abstract right to take private prop-

erty without making any compensation, and she has the power to delegate this right of eminent domain to incorporated companies, but we desire to limit and restrict the exercise of this power by the State.

I should be glad to see the amendment which I offered, adopted, but I am chiefly desirous that its principle, in any form, shall be engrafted in the new Constitution.

I am laboring, sir, under a severe head-ache, and feel unable to present my views in proper form. I will leave the further discussion of the subject to other gentlemen.

Mr. OWEN. I have nothing to say with reference to the amendment spoken of by the gentleman who has just taken his seat, for that is not before us. I propose to make a single remark with reference to what has been said by the gentleman from Jefferson, (Mr. Dunn,) on one clause of the amendment now under consideration.

There is no State in the Union, if we except Massachusetts, that have engaged more extensively in works of public improvement, than the State of New York; and I find this distinction taken between property taken for public use by the State, and property taken by individuals and corporations for the same purpose, in the New York Constitution. The words are:

"When private property shall be taken for any public use, the compensation to be made therefor, *when such compensation is not made by the State*, shall be ascertained by a jury," and so on.

Where property is taken for State purposes, it cannot be so imperative that there should be a jury trial. I think the distinction referred to a very convenient and proper one. But where the matter lies between an individual and a corporation, then the corporation should be required to pay first, and take afterwards. I am willing, so far as the State is concerned, that it should take first; but I am not willing that the individual should be compelled to sell to corporations upon their own terms; or else, after losing his property, to wait for payment until they see fit to make it.

Mr. CRUMBACKER. There has been so many amendments applied to this proposition, that I confess myself to be lost. If it is in order, therefore, I will call for the reading of the proposition of the gentleman from Laporte (Mr. Niles).

The PRESIDENT. Under the existing state of the case, it is not strictly in order to read that proposition, but, by unanimous consent, the Secretary will read. [Cries of "read," "read."]

"The proposition of Mr. Niles having been read by the Secretary—

Mr. SHOUP said: Mr. President, would it now be in order to move to refer this subject to the appropriate committee, with instructions?



The PRESIDENT. A motion to refer would be in order, either with or without instructions.

Mr. SHOUP. There seems to be quite a difference of opinion in regard to this matter; and it is my purpose to accommodate the views of all. I think, for this purpose, that it is best to unite upon some general propositions, as far as we can. I propose to refer the subject again to the committee on rights and privileges, with the following instructions:

"The committee on 'the rights and privileges' are instructed to report the following section as a part of the amended Constitution:

"No man's personal services, or real property, shall be demanded for public use, without just compensation. No man's personal property shall be taken without his consent."

This motion having been entertained by the Chair—

Mr. S. said: We all know that the rights of persons and property should be held sacred; but when the public good requires that a man's services should be had, the State has a right to command those services, paying him a just compensation therefor. We are also willing that real property should be taken from the individual when the public good demands it for the construction of canals, railroads, plank roads, &c. It is right that the Legislature should have power to do this, for this reason: we take the case of a person living in the interior of the State, remote from market. It is desirable and right that such a man should have a market for his surplus produce. It is clear, then, that unless the Legislature have this right to confer the power of condemning private property for public use, even a single obstinate individual might prevent the construction of a road, which might open a market for the surplus produce of the interior. We all agree, therefore, that this right should be preserved. But I believe there should be a distinction made between the right to personal property and the right to real property. A man may have personal property, which it is his peculiar right to hold. I would not place the individual who has personal property upon the same footing with the owner of real property, which the corporation might approach, demand, and condemn, and which, in most cases, can be had upon paying a fair compensation to the owner; for if one man should not be willing to give the right of way to a road company upon fair terms, his neighbor, who lives by the side of him, might; and so competition would generally regulate the price.

With reference to this matter of assessing the compensation, I think it should remain in the hands of the Legislature. We all agree to the principle that property should not be taken without a just compensation: and this, as I think, would be going far enough for a Constitutional provision. I have no fear about trusting the details of this matter with the people.

But gentlemen differ. Some are anxious that the benefits arising from the improvement, should not be taken into consideration along with the assessment of damages, because, as the gentleman from Jefferson (Mr. Bright) says, it would operate unequally; that it would be unequal to tax him for a public benefit, while his neighbor, along side of him, contributes nothing, and is equally as much benefited by the improvement as himself. Sir, I hold that where no damage has been sustained, there is nothing due. If a road was to be constructed over two farms adjoining each other, and five acres were to be taken from each; and if the work should be found to benefit the owner of one of these farms to the amount of five hundred dollars, and the other to the amount of six hundred dollars, I hold that the former has no right to complain because he is not so much benefited as his neighbor.

I cannot see, sir, why gentlemen should be unwilling that the adjustment of all these matters should be left to a fair jury trial. It seems to me, certainly, that every man ought to be willing to submit such a case to the decision of a jury of his peers.

But again: with respect to the consideration that one man is taxed for the construction of a public work, and his neighbor is not, I ask if a man has land lying in a state of nature—not worth more than three or four dollars an acre—if a railroad should pass through that land, enhancing its value to ten dollars an acre, has the owner of that land received any damage? He certainly has not; but, on the contrary, he has been benefited by a large increase in the value of his land, and the value of his produce is proportionably increased; and therefore it is, that I think it is eminently right and proper that the jury of assessment should consider this whole matter when they come to administer justice to these parties. I am willing to bring all incorporated bodies to a strict accountability and responsibility, and I would give them no undue advantages. But these public works contribute to the general good, and to encourage them is to encourage a public benefit. We should not break them down, but rather support them; for so long as they do no damage, there is no cause of complaint. If we add to the value of the property of the citizen, we certainly do no harm; and so long as we do no harm, no man has any right to complain. When a man says, you have not benefited me as much as my neighbor, who does not perceive that this arises from a feeling of envy, which ought not to be countenanced anywhere?

I hope, Mr. President, that we shall be able to unite upon some general principle with reference to this matter; for, certainly, we should not go into the details of legislation here. I hope we shall determine to incorporate only general principles into the Constitution, and

leave it for the people to carry out the details. It is with this feeling, and these views, that I have made my motion to re-commit, with instructions.

Mr. RARIDEN. I desire to consider the doctrine, or the theory, advanced by the gentleman from Jefferson (Mr. Bright).

I am opposed to re-commitment. Upon this branch of the motion, I can only say what I said this morning: that there are two debatable questions involved here, which have to be decided on this floor, and a re-commitment to the committee would not in the least abridge our labor or concentrate the action of the Convention. We had much better come to our decision now, while we have the question presented in a tangible shape, in the proposition of the gentleman from Laporte (Mr. Niles).

But I want to look at the theory of the gentleman from Jefferson. He affirms that the old Constitution is right upon this subject, but that the law carrying out the Constitutional principle and the decisions of the courts thereon, are all wrong, and that the wrong consists in the inconsistency of the laws and decisions with the Constitutional provision. This is exactly the question which I am going to discuss. I understand the gentleman to affirm that it was never intended, by the old Constitutional provision, that the consequent benefits of a work of public improvement should be taken into consideration by a jury empanelled for the assessment of damages; and I understand him to say, further, that all our judicial tribunals have committed an error in their decisions upon this matter. Well, now, I maintain that the Constitution and Legislature, and the decisions of the courts, are all right—that they are all right, together, upon this subject; and that they are perfectly consistent with the uniform principles of equity and justice which generally characterize the administration of the laws in this country.

I proceed upon the assumption, that whenever the State sees proper, in the construction of any public work, to use or to take property from an individual and deprive him of its use, or dispossess him entirely, that when the individual calls for an indemnity for his loss, the jury of assessment should consider the amount of benefit which the individual will derive from the public work, and deduct such benefit from his positive damages. The gentleman says this is wrong and inequitable; and here I meet him and say, that this is all just, and right, and proper. I go further, and say, that without any such legislation, the decisions of the courts would be identically the same; because the law itself is based upon the general principles of equity, and the decisions are only made to conform to those principles.

Let us examine the case. Here an individual complains that a railroad or a canal, passing through his ground, has injured his property;

he makes the issue, and says, "I have suffered in my property to the amount of one thousand dollars;" and a jury is called to adjudicate upon his claims. They ascertain that his property, independently of the public work, (that is, before it was contemplated,) was worth two thousand dollars, but that the construction of the public work had elevated the value of his property to five thousand dollars. He has sustained a positive injury by this public work to the amount of one thousand dollars, but at the same time, this public work has elevated the value of his property to five thousand dollars. I ask, then, upon the supposition that no law exists in the case, can any honest man, when called upon to assess the damages here claimed, say, that this man has sustained any damage at all? Could you, sir, upon your oath to administer justice, with a full knowledge of the fact that the balance of this man's property was thus increased, and to this day remained doubled or trebled in value—could you say that this man had sustained damages to the amount of one thousand dollars? No, sir; no man could say that. So, without the law, you see, the decision ought to come to what the law is; because the man has not been injured, but rather benefited. It is true, the beauty of his farm may have been marred somewhat, but money is the measure which represents everything connected with a case of damages. The value of the thing before the cause of the complaint existed, and the value of the thing left, are only to be considered; and because the thing left is worth more than it was before, consequently the individual has not sustained any damage.

Again: the gentleman (Mr. Bright) says, it would be very unjust, in these assessments, to take into consideration the good which a man derives from the public work, as an offset to the damages, because his neighbor receives almost, or quite, as much benefit from the work, and no injury at all. Well, but what of that? Have I a right to find fault with my neighbor because a blessing has fallen upon him?—because a common blessing has fallen upon us both, but with some little blotch in my case? Is that any reason why I should murmur? My property has been doubled, although I have lost four or five acres of ground; but should I say, here is my neighbor, whose property has also been doubled, and I cannot stand that? He has gone without loss, and I have sustained the loss of my four or five acres; therefore, you should not deduct from my damages any thing you enjoy!

Mr. President, I could not, for a moment, allow myself to reason in this way. As I have said on a former occasion, when we enter into a civil compact for good government, we give up many of our natural rights for the sake of obtaining a remedy for our wrongs, and the government is bound to provide that remedy. We have stipulated that we will not take the power



of redress into our own hands, depending upon the government, through our representatives, to provide the remedy; and hence we find it in the Statutes. The citizen and the corporation are referred to a common tribunal—the courts of justice. The Legislature has said that, in the estimate of damages by a corporation, the benefits of the work shall be considered; and as we have seen, such would be the decision without the law. For the result of the examination is, that the individual has lost five acres, but the residue of his land is more than doubled in value, above what it was before the cause of his complaint existed. I would ask again, then, has he been injured? I say he has not. I would like to be injured in that way every day in my life. I would like to have such a kind of injury forced upon me frequently.

But gentlemen tell me this benefit is ideal. Well, the whole that a man possesses is ideal just as much. We only have just so much time more or less, to get through the world. Most of us, I suppose, will get through quick enough without railroads or steam boats.

I confess that the gentleman from Hancock (Mr. Walpole) struck out at least one new idea in his remarks, which my mind had not conceived, until he put it into my head. I have no doubt but that it was put forth with design, and that it will have its effect upon the community. This Madison and Indianapolis railroad, he said, was powerful now; it had wealth and strength without limit or stint. Well that road had the benefit of the principle of which we have been speaking, in its beginning; and it had its difficulties too, and enough of them, along with all that we call charitable and generous, and considerate. But now it has grown to be strong. It was now unrestricted in means; so that it would not hurt it nor any of its various arms, extending out in many directions, but all terminating upon the one line; it would not hurt that road if forty, fifty, or a hundred land holders should object to the progress of any one of its arms, projected and terminating between this and Madison. There is an abundance of money to supply every such demand that can be made, without regard to any off-setting of the benefits of the work in procuring the right of way. But, is it so with our other railroads? Can they get along amidst these obstructions and embarrassments, superadded to all their inherent difficulties? Have they those men who will put in their money, power, and influence to aid them, and to hush every complaint, and to make every body their friend? No, sir, they are too poor to buy up an adequate support. Not that I suppose any such thing ever was done in a corrupt way; but that would be the effect of the possession of large money resources. For this reason, there will always appear strong friends enough in behalf of any railroad terminating upon the Madison and Indianapolis Railroad. All they would have to do,

in case of any difficulty, would be to look to the common parent and common friend, and there they would find money at their service. The work itself would be good security for the old corporation to advance money upon, for they could take the road when completed, and keep it till the proceeds might re-imburse them; and it would be to the advantage of the corporation to do so. Whoever had the interest of the company at heart, would favor such a policy. If the gentleman (Mr. Bright) were a director he would advise such a course; and so would I; and such would be the course of all men in regard to such things; and I see no impropriety in it.

But I want to continue to all other railroad companies the same opportunity to make their way out and through the depots of trade, which has been extended to the Madison and Indianapolis railroad. I want to leave the Constitution as it is in this respect, with all the legislation, and decisions of the courts, and jury assessments which have been made under it. I want no distinction to be made between the old and the new railroad companies; and I believe I express the wants of the country in this respect.

But, I am astonished at the course of the gentleman from Jefferson, now that he has got the benefit of a correct principle, to turn round and denounce it. But this is not more absurd than for him to say, he has a right to grumble because his neighbor (who enjoys the same benefits and advantages of a railroad with himself) has not been injured as much as he has, by its construction. It is wrong, sir; it is wrong in principle, it is unchristian-like, it is uncharitable, and should not be recognized in the fundamental law of any country.

Mr. KILGORE. I rise merely for the purpose of obtaining a direct vote upon the proposition of the gentleman from Laporte (Mr. Niles). For this purpose, I move to strike out the instructions embraced in the motion of the gentleman from Franklin, (Mr. Shoup,) and inserting the proposition of the gentleman from Laporte, by way of amendment to the instructions.

Mr. RARIDEN (in his seat). Vote against them all.

Mr. KILGORE. We have discussed the subject now some three or four days: and there have been some two or three votes relative to amendments, which indicate pretty strongly that this proposition will probably meet the approbation of the majority. Where, then, is the policy in consuming time with discussions. Would it not be far better to take a direct vote upon the proposition? If it should be voted down, then we shall all be so much more ready to try again to make the section as perfect as possible.

The PRESIDENT. Will the gentleman send up his amendment, in writing?

Mr. KILGORE. The Secretary has the paper upon the table.

The amendment to the instructions was read by the Secretary.

Mr. BERRY proposed to amend the amendment to the instructions, by adding his proposition.

Mr. KILGORE. I hope the gentleman will allow us to take a direct vote upon the proposition of the gentleman from Laporte.

[Mr. WALPOLE next addressed the Convention. His remarks are reserved for revision.]

Pending this question,

On motion by Mr. TAGUE, the Convention adjourned till to-morrow morning, nine o'clock.

## SATURDAY, Nov. 9, 1850.

The Convention met, pursuant to adjournment.

Prayer by Rev. Mr. MILLS.

The Journal of yesterday was read and approved.

Mr. READ of Clark, from the committee on State officers other than executive and judiciary, made the following report:

Mr. PRESIDENT: The committee on State officers, other than executive and judiciary, to which was referred a resolution instructing them to inquire into the expediency of engrafting in the new Constitution, a section providing for the election of a State Librarian by the qualified voters of the State, have had the subject under consideration, and directed me to report the following section for the consideration of the Convention, and ask to be discharged:

Sec. — There shall be elected by the qualified voters of the State, "a State Librarian," whose powers and duties shall be prescribed by law, and who shall hold his office two years, and until his successor be elected and qualified.

The report was concurred in, and the section was read a first time, and passed to a second reading.

Mr. GIBSON, from the committee on the practice of law and law reform, made the following report:

The committee on law and law reform, to whom was reported a resolution directing them to inquire into the expediency of providing in the Constitution, that all debts contracted after the 4th of July, 1860, shall be debts of honor, and not collectable by law—have had the same under consideration, and beg leave to report that they deem it inexpedient to report such provision, and recommend that the resolution lie on the table.

The report was concurred in.

Mr. GIBSON, from the same committee, made the following report:

The committee on law reform, to whom was referred a resolution of inquiry as to the expediency of amending the Constitution, so that testimony in all cases of equity shall be taken in the same manner as in courts of law,

beg leave to report that they have had the subject under consideration, and that they deem action thereon inexpedient, and recommend that the resolution lie on the table.

Which report was concurred in.

Mr. GIBSON, from the committee on the practice of law and law reform, made the following report:

The committee on law and law reform to whom was referred a resolution of inquiry, into the expediency of providing that in criminal cases the jury shall find facts alone, and the courts assess the penalty, report that they have had the same under consideration, and deem action thereon inexpedient and recommend that the resolution lie on the table.

The report was not concurred in.

## GRAND JURY SYSTEM.

Mr. ROBINSON. Some days ago, Mr. President, I offered a resolution on a subject which was made the special order for Monday last. I move now that the Convention take the resolution from the table.

A MEMBER. For what purpose?

Mr. ROBINSON. Not with any view of discussing the subject, but merely for the purpose of having it referred to a committee, so that in case the resolution on the subject now pending before the Convention should fail, the Convention may be in a position to take the subject up on another report.

The motion to take up the resolution was agreed to.

Mr. ROBINSON. The resolution which I offered is as follows:

Resolved, That the committee on matters pertaining to criminal law be and they are hereby instructed to report to the Convention, a section to be incorporated in the new Constitution, as follows:

Sec. — That no person shall be put to answer any criminal charge, of a capital character, nor any criminal charge, the punishment whereof is or may be confinement in the State prison, a county jail, but by presentment on indictment by a Grand Jury. Provided, however, that the Grand Jury shall have no power to present or indict any person for any crime or petit misdemeanor below the grade above referred to; but the same shall be punished in such way and manner as the Legislature may prescribe.

Mr. TERRY. Will it be in order to move to amend the resolution?

The PRESIDENT. Certainly.

Mr. TERRY. Then I move to amend it by striking out all after the word "resolved," and inserting the following: "No person shall be held to answer for a capital or otherwise infamous crime, unless on presentment or indictment."

Mr. ROBINSON. I hope the amendment will not be adopted. I have no disposition to detain the Convention with any remarks on the



main question involved in this resolution; but I will merely make an observation by way of explanation. I have submitted a proposition which I wish should go to a committee, and I believe, in regard to the Grand Jury system, it is one which is called for by the people. The people are not opposed to that system. I do not believe that a majority of them are disposed to have it wholly abolished. The only complaint that exists in regard to it—at all events so far as I have heard—is the abuses that arise under it. It is the number of these indictments for petit misdemeanors which occupy so much of the attention of courts, and which sometimes detain them for a whole week, and which might be much better disposed of by some inferior tribunal. I believe that the resolution embodies what the people want. I believe that the majority of the people of Indiana are not in favor—so far as regards capital crimes, involving the rights and liberties of the citizen—of abolishing Grand Juries and taking away that guard that has been thrown around them ever since we have existed as a government. I believe that they are justly opposed, however, to this constant taking up of time by the circuit court in the trial of these petit misdemeanors for which the Legislature might provide a punishment in another manner, and in such a way as to secure the rights of all parties.

I hope, therefore, that the amendment will not be adopted, but that the resolution will be permitted to go to the committee. If the committee should report a section here embodying the terms of that resolution, it will then be a proper subject of amendment, and the gentleman can avail himself of every thing that can then be done to effect what he desires in that amendment. I again express my hope that this resolution may be permitted to go to the committee I have named, and when their report is made, if they should report favorably, I have no doubt that the Convention will be perfectly willing to hear every gentleman express his views on the subject. The question as to what reforms shall be made in the Grand Jury system is a very important one, and one upon which every individual here should have the fullest opportunity of expressing his opinions, and of presenting his objections to any proposition that may be made, and to offer any amendment which may suggest itself to him.

Mr. TERRY wished to modify his amendment by inserting the words, "by a Grand Jury." The words "capital" and "infamous" had a technical meaning. He wished merely to say that his amendment differed very little from the resolution of the gentleman from Decatur. It was to confine the jurisdiction of Grand Juries exclusively to that class of cases which involved life, liberty, or character.

Mr. HOLMAN. I have no wish to stifle debate upon this subject. On the contrary, I admit it to be a question of paramount importance;

but gentlemen should remember that this question is already pending in two forms before the Convention; first, on the proposition of the gentleman from Tippecanoe, and the amendments which have been offered to it, and secondly, in a section reported by the committee on rights and privileges of the inhabitants of the State. It would therefore seem to me to be very unwise to consume the time of the Convention in having three propositions in which the same question is involved. For that reason, therefore, I will move to lay the resolution and amendment on the table.

Mr. ROBINSON. I do not desire to occupy the time of the Convention, as I am aware they are impatient to proceed to the consideration of the order of the day; but I do think that the gentleman from Dearborn and the gentleman from Davis, (Mr. Terry,) who offered the amendment, are both mistaken in the force of the amendment.

There is no proposition before the Convention embracing the same principle contained in the one which I have offered. There is one which, in substance, if not directly, proposes to abolish Grand Juries altogether, and there is another which has been proposed by the gentleman from Tippecanoe, to the same effect. The effect will be the same as the adoption of the section reported by the chairman of the committee on rights and privileges, which amounts to a total abolition of the Grand Juries. That will be the effect of the gentleman from Tippecanoe. The amendment of the gentleman on my left would not accomplish every thing that is sought to be effected by the resolution now before the Convention. It simply asks to retain in our Constitution the language of the Constitution of the United States, which says that no person shall be put to answer for a capital or otherwise infamous crime, except on presentment by, or indictment before, a Grand Jury. It leaves the question of jurisdiction, that has always been acted upon in regard to petit misdemeanors, precisely what it was before. Under the provision of the amendment, and under the language of the Constitution of the United States, as acted upon by courts, Grand Juries have always had jurisdiction to indict for any crime or misdemeanor.

I simply have to say that the proposition contained in my resolution goes further. It embraces, in my mind, what it ought to embrace, while it provides that no person shall be put upon his trial for a capital or infamous crime, by which he can be confined in a State prison or a county jail, it takes away from Grand Juries, by direct constitutional legislation, if it should be adopted, all jurisdiction in regard to this class of petit misdemeanors, that have been perplexing and occupying the time of the courts, and creating dissatisfaction among the people. There is no proposition before the Convention that goes to that extent. While then that prop-

osition retains the rights of the citizen, and throws around him a guard that ought to exist in regard to these high offenses, it takes from Grand Juries, and from the criminal courts, the right to prosecute these petit misdemeanors, and makes it obligatory on the Legislature to create a tribunal before which such offenses may be investigated, and to provide for the manner in which they shall be punished. If gentlemen will only consider for a moment, I have no doubt that they will come to the conclusion that the proposition is one which is right in itself, and, also, that it is loudly called for. While we are not willing to take from Grand Juries jurisdiction over these high crimes involving important consequences, we do think that with perfect propriety, and with a due regard to the rights of the citizen, there can be created by legislative enactment, an inferior court in which these petit misdemeanors could be tried and punished. That is the object of the resolution, and I hope its reference will not be objected to.

One word more, and I will not trespass further upon the time of the Convention. It is this: If the propositions now before the Convention should be finally adopted when the sense of the Convention is taken upon the question, then that will settle the fate of the proposition which I have offered, but if both of these propositions should fail, then perhaps we could perfect the system in some way which would alike meet the judgment of the Convention, and the wishes of the people. [Applause.]

Mr. PETTIT desired to know whether the resolution was an imperative one, or merely one of inquiry.

The PRESIDENT. It is an imperative resolution.

Mr. PETTIT. Then I trust, sir, that it will be laid upon the table. This whole matter, as has been truly remarked by the gentleman from Dearborn, (Mr. Holman,) is before the Convention in two forms. First, in the resolution offered by myself, with the amendments proposed thereto, for the consideration of the Convention, and secondly, in the section reported by the chairman of the committee on the rights and privileges of the inhabitants of the State. It will be time enough when the resolution I offered is taken up from the table, or when the report of the Committee on the subject is taken up, for gentlemen to offer their amendments. I see no necessity for re-occupying the time of the Convention now by offering amendments. They can all be presented, and receive their due consideration at the time when the main proposition comes up for consideration. The proposition of the gentleman from Posey (Mr. Owen) will come up soon, and I know of two or three gentlemen who intend speaking on the subject; at that time gentlemen will have opportunity to present their amendments. I renew the motion of the gentleman from Dear-

born (Mr. Holman) to lay the resolution and pending amendment on the table.

The question being put, the motion was agreed to.

#### RIGHTS AND PRIVILEGES.

The Convention then proceeded to the consideration of section third of article second, the question being upon the amendment to the instructions offered by the gentleman from Delaware, (Mr. Kilgore,) pending at the time of adjournment on yesterday.

Mr. BASCOM moved to lay the amendment to the instructions on the table.

On this motion the yeas and nays were demanded and being ordered were taken with the following result—yeas 68, nays, 52 :

Those voting in the affirmative were,

Messrs. Alexander, Allen, Anthony, Bascom, Beeson, Berry, Bicknell, Bright, Carter, Chapman, Clark of Hamilton, Cole, Crawford, Dick, Dobson, Dunn of Perry, &c., Edmonston, Fisher, Frisbie, Garvin, Gibson, Graham of Miami, Graham of Warlick, Haddon, Holliday, Harbolt, Hardin, Helm, Hendricks, Hogen, Holman, Huff, Kent, Kendall of Warren, Lockhart, March, McClelland, McFarland, Miller of Gibson, Milroy, Mooney, Moore, Morrison of Marion, Nofsinger, Owen, Pepper of Crawford, Pettit, Rariden, Read of Clark, Read of Monroe, Schoonover, Shannon, Sherrod, Shoup, Smiley, Snook, Smith of Scott, Spann, Tague, Terry, Vanbenthusem, Wheeler, Wiley, Wolfe, Wunderlich, Yocum, Zenor, and Mr. President—68.

Those voting in the negative were,

Messrs. Badger, Balingall, Beach, Beard, Bidle, Blythe, Bourne, Bracken, Bryant, Butler, Chandler, Clark of Tippecanoe, Colfax, Cookerly, Crumbacker, Davis of Parke, Dunn of Jefferson, Farrow, Foley, Foster, Gootee, Gordon, Gregg, Hall, Hamilton, Hawkins, Helmer, Hitt, Hovey, Howe, Kilgore, Kinley, Maguire, May, Milligan, Morgan, Murray, Nave, Newman, Niles, Pepper of Ohio, Prather, Robinson, Sims, Steele, Stevenson, Thomas, Thornton, Todd, Wallace, Walpole, and Watts—52.

So the amendment to the instructions was laid on the table.

The question then recurring upon the adoption of the motion of the gentleman from Franklin (Mr. Shoup) to re-commit with instructions, A division of the question was called for.

The PRESIDENT. The question will be first taken upon the adoption of the instructions of the gentleman from Franklin.

Mr. RARIDEN moved to lay the instructions on the table.

The motion was agreed to.

The question then being upon the motion of the gentleman from Franklin to re-commit,

It was taken, and the motion to re-commit was not agreed to.

The question then recurring upon the amendment offered by the gentleman from Dearborn



(Mr. Holman) to the third section of special order No. 2,

Mr. WOLFE moved to amend the amendment offered by the gentleman from Dearborn by adding the following:

"No man's particular service shall be demanded or property taken for public use without just compensation being made therefor. But between corporations and individuals the damages shall be first assessed by a jury at a fair cash value."

Mr. DUNN of Jefferson moved to lay the pending amendments on the table.

Mr. HOLMAN called for a division of the question.

The PRESIDENT. The question will first be taken upon laying the amendment to the amendment on the table.

On this motion the yeas and nays being demanded, were ordered and taken with the following result—yeas 105, nays 16:

Those voting in the affirmative were,

Messrs. Alexander, Allen, Badger, Balingall, Bascom, Beach, Beard, Beeson, Bicknell, Biddle, Blythe, Bourne, Bracken, Bright, Bryant, Butler, Carter, Chapman, Clark of Hamilton, Clark of Tippecanoe, Colfax, Crawford, Crumbacker, Davis of Parke, Dobson, Dunn of Jefferson, Dunn of Perry, Edmonston, Farrow, Fisher, Frisbie, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Gregg, Hall, Holliday, Hamilton, Harbott, Hawkins, Helm, Helmer, Hendricks, Hitt, Hogin, Holman, Hovey, Howe, Huff, Kent, Kendall of Warren, Kilgore, Kinley, Lockhart, Maguire, March, May, McFarland, McLean, Miller of Clinton, Milligan, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Murray, Nave, Newman, Niles, Nofsinger, Owen, Pepper of Ohio, Pettit, Read of Clark, Read of Monroe, Schoonover, Shannon, Sherrod, Shoup, Smiley, Snook, Smith of Scott, Spann, Steele, Tague, Vanbenthussen, Wheeler, Wiley, Wolfe, Wunderlich, Yocum, and Mr. President—105.

Those voting in the negative were,

Messrs. Anthony, Berry, Chandler, Cookerly, Dick, Foley, Foster, Haddon, Hardin, McClelland, Miller of Fulton, Miller of Gibson, Read of Clark, Smith of Scott, Tague, and Wolf—16.

So the amendment to the amendment was laid upon the table.

The PRESIDENT. The question is now upon laying the amendment of the gentleman from Sullivan, (Mr. Wolfe,) to the amendment of the gentleman from Dearborn, (Mr. Holman,) on the table.

On motion the yeas and nays were demanded, and, being ordered, were taken with the following result—yeas 53, nays 66:

AYES.—Messrs. Badger, Balingall, Bascom, Beach, Bicknell, Biddle, Blythe, Bourne, Bright, Bryant, Butler, Chandler, Clark of Hamilton, Colfax, Crumbacker, Davis of Parke, Dunn of

Jefferson, Farrow, Foley, Frisbie, Gootee, Gordon, Gregg, Hall, Hamilton, Hawkins, Helmer, Hovey, Howe, Kendall of Warren, Kilgore, Kinley, Lockhart, Miller of Fulton, Morgan, Murray, Nave, Newman, Niles, Pepper of Crawford, Prather, Rariden, Robinson, Sims, Stevenson, Terry, Thomas, Thornton, Todd, Wallace, Walpole, Watts, and Zenor—53.

NOES.—Messrs. Alexander, Allen, Anthony, Beard, Beeson, Berry, Bracken, Chapman, Clark of Tippecanoe, Cookerly, Crawford, Dick, Dobson, Dunn of Perry, Edmonston, Fisher, Foster, Garvin, Gibson, Graham of Miami, Graham of Warrick, Haddon, Harbott, Hardin, Hendricks, Hitt, Holman, Huff, Kent, Maguire, March, May, McClelland, McFarland, McLean, Miller of Clinton, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Morrison of Marion, Nofsinger, Owen, Pepper of Ohio, Pettit, Read of Clark, Read of Monroe, Schoonover, Shannon, Sherrod, Shoup, Smiley, Snook, Smith of Scott, Spann, Steele, Tague, Vanbenthussen, Wheeler, Wiley, Wolfe, Wunderlich, Yocum, and Mr. President—66.

So the amendment was not laid on the table.

Mr. PETTIT. Is it now in order to move to amend the section?

The PRESIDENT. It is, sir.

Mr. PETTIT. I move, then, to insert, after the word "property," the words "or services."

Mr. RARIDEN. I desire to know whether the effect of this provision will not be to require the tender of the witnesses' fees, before he could be required to obey the subpoena in a criminal prosecution?

Mr. PETTIT. There is no such object as to require the tender of witnesses' fees. The most that can be made of it is, that the State shall pay her witnesses in criminal prosecutions. That she shall insist upon no honest man, who has done the State no wrong, because he happened to be present where the law was violated, to come up to court and testify for the benefit of the State, without pay. I have known witnesses in criminal cases, who have been compelled to travel across the whole State, and to beg their way, because they were not able to pay expenses, in order to testify in criminal prosecutions, without receiving one cent of compensation. This is a wrong which ought to be corrected, and which this proposition will correct, so far that the State will be compelled to pay.

Mr. RARIDEN. I admit that there are hardships, such as have been indicated by the gentleman from Tippecanoe. But still, it is better to endure this, than to bring upon the State the immense expense which this proposition would induce. If the State were to engage to pay all the State witnesses, it would soon become a business to seek to be a witness. I will venture to say that, if this proposition were made a Constitutional point, that seventy-five thousand dollars a year would not pay the

expenses of the judicial establishment of the State. I undertake to say, that, if the State is made liable, according to the terms of this proposition, that the State will be compelled to pay the costs of prosecution, whether conviction follows or not; and I think there is no State in the Union, where the party, if convicted upon a criminal prosecution, is not required to pay the costs. The convicted party always pays the costs. But here, by the terms of this proposition—because there is always more sympathy in behalf of the person prosecuted, than in behalf of the State—the State will always be compelled to pay those witnesses; and I repeat my serious conviction, that, under this provision, seventy-five thousand dollars would not be sufficient to pay the expenses of the judiciary of the State. I think it would terminate in an embarrassment of the Treasury; and, certainly, this would be worse than for a few individuals to suffer the inconvenience which has been referred to. But, in fact, this inconvenience does not always fall wholly upon the witnesses themselves, for their kind neighbors often assist them in the way of expenses; and not unfrequently the treasury of the county is brought into requisition for the same purpose. A public spirited man will always go to testify for the State, whenever the case demands that he should; and whenever such a witness happens to be poor, then the public spirit of his neighbors will hardly fail to make up a sufficient sum of money to indemnify him. I hope the amendment may not prevail.

Mr. GIBSON. I call for the reading of the amendment. It is my opinion it will go further, and require witnesses' fees to be tendered in civil cases.

And accordingly the amendment was read by the Secretary.

Mr. GIBSON (continuing). The effect of that will be, that in all civil cases you must always first tender the money to the witness, before you can compel him to serve. That would be the necessary effect, and hence it would be impossible for a poor man to assure himself of the attendance of his witnesses.

Mr. HOLMAN read the first clause of the section, also the section as proposed to be amended, and was understood to say that the amendment to the second clause would not make the State any more liable to pay costs, either before or after trial, than the terms of the first clause of the section.

Mr. PETTIT. I would like to know what is understood by "particular" services?

Mr. HOLMAN. I understand that "particular services" here have reference to that kind of service which every citizen is not bound to perform.

Mr. PETTIT. Every citizen is bound to perform every reasonable service which the State may require. But I call for the yeas and

nays on this question. I want to see whether the State is going to pay her witnesses or not.

Mr. CHAPMAN said—

Mr. PRESIDENT: The gentleman from Hancock (Mr. Walpole) in his remarks yesterday, expressed surprise that some of the delegates from Marion county had supported the proposition of the gentleman from Jefferson (Mr. Bright).

As one of the delegates from Marion county, I am willing to confess the reasons by which I am influenced, either here or elsewhere.

I give no vote in this Convention without due reflection, and seek to be governed in all cases by principles of abstract justice. Acting thus, I am willing to risk the consequences, whatever they may be.

I think I understand the position of the gentleman from Laporte (Mr. Niles). He, as well as myself, was a member of the committee from which the original section under consideration came to the Convention. If a shadow of doubt rested upon my mind in regard to the propriety of the section, as reported, it would be occasioned by his disapproval; for there is not a man in this body whom I more highly esteem, or in the honesty of whose intentions I have more confidence. But, sir, notwithstanding the deference which I am willing to pay to him, I feel bound to differ with him on this occasion.

The reason of this difference is as complimentary to him as it is sufficient to me. The majority of men sent to the General Assembly are not always distinguished by those noble qualities which are so marked in him. I am satisfied that had he been as close a neighbor to the General Assembly as I have been, he would hesitate, as I do, before he would renew to that body the immense discretionary power which his amendment proposes.

He, sir, proposes to trust everything touching this subject to the discretion, the integrity, and the wisdom of the Legislature. Sir, if such a course be right in a case so all-important as this, why do we need a Constitution at all? Why not trust all our rights to the guardianship of the same authority? The gentleman from Laporte would be the last man who would agree to any such thing as that!

Sir, the proposition of the gentleman from Laporte, sounds very well to the ear, and looks very well upon paper. But practically, it would be as unsubstantial as a barrier of mere fog, against the encroachments of associated wealth. I would not give a pinch of snuff for the choice between such a provision, and no provision at all! I would rather entirely rely upon the magnanimity of the Legislature.

The gentleman from Jefferson, (Mr. Bright,) I think, fully realized all this, and hence his proposition as an amendment to that of the gentleman from Laporte (Mr. Niles). Whether so intended or not, the proposition of the



gentleman from Jefferson (Mr. Bright) had a tendency to strengthen the proposition of the gentleman from Laporte, (Mr. Niles,) and thus to give it momentum enough to beat the original proposition reported by the committee.

The gentleman from Hancock (Mr. Walpole) can begin to guess at the reason why I voted against the proposition of the gentleman from Jefferson, while it was coupled with the proposition of the gentleman from Laporte, (Mr. Niles,) and why I voted for it as a separate proposition.

Mr. President, one gentleman has explicitly stated two distinct points which he considers to be involved in this matter. I think, sir, that there is really but one great issue, and that is this: *Shall corporate powers over-ride personal rights?*

This is the question, sir, disguise it as we may; and I, for one, do not hesitate for a single instant to declare against privilege, and in favor of right.

A great deal of poetry has been uttered in regard to the advantages of railroads and other works of like character, which it is said are constructed by companies, having in view, as their primary object, the public good. Admit the sincerity of all this, Mr. President, and still I can conceive of something quite as good, if not a great deal better. I mean a free, an independent, and a well-protected people.

Is it possible that gentlemen have so soon forgotten the syren songs by which they were decoyed into a system of internal improvement, which entailed upon the State ruin and degradation, and the ultimate burden of which we have yet to bear? If I ever uttered a prayer sincere, it is now, when I invoke a wise Providence to save us from these present delusory appeals, which, in my judgment, tend to a similar, or more ruinous end.

Sir, the gentleman from Hancock (Mr. Walpole) expresses himself severely against the "constituents" of the gentleman from Jefferson (Mr. Bright). And he seemed to suppose that the proposition which he offered was intended to perpetuate the Madison Railroad monopoly, rather than to protect the just personal rights of the people. Those gentlemen may settle that matter between themselves. For my part, I care not what was the motive, I only look to the principle, and the results which may depend upon it. I believe these both to be good, and so believing, will vote accordingly.

The gentleman from Hancock declared that he wished others to enjoy the same privileges which had enriched the "constituents" of the gentleman from Jefferson. That, sir, is the very thing which I desire to avoid and prevent, if it is to be done at the sacrifice of the paramount interests of the people. How, sir, can he justly stigmatize those against whom he complains, in this instance, except under the rule that there should be "honor among thieves."

If it be true, sir, that the managers of the Madison Road have obtained unfair advantages of the State, let us apply a very different remedy from that which would grant the same opportunity to others. Let us sever all connection between that concern and the State, and *harness* it so stringently as to insure tractability. Let us apply a remedy, instead of deliberately attempting to spread the contagion. Let us exert our power for good and not for evil.

If the leaders of that powerful interest, either on account of selfish motives, or a better spirit, are now disposed to aid us in guarding personal rights, I am glad of it. They who have reaped the fruits of an iniquitous system, may be the better capable of interposing a remedy against an increase and extension of the evil.

It is said, sir, that the late President Taylor was a great admirer of *Æsop's Fables*. Whether he was or not, there is a good deal of practical wisdom embodied in them, by which we may profit. There is one, I remember, which is entitled "The Fox and the Flies." If one swarm have gorged themselves by sucking our blood, that is no good reason why we should invite more hungry swarms to succeed them. It may sometimes be necessary to "fight the devil with fire," but we should be careful that we do not burn our own fingers while handling the weapon.

I remember also, sir, a remark attributed to Gouverneur Morris, in the Convention which framed the Articles of Confederation, in 1778. The question was, the creation of a practical aristocracy of life office-holders, as a compromise between the principles of monarchy and democracy. Mr. Morris declared that if he had to choose between either alternative, "He would prefer to be torn by a lion, rather than be destroyed by vermin." So I say, in this case, admitting all the allegations of the gentleman from Hancock to be true. If I must choose, I will surrender to the Madison Autocracy, rather than subject myself to the depredations of bands of more reckless marauders.

But, in acting upon this question, Mr. President, I am governed neither by hostility to the Madison road, nor by any desire to aid or retard other and rival interests. My desire is simply to protect personal rights everywhere against the encroachments of corporations, and that is all. If I can accomplish that, I shall be content. In securing this, I have no desire to throw any obstacle in the way of judicious public works, which may be undertaken by companies. I only ask that companies may be subject to those great rules of equity which are enforced between man and man. If I err in this, I shall remain incorrigible in my error.

A few words, Mr. President, relative to the section reported by the committee.

The Convention has substituted the word "particular" for that of "personal," in the first sentence. This being the case, in my opinion,

the declaration is of no use whatever. It may as well be entirely stricken out. No word in any language, is more restrictive and constrictive than the word "particular," and the past action of the Legislature proves this conclusively. It affords no protection whatever to any man, as it now stands in the Constitution. The word "personal" was originally much more indefinite in signification, but, under the influence of republican ideas, we have invested it with great consequence, and that impression would have some weight in regulating the action of the legislative power.

A multitude of services are now demanded of individual citizens, which ought to be paid for, though they are not, and probably will not be, under your amendment; for the action of the Convention in this particular, will be considered as a sanction of the past and existing state of things. But for this, I should not regret the change.

The remainder of the section was conceived in a spirit of liberality towards corporations. It attempts to guard the personal rights of property, by the reasonable requirement, that no man's property shall be taken, unless by a valuation to be fixed upon it by an impartial jury of his peers. Gentlemen profess a willingness to trust the people by their agents in General Assembly. I prefer to leave it with the people themselves, in the capacity of jurors.

I will not confide in the Legislature in this instance, for I have seen too many instances of the control which corporate bodies can exercise over it. Why, sir, we see the malign influence even in this Convention. Several gentlemen have nearly shed tears over the supposed deprivations which they imagine we are to inflict, by this section, upon corporations. They seem to think it an outrage, big with public ruin, to ask those amiable and patriotic bodies to allow us to assess the damages, before they seize upon our property and appropriate it to their own use against our will or wish.

I ask you, Mr. President, what would be thought of the arguments of those gentlemen, should they be applied to individuals singly, instead of a corporate number of individuals? You and I may own adjoining town lots, upon which we live. I wish to build a church, a hotel, or some other building, for public accommodation, as well as my own. I want your lot, or a part of it, to enable me to do so profitably. Do I seize upon it, and snap my fingers in your face to reconcile you to the seizure? No, sir. I endeavor to bargain with you fairly, as law and justice requires me to do. But, suppose you should refuse to sell, how would it look if the Legislature should grant me the privilege to seize upon your lot, and give you no more immediate remedy than a tedious and expensive suit at law?

But, sir, the section as reported, does not ask corporate bodies to come down to the common

level of common right. We give them the immense privilege still of seizing upon every man's land at pleasure, or whenever it may be to their interest to do so; while we simply ask of them to allow the assessment of damage to be made in advance.

If this were the first time that such a requirement had been proposed, the peculiar friends and admirers of corporate privileges, might have an apology for their alarm. But, not only New York has adopted such a provision,—Kentucky, also, if no other State, has adopted a similar provision—more stringent, because it unconditionally requires "previous payment," instead of mere assessment.

In conclusion, Mr. President, while I hope we shall yet have strength enough to sustain the original section, I shall not be much surprised if it be rejected. The impression seems to prevail, that our chief business is to curtail and trammel personal rights, while we correspondingly are to enlarge the powers of the executive department of the government, and the privileges of corporate bodies. While every other recent State Convention has imposed greater restrictions for the safety of the people, we seem disposed to stand still, if not to confer special privileges of greater magnitude than ever.

This is done upon the plea of the public good. Mr. President, no abuse ever existed under the patronage of any government, that was not defended by the same plea.

Whatever others may do, I, for one, will exercise my right as often as I can, to diminish instead of expanding such abuses, let the plea in their favor be as specious as it may.

Mr. STEVENSON. I had not intended to say anything upon this subject, but in consequence of the numerous amendments which have been made, which have altered the original position of the matter, I desire to explain the vote which I am about to give.

I do not differ very much from the sentiments expressed by the gentleman whose proposition is now before the Convention. I am not willing to give any unfair advantages to corporations over individual rights. While I think with gentlemen that the State is, in a great measure, dependent upon the construction of works of public improvement for her future prosperity, I think that corporations should be guarded strictly and carefully. But there is no class of provisions we are called upon to adopt, so dangerous as your general restrictive clauses. They are dangerous because we do not expect to amend or change the Constitution for, perhaps, the next twenty-five years. If we make a false step now, if we provided an unjust restriction in this Constitution, we must suffer under it, perhaps for a quarter of a century, as implicitly as though we had an inexorable tyrant on the throne. It is an important and a solemn matter to enact a legislative provision, which, if it work injustice, cannot be repealed for one



or two years; how much greater is our responsibility who are framing an organic law which will be binding for a long term of years before there is any probability of revision? It is not necessary to elect a monarch and place him upon a throne to have despotic laws. You can bind up the country in the organic law and, for a time at least, the popular will will be as much stifled and repressed as under the rule of a sceptred king. I say again, there is no class of provisions so dangerous to the freedom of the country, as your restrictive clauses. Why, sir, look at it; there are two classes of restrictive propositions which are presented for the consideration of this Convention. The one is to restrict individuals, the other is to restrict the State. The first class is comparatively harmless—the second, dangerous and most carefully to be guarded against. A few days since, we voted with reference to the first class of restrictions—the question was “shall the Auditor of State be re-eligible to a second term of office?” This class of restrictions applies to individuals, and does not “tie up” the country, to use a familiar phrase.

The people still elect an Auditor of State, although the person who has once served in that capacity, is ineligible to re-election—he is restricted in the number of terms he shall serve. But when you say “the State shall not do thus and so,” you must be very careful that you do not “tie up” and destroy the prerogatives that belong to the State and without which she is powerless to protect the rights of the citizen.

The original section, to which all these various amendments have been made, was drawn up by as intelligent a gentleman (Mr. Owen) as has a seat upon this floor—we have as unmistakable evidences of his industry as of any other gentleman. But, notwithstanding the intellect and the keen discernment of that gentleman, he has here reported to us a section, the effect of which will be to prevent the authorities of a county from felling a stick of timber, or taking a wagon load of gravel for the construction or repair of a bridge until a jury has been empaneled, and the damages thereby done to private property assessed and the amount tendered in money. A plank road cannot be built over a mile of waste land until the same formalities of the law are complied with. I do not say this out of any desire to reflect upon the gentleman from Posey, (Mr. Owen,) for I have the highest respect for his abilities and the most entire confidence of the rectitude of his intentions, but for the purpose of calling attention to the matter. If we were here in a legislative capacity and should enact an unwise and unjust provision, the evil would continue but for one or two years and we could repeal it; but we are sitting here in another capacity, and the provisions that we engraft in the new Constitution, if wrong, cannot so soon and so easily be remedied. Therefore, we are admonished to do nothing at

all in the character of Legislators, to enact or embody in the Constitution, no subjects of legislation which can be left to that department of the government we shall organize. The future is unknown to us. We cannot tell what new interests will be created, what different circumstances will surround the people and modify their action, and therefore, we can only lay down broad and general principles in the Constitution, principles that are susceptible of application in the government of the State, under all circumstances. Our legitimate business here is to organize the government, provide for the organization of the different branches, the executive, the legislative, and the judicial, and set the whole in motion, as it were. We can declare great general principles, we can provide who shall be voters, we can declare the number of officers and their duties, we can declare the rights and privileges of the people of the State, but we cannot legislate on particular subjects. We cannot even frame a Constitution with sole reference to the condition of the State, this year or next, else we should impose iron chains to fetter the energies and cripple the effort of a great people.

The principle of the amendment of the gentleman from Laporte, (Mr. Niles,) and it is a good one, is, simply, that no man's property shall be taken without compensation. But some gentlemen say this is not enough; that we should go afurther, and provide that in assessing the damages, the jury shall not take into consideration any benefits which may be conferred upon the adjoining property of the owner. Why, sir, we are to declare general principles, not to provide for particular interests. We want the form of government only, not its details. We should go no farther than to organize the several departments of government and to set the whole in motion; otherwise, we come upon dangerous ground.

Look back for a moment at the Convention which framed the old Constitution, for the purpose of illustrating the idea I wish to present. The old Constitution provides that all fines and forfeitures should be applied for the building and support of county seminaries. It is clearly an unwise provision now, but was it so then? At the time of that Convention, it was undoubtedly a well considered and beneficent provision. The country then was new, just springing into life, and there was a great demand for a higher grade of schools than the ordinary common and district schools. But now, things have changed, and academies, seminaries, and colleges are abundant; but the general desire is for multiplication and encouragement of common schools. The provision has come to be a most impolitic one, and it shows how absolutely impossible it is for a body of this character to descend to the details of legislation. We cannot see what is to take place in the future; every feature of the body politic may be changed, and new combi-

nations in the commercial and moral aspect of society, baffling the keenest and most far sighted intellects of this day to foresee and foretell. Therefore, it is best for us to stop when we have organized the several departments of government, and provided for setting it in motion.

But, gentlemen are not satisfied with this; they say it is not sufficient. That is not saying much for the intelligence of the country. We are called upon to put in motion a political system, by which the country can afterwards protect itself and secure its own particular interests. We need not fear that wisdom will die with the dissolution of this Convention, or that the people will lack intelligence and ability to protect themselves. Let us throw the burthen of protecting the various interests of the country, and of providing for the new combinations of circumstances that are ever arising, upon the Legislature. I know that this Convention is a most intelligent and able body, but I am not prepared to say that future Legislatures will not also comprise the best talent and political ability in the State. I will not undertake to say that this Convention, able as it is, is better qualified to protect the interests of the State for forty years to come, than all the Legislatures that will assemble in that time. On the contrary, I believe that just so sure as we undertake to legislate here, we shall ruin the best prospects of the State.

We live in a State whose prosperity is just commencing; we are just upon the threshold of a great future, and we cannot foresee the result, nor legislate for the specific interests of a community a quarter of a century in advance of the present time.

One thing has been well done: we have declared that the State shall not embark in any system of internal improvements, and in that single provision is the foundation for future wealth and prosperity.

Let us, throughout, satisfy ourselves with the declaration of such general principles, and not go further and tie up the hands of a great people, by restrictions upon the enterprise of the country.

We have also provided that hereafter all corporations should be formed under general laws: that is going far enough. We desire that individuals should not suffer from the encroachments of powerful corporations. Very well: declare the general principle in the Constitution, and leave it to future Legislatures to provide specific guards for the protection of the citizen. Trust the people to protect themselves—to guard their own interests. The question is, will we stop at the proper place, or go beyond upon dangerous ground.

The fault in the section reported by the gentleman from Posey arises, not from any want of sagacity in himself, but from the nature of the provision he proposes; it is a general restriction upon the State, and there is the error. I care

not though we should discuss the matter for a month, there will still be latent difficulties and hidden dangers that we shall not discover, and that human ingenuity cannot discover, because they will only be developed by time, and the changed circumstances that will exist in the future.

I am against the grant of special and unjust privileges to corporations, but I wish to leave the legislative department which we shall organize to guard the rights of the people and limit the privileges of corporations. I do not wish to impose restrictions upon the State—upon the people—by tying up the hands of its Legislature. The effect of our legislating here may be more clearly seen by imagining the Legislature to hold its sessions twenty-five or fifty years apart.

I have already occupied more time than I should, but I feel a deep interest in this matter, and sincerely hope that we shall content ourselves by organizing the several branches of government, declare the general and fundamental principles upon which it shall be administered, define the relations of the government and the governed, and the rights and duties of each, and leave all that pertains to legislation to the Legislature.

Mr. WATTS. A few words, Mr. President, principally in relation to the remarks of my friend from Marion, (Mr. Chapman,) which, in my humble judgment, need some notice. He sets out with a declaration of his holy horror of all corporations. He believes them anti-republican and anti-democratic. Now, sir, for my own part, I never could see any impropriety in granting to corporations—to associations of individuals—the same rights which are granted to individuals. The interests of the country—the prosperity of the State—is promoted by the association of capital for the construction of works of public improvement. I can see no just reason for cramping and fettering the action of corporations any more than that of citizens—no more reasons for imposing restrictions upon the investment of associated wealth, than upon the investment and use of individual wealth.

The gentleman from Marion (Mr. Chapman) not only expresses his opposition to everything in the shape of corporations, as opposed to pure democracy, but he throws out an insinuation against the honesty and intelligence of the Legislatures of the State. He seems to think, that, when this Convention has adjourned, it will be difficult to re-assemble a body of well informed and patriotic men to legislate for the interests of the State. I must join issue with the gentleman in this particular, for I think differently. But, sir, that member has been led into an error; he has for a long time been living near the doors of our legislative halls and has formed some misconceptions of the capacity and integrity of the people's representatives.



He has been led into an error somewhat similar in its causes to one which like to have carried me away some years since. At an early day I moved into the little town of Hartford, in this State, and took up my residence on a hillside that overlooked the surrounding country. Well, sir, we had so little communication with the world outside, and so lofty an idea of the peculiar advantages, the wealth, refinement, and enterprise of our own village, that I really began to think there was no place in the country quite equal to Hartford. And so it is with people living here at the centre—at the Capital city of the State—they are apt to underrate the intelligence and integrity of the people living in the country, or as the politicians of New York City would say, “the rural districts.”

Mr. CHAPMAN. I do not underrate the intelligence and virtue of the people, nor shall I be guilty of overrating the honesty and patriotism of those who, year after year, find their way into the Legislature. If the gentleman had lived near neighbor to the Legislature as long as I have, he might, while he had the highest respect for the intelligence and virtue of the masses of the people, have reason to change his opinion of some men who contrive to be sent up here as their representatives.

Mr. WATTS. I accept the explanation of the gentleman. He appears to think it unsafe to trust the people; he wishes to guard against an abuse of power. But I cannot go with him in his desire to tie up the hands and restrict the powers of the Legislature. The people will be called upon once a year, or once in every two years, to elect men to represent them here; and the strong probability is, that they will select men who will most nearly represent their feelings, views, and wishes. It certainly is to their interest to do so; they ought to know who will best represent them. As it is peculiarly their own business—as they are to gain all the advantages of a wise choice, and endure all the evils of a bad one—I am willing to leave the matter entirely to them.

I believe, then, that we should not restrict the Legislature; that we should only declare those general principles that should form its rule of action. Set the wheels of government in motion, and only restrict the Legislature in general terms and so far as is clearly for the good of the whole people.

In conclusion, Mr. Chairman, I am opposed to the original section of the report and to all propositions and amendments providing that before private property can be taken for public use, a jury of freeholders must be empaneled, the damages assessed without regard to the benefits conferred by a work of public improvement upon other property of the owner, and the amount tendered in money. This is too much like legislation; it is, in my humble opinion, beyond the legitimate province of action of this Convention. I am in favor of adopting a sec-

tion upon this subject that shall simply declare that no man's property shall be taken without just compensation. That is sufficient.

Mr. KENT. If no person desires further to discuss this question at the present time, I will move that the Convention adjourn.

Mr. WALPOLE. The gentleman from Marion (Mr. Chapman) has made some statements in reference to my position, which, to some, might appear to require a reply on my part. I beg to say, however, that I make it a rule of action never to quarrel with an angry man. [Laughter.] The gentleman appears to be angry; what has aroused his ire is not for me to say, and is perhaps a matter of small consequence. I wish that gentleman to understand, that when I am destroyed, I hope to be destroyed by something having the magnanimity of a lion, and not by the “miserable, creeping vermin” of which he has spoken. What I said in reference to the question under consideration was, that influences had been brought to bear upon the gentleman from Jefferson (Mr. Bright) and the gentleman from Marion (Mr. Chapman) to throw Constitutional restrictions in the way of the enterprises of the people of the State of Indiana. The political history of the State of New York furnishes us with examples of the powerful influences which have been wielded by corporations in the halls of legislation to the detriment of the people. Why was it that the people of the State of New York sought so earnestly to amend their Constitution? It was because the power of corporations was brought to bear against individual enterprise. The gentlemen from Marion and Jefferson know this to be true; and the same influences which were exercised there to defeat and suppress individual enterprise, will be exercised here with the same view. When the report of the committee on currency and banking comes under consideration, the same influences will be brought to bear upon that question which have been brought to bear upon this. They will be brought to bear upon the gentleman from Marion, and he will not be aware of it; but, sir, it is the power of wealth that has been brought to bear upon him in the views which he entertains in regard to the question now under debate, and—

Mr. CHAPMAN (emphatically). No, sir.

Mr. WALPOLE. Sir, the gentleman from Marion professes to be of the democratic party, one of whose leading principles is opposition to corporations; and yet, by the course he is taking, he is opposing the principles of his own party inasmuch as he is seeking to cherish, foster, and sustain corporations already existing, to the exclusion of any possible competition.

Mr. CHAPMAN (interposing). No, sir.

Mr. WALPOLE. The gentleman denies the conclusion; but let us look at the facts. He calls upon us to sustain a proposition to the effect that when part of a man's property shall

be taken for any improvement about to be made, the value of such improvement to the remainder of his property shall not be taken into consideration in estimating the amount to be paid for the property thus taken. Now, what is this but building up, or at all events cherishing, fostering, and *sustaining forever*, in the enjoyment of the advantages existing public improvement, to the exclusion of all individual enterprise that might be brought into competition with such improvements as are already completed and in operation.

I agree with the gentlemen, Mr. President, that if there were no internal improvements already in existence, the question would present a very different aspect. Were we now just commencing to make them, there can be little doubt that the principle, in the abstract, would be a proper one; but that is not the case and it is because it would so operate as to prevent all future competition with corporations now existing, that I am opposed to it. I desire, in my opposition to this principle, that the people should not be deprived of their right to compete with existing corporations, amounting, as they now do, to monopolies; but the gentleman from Marion, (Mr. Chapman,) in carrying out his views, would foster and sustain accumulated wealth to the exclusion of all competition. He states distinctly that he intends to put down corporations, when the effect of his vote will be to sustain them.

MR. CHAPMAN. Such was not my language.

MR. RARIDEN. The gentleman (Mr. Walpole) is stating the effect of your language; not your words.

MR. CHAPMAN. I would treat all associations of individual enterprise with liberality.

MR. WALPOLE. Undoubtedly the gentleman is exceedingly liberal, for by the position he sustains he wants to break down all new attempts at internal improvement, in order to sustain those in which he is especially interested. [Laughter.] Very liberal, sir,—very. I admit that the old corporations and institutions have no better friend in this Convention than the gentleman from Marion.

Now, sir, let me advert for a moment to another proposition which is introduced here by the gentleman from Tippecanoe, (and now under consideration). The gentleman (Mr. Pettit) proposes that the State shall, in every instance, pay the costs incurred in prosecutions in the circuit court, should the State fail in the prosecution. That gentleman has been clamorous in regard to the manner in which our immense public debt has been created, and on this subject I heard him declaiming eloquently prior to the assembling of this Convention. Well, what does he now propose? It is, in effect, that every year there shall be an increase of that debt to the amount of two hundred thousand dollars, at least, for the paying of clerks, witnesses, at-

torneys, sheriffs, and others. The gentleman from Tippecanoe told us the other day that seven-eighths of all presentments and indictments by Grand Juries failed to result in conviction when brought before a petit jury—that there was not more than one conviction out of seven or eight.

A MEMBER. He said not one in twenty.

MR. WALPOLE. Well, I wish to be liberal, and I will compromise the matter and take only one half of his estimate. Now take the two counties which that gentleman and myself represent. I live in a county inhabited mostly by farmers, and in which there is very little litigation; he lives in a county having an immense population engaged in the diversified pursuits of life, and I presume that the docket of his county, with such a population, will show annually not less than four or five hundred cases. But say that in each county of the State there are, on an average, one hundred and fifty cases, and I will not assume that seven-eighths of them are lost, but only one-third, which is reducing the gentleman's estimate very low, indeed, what would be the amount of cost thus annually inflicted upon the State, estimating the cost at twenty dollars for each, and this is a low estimate? Why, sir, not less than ninety thousand dollars! What then will be the amount, taking it at seven-eighths, as some gentleman said? It would then be one-third of a million of dollars, and taking the number at nineteen-twentieths it would amount to considerably more than a million of dollars which the people would have to be taxed every year to pay. Are the people of Indiana prepared for such a change in the Constitution? Are they prepared to meet the enormous expenditure that will follow such a policy? I apprehend not. Yes, sir, it will make a difference of a quarter of a million of dollars, at least. Upon your present assessment of twenty-five cents on every hundred dollars, you raise a revenue of half a million; and by the proposition thus made, you would increase the amount of your assessment from twenty-five cents to thirty-seven and a half. But this is not all. The State is rapidly increasing in population, and with that increase, and the increase of commerce, will come a proportionate increase of litigation. And if the annual expense would amount to so much with our present population, what will be the amount of it in twenty-five years from this, with such a principle incorporated in our Constitution remaining unchanged? What will it be when it amounts to three millions? It will be at least seven hundred and fifty thousand dollars. It has been well remarked by the gentleman from Wayne (Mr. Rariden) that the public sympathy is usually in favor of the accused, but that there is no sympathy for the sovereign. When a man becomes the victim of malice you will find under the effect of the proposition of the gentleman from Tippecanoe, that witnesses will be accu-



mulated; their number—all professing to know something of the case—will be swelled up until your court houses will hardly have capacity to contain them, and each of these witnesses is to be allowed fifty cents per day, and the great paymaster—the government—foots the bill. Again: I ask you are we prepared for this? Do the people call upon us to make this radical change in a Constitutional form? I think not. The Legislature has never yet had the temerity to propose such a thing as a legislative enactment; they have not even proposed it as a mere experiment for one year. Let the Legislature try it as an experiment if it be desirable; but let us have nothing to do with it. I tell you, Mr. President, that this proposition involves consequences too serious to be lightly disposed of. Let the Legislature try it but for one year, and you will find such a clamor against it all over the State, as never was heard before on any question. The people are not prepared to be taxed from a third of a million to a million of dollars annually for any such purpose.

No, sir, the doctrine, if adopted, that the State must pay a man for every public service, will prove to be disastrous to our people. The citizen must make some sacrifices for the common good. Every man consents to do this when he enters into the social compact, and there is no hostility to this on the part of the people. I admit that the gentleman's proposition is a plausible one, at first blush, and there are doubtless many well meaning persons who would give it their approbation. I have no doubt that that class of persons who attend public houses, and horse races, and gambling tables, and such like gatherings, whence arise most of the cases for criminal prosecution, will be very glad to find such a provision whereby they will frequently be able to draw upon the public treasury for witness fees. There is always a number of "gentlemen loafers," as they are called, ready to testify on every occasion, who would say, as a matter of course, that they ought to receive compensation. In every county you will find some such characters, but these are not the men for whose peculiar advantage we are sent here to provide. Let us then think calmly and seriously upon this proposition. It is one of great importance, one which will be found to affect the public treasury to an enormous amount, and without, as it appears to me, any satisfactory ground for the change.

Pending the question,

On motion, the Convention then adjourned.

MONDAY, Nov. 11th, 1850.

The Convention met, pursuant to adjournment.

Prayer by the Rev. ALEXANDER CAMPBELL, of Virginia.

The journal of yesterday was read and approved.

Mr. EDMONSTON moved that the general order of business be dispensed with, for the purpose of proceeding to the consideration of the special order, which had been fixed for ten o'clock this day.

Mr. GREGG. I understand from the gentleman from Posey (Mr. Owen) that he is willing that the special order shall be postponed until ten o'clock on Wednesday next, and as it is a subject that interests the fair sex, it appears to me that it would be better to have it discussed on a day when the weather will be more favorable, and when a more general attendance of ladies may be expected.

But I have another reason why I would prefer that the special order should be deferred, and it is one that is personal to myself. I have not participated much in the discussion of the question that has been debated for some days past, and I would like at least to have an opportunity to record my vote upon it. I have been endeavoring to do so for the last three or four days, because I shall necessarily be absent for a few days to come.

And I have another reason, which is that I desire to offer an amendment to the last section of the article that is now under consideration, and to offer some general remarks upon the general merits of the question, and unless I have an opportunity to do so to-day, I shall, perhaps, not have an opportunity at all. I will say, moreover, that if it is the pleasure of the Convention to hear me upon the question relating to the rights of negroes, I will promise that it shall be the last time that I will inflict a speech upon the Convention.

I hope, therefore, that the special order will be postponed.

Mr. OWEN. I shall not oppose the proposition of the gentleman from Jefferson, though I confess that I do not think it ought to be agreed to by the Convention merely on the first consideration which the gentleman has suggested. In bringing up matters of this kind, we bring them up for consideration and decision by the Convention; and although every man must feel that, on a subject like this, it is desirable that those whose rights are the subject of discussion, should be present, yet I do not think that consideration alone should induce the Convention to postpone action in the matter. The other reasons assigned by the gentleman have weight. As the gentleman puts it on the ground that he has occasion to be absent for a few days, and is desirous of recording his vote upon another question that is now pending, I shall interpose no objection to the postponement of the special order.

The question being taken on the motion of the gentleman from Jefferson, (Mr. Gregg,) it was agreed to; and

The consideration of the special order was postponed until Wednesday next at ten o'clock

#### RIGHTS AND PRIVILEGES.

The Convention then proceeded to the consideration of the regular order of business, the question being upon the adoption of the amendment offered by Mr. Pettit, to the amendment offered by the gentleman from Dearborn, (Mr. Holman,) to the third section reported by the committee on the rights and privileges of the inhabitants of the State.

[The section as reported is as follows:

**SECTION —.** No man's personal services shall be demanded without just compensation. No man's property shall be taken by law, without compensation first assessed by a jury of freeholders and tendered, together with the expenses of the proceeding, to the owner, by the person to be benefited. But such tender, if rejected, shall not bar the right of appeal.]

The question being taken on the amendment to the amendment, it was disagreed to.

The question recurring on the amendment of the gentleman from Dearborn,

Mr. OWEN demanded the yeas and nays.

Mr. KILGORE moved to amend the amendment by inserting, after the word "tendered," the words "or secured."

The amendment to the amendment was, upon a division—yeas 40, noes 53—rejected.

The question again recurred on the amendment of the gentleman from Dearborn.

The yeas and nays were ordered.

Mr. RARIDEN said, he would like to hear the amendment of the gentleman from Laporte read.

The PRESIDENT remarked, that that amendment was not now pending.

Mr. RARIDEN. Well, sir, if a motion to lay the pending amendment on the table prevail, will not the amendment of the gentleman from Laporte be in order, as a substitute for the report of the committee?

The PRESIDENT. Certainly; the gentleman can move to lay the pending amendment on the table, and if that motion prevail, and no other amendment be offered, the substitute for the report of the committee will be in order.

After some further conversation on the point of order,

Mr. DUNN of Jefferson moved to amend the amendment by striking out all after the word "compensation," where it occurs in the second line.

Mr. DUNN said: Mr. President, if the motion to strike out should prevail, the amendment will read as follows: "No man's property shall be taken by law without just compensation;" and then the section, as amended, will be the same in effect as the substitute proposed by the gentleman from Laporte (Mr. Niles). I have made the motion to strike out for the purpose of ascertaining whether the Convention is prepared

to recede from the vote taken a few days since, which, I thought, indicated a determination not to insert in this section a provision requiring the damages to be assessed and paid before possession is taken of private property necessary to be used in the progress of a public improvement. This subject has been so fully discussed that I will not consume the time of the Convention by discussing it any further, though there is much I would be glad to say before the vote is taken. I must be permitted, however, to suggest some of the practical difficulties that will arise under the operations of this amendment, unless the latter part is stricken out. Suppose, sir, that, in the construction of a railroad, plank road, or other public work, it becomes necessary to have stone for the erection of a bridge. Those engaged in the work discover that there is stone in a neighboring bank, but whether it is of the right quality or sufficient in quantity they have no means of ascertaining. They are forbidden by the Constitution of the State to throw off a spade full of dirt until the damages that will be due to the owner of the land, by taking the stone, are assessed and paid or tendered. How is it possible to ascertain the damages in such a case? If a jury is called to assess the damages, they must guess both as to the quantity and quality of the stone; and then the company must pay the damages thus guessed at, or be delayed in the progress of their work. Suppose, after the damages are paid, it should be found that the stone was not of the right quality, or that there was not a sufficient quantity of it, what remedy has the company? I have given this illustration as suggestive of a class of embarrassments that must arise under this provision. But it may be replied that a contract may be made with the owner of the land. So there may, if his demands are not unreasonable. But, sir, what is to be done when the land is owned by infants or non-residents? I think, sir, our present Constitution has offered ample protection to private property, and I can vote for no further restrictions than it contains. I am unwilling to make any amendments that will embarrass unnecessarily those works of internal improvement in which the people of the State are so largely interested. I desire rather to encourage these improvements in every part of the State, that the people may have a cheap and expeditious way of reaching the markets with their surplus products. I have no such narrow views as have been imputed to the delegates from Jefferson by the gentleman from Hancock (Mr. Walpole) and the gentleman from Marion (Mr. Chapman).

When the time of this Convention cannot be more profitably employed, and not before, I will reply to the unfounded and ill-timed attacks of those gentlemen, upon the Madison and Indianapolis Railroad Company. In this debate reference has been made to the provision in the Constitution of New York, on the subject of



applying private property to the use of the public. It is as follows: "When private property shall be taken for any public use, the compensation to be made therefor, when such compensation is not made by the State, shall be ascertained by a jury, or by not less than three commissioners, appointed by a court of record, as shall be prescribed by law." It will be observed, sir, that the great State of New York has not incorporated in her Constitution a provision requiring the pre-payment of the damages assessed. It will be well for us to imitate her example, or to leave this matter just as we find it in our present Constitution, and, if the Legislature should deem it necessary, to provide that the possession of the property should not be taken before the damages are paid, they can pass a law to that effect.

Mr. WOLFE said he thought the Convention should act with caution in regard to this matter; for their action, whatever it might be, was to be the guide of future legislation for an indefinite period. The Constitution that they were about to form, if accepted by the people, might last for a century, or for five centuries. It was altogether uncertain for what length of time it might continue. I hope, said Mr. W., to see an amendment incorporated in the Constitution by which it may be, from time to time, amended and improved; so that if anything be put in that shall not prove acceptable to the people, after its practical working shall have been tested, they will have it in their power to vote it out. As to this proposition, it is an important one. Had it not been important, so much time would not have been consumed upon it. I did not expect that it would be debated to-day. I supposed we would have gone on with the special order.

I am sorry to see propositions presented here, the effect of which, if adopted, must be to retard public improvements; to throw obstacles in the way; to tie up the hands of this young and growing State; to cripple her energies; to retard her progress. Shall we insert in the Constitution provisions that will have this injurious tendency? I hope that this Convention will not consent to do any thing so injurious to the interests of the State.

It appears that many of our friends here have taken a great dislike to corporations, and their antipathy goes so far that it will not permit them to do justice to them. I will go as far as any one on this floor to guard the rights of individuals, and in doing that we shall protect the rights of the people of the whole State. For what is the State? Who is it that constitutes the State? It is the individuals residing within the limits of the State—they compose the body politic. Individual rights should be guarded, but not at the expense of the many. The true principle upon which all governments should proceed, according to my understanding of the matter, is to confer the greatest possible

good upon the greatest number. This is the doctrine which all of us contend for. Then I say we ought not to trammel our young and growing State; but, on the contrary, we ought to afford every facility for the development of her resources, and the consequent increase of her wealth and prosperity. Let us then come up to this question like sensible men, and act upon it solely with the view of carrying out that great maxim of government, to confer the greatest good upon the greatest number.

Mr. NILES said—

Mr. PRESIDENT: I have been highly gratified with the spirit of the remarks of the gentleman from Sullivan who has just resumed his seat (Mr. Wolfe). Like him, I was not anticipating that this subject would come up for consideration to-day, and am, therefore, not so fully advised as I ought to be of the precise nature of all the questions growing out of the various amendments and substitutes which have been offered. Though the question directly before the House is upon the amendment to the original section offered by the gentleman from Dearborn, I suppose it will not be improper to submit a few remarks covering the whole ground of this debate, and in reference to all the propositions upon which we shall certainly be called to vote.

In the first place, we have the section reported by the committee on rights and privileges, which provides that no man's property shall be taken by law without just compensation first assessed by a jury of freeholders, and tendered, together with the expenses of the proceeding, to the owner, by the person to be benefited, but that such tender, if rejected, shall not bar the right of appeal. Then we have the amendment proposed by the gentleman from Dearborn to the effect that no man's property shall be taken for public use, except by the State directly, without just compensation *first assessed and tendered to the owner*. This differs from the committee's section in being less minute in its details and less objectionable on that account, but in its spirit it is precisely the same. Next comes the amendment of the gentleman from Franklin (Mr. Berry) which embodies the principle first suggested by the gentleman from Jefferson, (Mr. Bright,) and which the Convention, the other day, under another form, came within two votes of adopting, that when private property is taken for public use, the damages of the owner shall be assessed *without any reference to the benefits conferred*. And lastly, we have the substitute for the original section submitted by myself, and drawn with slight verbal alterations, from the old Constitution. It merely provides that no man's property shall be taken and applied to public use without *just compensation* being made therefor; thus leaving the whole matter upon the broad platform of simple justice, and untrammelled by legislative provisions.

The proposition of the gentleman from Franklin, originally coming from the gentleman from Jefferson, (Mr. Bright), is to the effect that whenever land is taken by the State or a company of individuals, for a railway or a plank road, the owner shall be paid its full value, without any reference to extrinsic benefits, precisely as if it were taken by the company or the State and sunk in the bottom of the sea—just leaving the owner with so much less land. That is to say: suppose that somewhere in the new and heavy timbered portions of the State, where agricultural enterprise is almost paralyzed on account of the distance and inaccessibility of a market, a few public spirited individuals associate themselves together to build a plank road. They have occasion to pass through the lands of some narrow-minded man, perhaps a non-resident of the State. His land will be doubled in value by the improvement. He thinks that the necessities of the country will force it through. The company ask him for the right of way. He says, "No, gentlemen; if you go through my land you shall pay me for it, precisely as if you annihilated what you take, and without any reference to the good you do me." And this Convention is called upon to justify and sustain him in his course. Sir, I would as willingly provide in the Constitution for such a specific case, calling the parties by name, as I would vote for the proposition of the gentleman from Jefferson, for the one involves and implies the other.

According to this proposition, no distinction is made, as I think there should not be, between the taking of property by the State in building a road by a general tax or with borrowed money, and the taking of the same property by a company who equally subserve the public interests. But in either case, what is the propriety of enforcing one iron rule, without any reference to the circumstances, or collateral benefits or injuries? In one case, a plank road is built through a man's land in such a way as to double its value. In another, an important railroad depot is established upon or adjoining his tract, bringing a market to his door; or building up a town upon his land. In another, the railroad track merely crosses his farm, with no other direct benefit than the scaring of his horses by the puffing of the engine. And yet gentlemen insist that we should apply the same rule to all, and measure the damages in all cases alike. Sir, I ask if this Convention is prepared to force such a doctrine upon the people of this State? Are we prepared to embarrass and paralyze all our public improvements, which are just beginning to give value to the property, and life and hope to the people of the State, by restrictions so unjust and unequal?

The section reported by the committee and the amendment offered by the gentleman from Dearborn both require that where property is taken for public use, the damages shall be *first*

assessed and tendered to the owner, whoever he may be, or wherever he may reside, or how impossible soever it may be to make the tender. Until this is done, a plank road company shall not be permitted, except as trespassers, to even make a preliminary survey, as property cannot be taken at all, for any purpose or to any extent. It is indispensable that the tender be first made, and according to the original section, the right of appeal is given only to the owner of the property. That is to say: A company desire the right of way through some man's land for a plank road; a jury is empaneled to assess the damages; it happens to be packed for the defendant; a verdict is rendered for ten times the amount of the actual injury, the company must tender the amount assessed or abandon their enterprise; while if the owner of the property is dissatisfied he always has the right of appeal. Is this what gentlemen call justice? Is this the encouragement to be extended to enterprises most essential to the welfare and prosperity of the people? And yet, sir, I would as soon set my hand to the case I have now supposed, and ask the people to sanction it by their votes, as I would give my voice for the section reported by the committee. The principle of each is the same. It may be said that under the amendment proposed by the gentleman from Dearborn, the company will have the right of appeal. But what will it avail if their work must be suspended for months or years, while a law-suit drags its slow length through all the courts? and if the tender must be made where a tender would be impossible?

But complaint is made that insolvent companies may take land and never pay for it, unless they are compelled to pay for it in advance. When does it happen that a railroad or plank road company, just while they are receiving subscriptions and expending their money, are unable to pay for the right of way? And besides, I apprehend that there is no lawyer upon this floor who would express a doubt that the owner could enjoin an insolvent company from interfering with his land. Is not this whole thing of tender or pre-payment a matter rather of mere theory than of real practical importance to the property holder?

In contrast with these unjust and embarrassing provisions, we have the substitute submitted by myself, securing the ends of substantial justice, but leaving all matters of legislation to the Legislature, where they belong. When we provide that no man's property shall be taken without just compensation, we do not say that a tender shall not be required in the first instance, whenever, in the judgment of the Legislature, it would work no essential injury to the public interests. We do not say that if they find one rule to operate badly they should have no power to amend and improve their legislation, so as more effectually to secure the ends of justice, but we leave it upon the basis



of justice itself. It is admitted on all hands that private property must, in some instances, be taken for public use. No man in this Convention favors to the full extent the old New Hampshire doctrine on the subject. And if we provide that it shall not be taken without *just compensation*, why need we fear to trust the manner of securing that justice to the Legislature, the juries, and the courts? Are we to presume that Legislatures will be corrupt, and that courts and juries have lost all integrity?

I may remark that I am glad to see gentlemen with us upon this question whose constituents are largely interested in public improvements already completed. It proves them to be above mere selfish aims. For if, by unnecessary restraints, we tie up the hands of the Legislature and check the progress of our public works, it will be equivalent to a heavy bonus to the owners of those already built, and to the towns to which they are tributary. Sir, I admire the noble enterprise of the city of Madison. But while I rejoice in her prosperity, I would not withhold from Lawrenceburg, Jeffersonville, New Albany, and Evansville, and other important towns in the State, or the country tributary to them, upon just and equal terms, the same benefits so largely conferred by the railroad terminating at Madison. I trust we shall be ready to secure to all these important interests the most ample justice, and to extend all reasonable and proper encouragement to the enterprising men who are enlisted in their favor, instead of surrounding them by needless embarrassments, not to say prohibitory restraints. In many portions of the State capital can hardly be found at all to build works of prime necessity; and if you impose unnecessary and unreasonable restraints and burthens, you will often discourage enterprises which might otherwise succeed. The building of many a plank road may be postponed for years.

I must be permitted to allude to a remark of the gentleman from Marion, (Mr. Chapman,) to whose enlightened views upon many subjects I have listened with the highest satisfaction. Were it a mere collateral remark, thrown out in the hurry of debate, I would not refer to it at all; but it seems to me to embody and fairly represent the idea of several who have spoken upon this question, no less than his own. It was, that, though he valued public improvements much, he valued a free and prosperous and happy people more. As an abstract sentiment, it is of course unobjectionable; but when gentlemen attempt to array public improvements, originating among and carried on by the people themselves, against their freedom, happiness, and prosperity, I have a word to say. Would gentlemen remove from the people all the elements of their happiness and prosperity, and then talk of a prosperous and happy people? Sir, I would as soon build a Chinese wall around the State, or, like the Empire of Japan, exclude the

civilized world from our borders, as I would unjustly restrain public improvements. They are elevating our people to a condition of affluence and ease; they lay the wealth and commerce of the world at our feet, and underlie all of our prosperity. Sir, I would quite as unwillingly discourage or impede our public improvements as I would, if I could, persuade the people to retrograde to a semi-savage condition; to live in impassable forests, supplied with the naked necessities of life, and to pursue fishing and hunting as their only occupation—a condition of things which a certain class of poets have sometimes celebrated, but which sound statesmen and sound philosophers do not value over highly. I would as soon bring back the whole people to that condition in which, unfortunately, some of them are yet found, when, after the labor of the year, the farmer has harvested his crop of wheat or corn and starts to market, some twenty, thirty, or fifty miles, in a mud wagon, and at length returns worn out and discouraged, and ready to make solemn oath that he will never raise so large a crop again. Is that the condition of happiness which gentlemen would envy and perpetuate?

I am glad, sir, that we have not heard the argument in this case which was urged in favor of adopting another, to me, obnoxious measure, that, if the people accept our Constitution, it will be their act, and whatever they do will be right. It may be that we could force such a provision as is now contemplated upon the people (though I am by no means certain of it); it may be, that, to secure some other great and needed reforms, they would submit to injurious restrictions. But I trust that we shall act with the same deliberation as if our action were final; and that the only inquiry will be, is the measure sound and safe in itself.

Then I hope, sir, to see the section proposed by myself, and drawn from the old Constitution, inserted in the new, and that all the other propositions to which I have referred will be voted down. What can be more broad and equal than the platform of justice? What more just than justice itself?

Mr. OWEN. This debate, sir, has wandered so far, has assumed so wide a range, so numerous and variant have been the propositions it has touched upon, that it seems to me it may be useful, if it be not absolutely necessary, to recall the attention of the Convention to the exact point at issue between the contending parties, at this stage of the debate.

The gentleman from Laporte (Mr. Niles) has spoken of the proposition of the gentleman from Jefferson, (Mr. Bright,) which is to the effect that the damages shall be awarded without reference to extrinsic benefits. I remark to the gentleman, that there is no such question now before us. The question now is, upon the amendment originally proposed by myself, and

accepted by the gentleman from Dearborn (Mr. Holman).

Mr. NILES, interposing, and Mr. O. giving way, said, upon examining the papers upon the Secretary's table, I find that the same provision proposed by the gentleman from Jefferson, (Mr. Bright,) is embodied in the amendment now submitted by the gentleman from Franklin (Mr. Berry).

Mr. OWEN, continuing. That amendment is, it is true, on the Secretary's table; but it is not the amendment upon which we are now about to vote. This latter amendment reads in these words: "No man's property shall be taken without compensation; nor, except in case of the State, without such compensation first assessed and tendered to the owner." Not one word is to be found in it as to the principle of estimating damages; not a single word in regard to the right of appeal, to which the gentleman alluded by way of objection to the proposition. There is, under the section as it stands, a right of appeal, both on the part of the company and on the part of the individual. The gentleman may argue, indeed, that that right is virtually, though not expressly, cut off. There can be no difficulty, however, about the enactment by the Legislature, of a provision of law to this effect: that, in the case which the gentleman has supposed, namely, where the jury may have assessed five times or ten times the just amount of damages, the money may be paid into court, and there remain, untouched by the owner, until the final decision of the case appealed. This will secure final payment, yet protect the company from imposition.

It is evident enough, I think, that the proposition now before the Convention, and that submitted by the gentleman from Laporte, (Mr. Niles,) are the two most prominent, and that either the one or the other will ultimately be adopted. We who are voting upon the former proposition, desire that the value of the property to be taken, shall be first assessed and tendered to the owner; our opponents think this unnecessary and inexpedient.

But, in the first place, I would say a word in regard to the remarks by the gentleman from Sullivan, (Mr. Wolfe,) as to the opposition and enmity which he seems to think exists in this body, against all corporations.

Mr. President, I am a citizen of Posey county; and the people of Posey county, in their capacity as citizens and individuals, have subscribed for public improvements of various kinds, which they expect to complete in the course of this year and the next, to the amount of between \$74,000 and \$75,000. This has been done by Posey county alone; and I am a stockholder in every one of these enterprises. Is it a likely case, then, that I would advocate a proposition of which the effect is, to retard and cripple improvements, even in my own county? I need make no protestation that I shall never sanction

a proposition which I believe calculated to produce such an effect.

Mr. President, what are the minor objections that have been made to the proposition of the gentleman from Dearborn, and brought to bear against its provisions? It has been said that an individual, having a quarry of stone, or a few timber trees, might refuse to sell the same at any fair price; and, in that case, before the stone or timber could be taken, a jury must be called, and formal damages assessed. Are stone quarries, are timber trees, so scarce in this country of ours, that, if one man refuse to sell, no other can be found to offer them? My experience is, that, in nine cases out of ten, a reasonable price can, and will be fixed, by private agreement, on all such articles, when required by a company, in the construction of roads. Throughout last summer I served as acting Commissioner on the plank road between New Harmony and Mt. Vernon; and not in a single instance did any difficulty occur which it required a jury to decide.

But let us suppose the case, certainly a very possible one, that some individual does hold out to the last against the sale of some property absolutely needed; say that a jury does assess some ten or twenty dollars more than really ought to be paid; and suppose the company compelled to tender this unreasonable amount; shall we set the tender, yes, or the loss, of such a sum of money, or of any sum of money, in competition with the right of the citizen?

Sir, this is a provision which may—in some cases probably will—lead to some inconvenience. No human right can be secured, or ever has been secured, without such risk. In that country from which most of our ancestors came, and of which I myself am native—in a country which cannot yet boast of the large liberty enjoyed by us here—has not mere expediency often been made to give way to right? Do you not remember how secure is the subject of Great Britain in the right of his domicile? An Englishman's house is declared to be his castle. The winds of heaven, as some one has it, may enter; the storm and the tempest may beat through its frail walls; but the king of England cannot enter. No officer charged with the execution of any civil process can force the outer door of an Englishman's dwelling. Inconvenience may result from this; loss to individuals, delay to justice; yet this inconvenience is submitted to—willingly submitted to—that the great principle of human rights may remain inviolate.

It is a thing the furthest from my thoughts or wishes, to put any obstacle in the way of roads, and similar public improvements. To their increase among us, as the offspring of private enterprise, we shall owe much of the prosperity that may be in store for our State. Nor do I cherish enmity to corporations created under proper guards. I but say, that I am not



willing to see them established on the ruin of human rights.

Mr. MORRISON of Marion. Mr. President, I have listened with close attention for four or five consecutive days to the gentlemen who have participated in this debate, and have watched its course and progress. I have observed, sir, that every proposition which has been presented, either as a substitute or as amendments to the original section, have met with about the same reception. I conceive, and herein agree with my friend from Posey, (Mr. Owen,) that the controversy is now narrowed down between two simple and distinct propositions. The first question is this: shall a corporate body have the right, without resistance on the part of the citizen, to go upon his private property and take the whole, or any portion thereof, without a jury of freeholders being first assembled to assess the damages and the amount of the award tendered? The other question is, whether the jury, in assessing damages, may take into consideration the benefit supposed to be conferred upon other property of the individual claiming damages. In other words, will the Convention interpose barriers between the rights of the citizen, and the encroaching and aggressive spirit of corporate bodies?

This is a question which deserves the most serious attention of a body of the people's representatives, assembled to frame the organic law of a State. We are here assembled to declare the rights of the citizen, the duties of Government, and provide guards for the protection of the one and to define the functions and limit and restrict the exercise of the powers of the other. When the rights of the individual citizen are brought in contact with an association, when a single citizen is brought in collision with the combined strength and wealth of a corporation, the citizen is as a willow, standing against the gale. The influence, the combination of interests, the association of wealth, in a word, the concentration of all the elements of power existing in a corporation, will inevitably crush the citizen to the earth. Unless we interpose great constitutional barriers, the personal rights of the individual will be disregarded and overborne, and his property swept from him by the remorseless and strong arm of corporate power.

I, sir, would be one among the last to impose such limitations and restrictions upon associations and corporations, as would prevent individuals associating their energies and their capital for the purpose of constructing those great works of public improvement to which the State must look, in a great measure, for her future prosperity and growth. I have listened this morning with delight to the gentleman from Laporte (Mr. Niles) while he portrayed to us in the strong colors of his imagination, and the vivid language of his eloquence, the destiny

of the State in view of the construction of the net work of plank roads and railroads, projected by private enterprise, and to be certainly completed by private enterprise, unless we unwisely restricted and discouraged associations of individuals banded together for this purpose. He told us that the growth and prosperity of our noble State was mainly attributable to the few works of public improvement already in operation, and from this deduced what our future position would be when the great system of internal improvements now projected and commenced by private enterprise should be completed.

But I attribute the increase of population, and the development of the wealth of the State, to different sources. I do not see, as the gentleman thinks he does, the cause of all this to be entirely in our roads and canals. I attribute it to our form of government and to our laws. It is to our free and liberal institutions that have induced the producing classes of the old world to emigrate to our shores and settle within our borders. They have induced the farmer, the mechanic, the manufacturer, and the laborer to come into the State, and develop its resources. Added to these, the considerations of a bountiful soil and a healthful climate have attracted a large and thriving population, and the ratio of its increase is still undiminished. It is the aggregate of these individuals that forms a great State. The pictures drawn for us by the gentleman from Laporte were delightfully portrayed; but so, also, were the painted descriptions of the future prosperity of the State by the friends of internal improvements constructed by government in 1836. Every man then in any way engaged in public improvements told us that by their means the people of Indiana were to be made the greatest people on the face of the earth!

Mr. President, the people of Indiana reluctantly, but unavoidably, are now looking at the sad reverse of that picture.

The principle that I wish to present to the Convention is this: this body has made a wrong estimate of what constitutes the public. Are we to estimate those gentlemen who form themselves into associations and incorporations as constituting "the public?" Are we in legislating or in framing a Constitution for the inhabitants of Indiana, to regard the officers and stockholders of corporations as "the people of the State?" Are they anything more than a portion, a very respectable part perhaps, but still a portion only of the people, who to secure greater returns for exertion and more profitable investment of capital, have formed themselves into companies and associations, as distinguished from the transactions and operations of the isolated individual citizen? I suppose that out of two hundred thousand citizens, not more than ten thousand at most, are connected

with corporations. The proportion is not more than one in twenty.

Now, sir, I hold that "the public" consists in the main, of individuals who are unconnected with corporations. The farmers, the agricultural class of a State, is generally the largest portion, and, I might add, the most valuable, of its population. The producing class is always numerically the strongest. And compared with these how few are members of incorporated companies!

I hold that in this matter the issue is distinctly made up between the people on the one hand, and corporations on the other. I desire that idea to prevail. Not that I would foster, or that I should like to see, a prejudice engendered in the minds of the people against corporations, but I desire that the interests of the people should not be placed within the power of corporations.

Gentlemen tell us that we should not meddle with this matter here, they tell us that if we will leave it out of the Constitution the people's rights will be guarded and amply protected by their representatives coming up here to the Legislature annually or biennially. Let me tell gentlemen that this cannot so certainly be calculated upon. Vigilant representatives, unconnected with those corporations, uninterested in the chartering of new ones, and above the reach of the insidious temptations to swerve from the rigid line of duty, may thus protect the rights of the people, and strive to interpose barriers to the encroachments of associated wealth by restrictions and limitations upon the exclusive privileges of corporations. But, sir, will there ever come a time when those who are directly or indirectly interested in corporations, when those that are liable to yield to the potent influences of wealth and power, will not find their way into legislative halls? No, sir, never.

Look for a single moment at the relative position of private citizens, of individuals, and corporations. Observe the power of the one and the weakness (because isolated) of the people. Corporations can always, and do always, send up to the Legislature their "lobby members," to represent their interests as distinguished from the interests of the people at large. They have the wealth to enable them to do this, and the result generally justifies the outlay. Even though we should provide in the new Constitution that corporations should be formed under general laws, these influences would still be brought to bear in their favor, and they would still manage to secure privileges and rights not common to individuals.

On the other hand, it must be evident to all that the people can oppose no counteracting agency to these influences. They cannot come up here in a body, and individuals cannot spend their time and money to come up to the Legislature and stay around the lobbies and doors of

this Capitol, to protect themselves against corporations. The people act without concentration; in the aggregate their political power is omnipotent; in the segregate, comparatively impotent.

The farmer, when he buys his land, does so after taking into consideration all its advantages, not only its location but its productive and latent resources; he takes into account the number of acres of arable land, the amount of waste ground, the timber, the stone, the sand and clay, &c., &c.. Either his timber, his stone, or other property may be taken from him, according to the plausible doctrine of the gentleman from Laporte (Mr. Niles) without his will or consent, if it is necessary to the construction of a work undertaken by a corporation acting either under a general act of incorporation or the muniments of a special charter.

The reason given for this allowance of trespass on private right, is, that the construction of works of public improvement result to the benefit of the whole community, and as he is "one of them"—as he is a component part of the public—he will receive his share of the benefit; and, moreover, if he own adjoining property, he will be incidentally and peculiarly advantaged, and, perhaps, enriched by its proximity to the railroad, plank road, or canal. I would ask gentlemen if, under the operation of the same principle, a corporation engaged in the construction of a public work, should not be privileged to enter a store, a mill, or a workshop, and take possession, under legal forms, of course, that would take off the air of theft, of broad-cloths, boots and shoes, hardware and groceries, flour, and the products of the mechanic's labor? Why not? All these things are necessary in the construction of the work, and the owners might consider themselves paid by the general benefits resulting to community from the railroad or other work.

A MEMBER. It may be that the timber and stone, &c., taken by a corporation, are the only materials convenient to the line of the road; it might subject the company to serious inconvenience to carry those materials from a distance.

MR. MORRISON. And so it might be vastly more convenient to take the flour from an adjoining mill, or the goods from a convenient store, than to buy in other markets where the price might be higher, or, as the more likely case, where the owners being unwilling to take their pay in "general benefits," would demand the cash for their goods and products!

I, sir, for one, would be ashamed to go home among my constituents and tell the farmer, the man whose property is in land and timber, that, in this Convention, to which I was sent to secure the protection of his rights, I had agreed to impose upon him obligations and liabilities not imposed upon the merchant, the mechanic, and other of his fellow citizens. I should be extremely puzzled were he to ask me why I



made this distinction against his class and exempted others—why his property might be condemned for public use against his consent, while the merchant and manufacturer would be protected against the conversion of a dollar's worth of their property to the public use without their consent, and without the payment of the value they fixed upon it, in money; I say I should be extremely puzzled to answer such a question and to explain my vote.

The gentleman from Laporte (Mr. Niles) hopes never to hear it said upon this floor that the policy of the State should be to embarrass and discourage corporations formed for the construction of works of public improvement. Well, sir, I do not wish to embarrass them; I do not wish to discourage the laudable spirit of private enterprise; I will be foremost to encourage and to foster it by all legitimate means. And while I would do this, I wish to place them upon the broad platform of equality with individual citizens. I do not wish, in other words, to grant to any one man, or set or class of men, special and exclusive privileges.

When an individual purposes to build a warehouse, or construct any work, he must not only pay, in money, the market value of all the materials he would use, but he cannot take them without the consent of the owner first obtained. I propose that corporations should enjoy no greater privileges than individuals. In their combined resources they have power enough and advantage enough over the private citizen, without our legislating or providing in the Constitution for their especial benefit. The aggregation of wealth in the hands of corporations, puts it in their power to defy competition from individuals. They have the power of money; they already have great advantages of the isolated citizen. Let us protect the citizen, not throw the ponderous weight of Constitutional provisions and special legislative enactments into the already descending balances of the corporations.

If corporations proposing to build a railroad or other public work, desire stone, timber, &c., let them advertise for proposals to furnish the specified qualities and quantities, then a healthy competition will spring up, and they will obtain the materials they may need at the cheapest rate. But do not provide that they can take timber, stone, or land without making compensation in the same manner that individual citizens would be required to under like circumstances.

But we are told by gentlemen that the benefits conferred upon a man's farm by a road passing over it, should be taken into account, and enter into the compensation awarded to him for other property that may be taken. Now, I ask, of what benefit to a man, a portion of whose farm may be destroyed by a railroad, is that road, over and above its benefits to his neighbor, whose farm lies on the line but is not dam-

aged by it? Certainly none at all. Then is it not clear that the man whose farm is damaged by the construction of a public work, say to the extent of five hundred dollars, pays just that much more for internal improvements than his neighbor, who receives equal benefits but whose property remains untouched? If the farmer, a portion of whose land has been taken for the construction of a railroad, and who has been paid for that land in "supposed benefits," wishes to transport his grain over the road to market, is he not charged the same freight tariff as his neighbor? and if he wishes to ride over the road, must he not pay the same fare as his neighbor? Then why make him contribute an actual amount towards the building of that road, which you do not require of his neighbor?

Mr. President, these roads and other works of public improvement will be built. The gentleman from Hancock (Mr. Walpole) has said, that we are not willing to allow a healthy competition to spring up with the roads already constructed, and the same idea was thrown out by the gentleman from Laporte (Mr. Niles) this morning. As a citizen of Marion county, I know that the people whom I represent will understand their own interests, will know when they need a railroad, a plank road, or canal, and when they are satisfied that they need either one, they will grant the right of way and give a company proposing to do the work, all the facilities and aids they may require. But I wish to protect the people of Marion county, and the people of the State, against what I must denominate "soulless corporations." I am told that if corporations actually encroach upon the rights of the citizen, if they take private property without making just compensation therefor, that the people have a remedy in the law, that they can sue out an injunction and restrain a corporation from taking and using their property. But to get out an injunction the citizen must employ a lawyer, and otherwise incur a bill of costs he may be entirely unable to pay. It has passed into a proverb that when a man goes into law he gets "fleeced;" most emphatically is this true where an individual goes to law with a powerful corporation. And is it proposed that the citizen shall pass through this ordeal to secure his "inalienable rights" from encroachment?

This idea, the idea that corporations and associations shall not compensate the owner of private property in money, at its market value, is so repugnant to every declaration of political rights, so at war with every principle of justice, that I am at a loss to understand how gentlemen can support it. I cannot go into my neighbor's store, take a yard of cloth or a barrel of flour by telling him that I need it and will pay him for it hereafter, unless that neighbor chooses to trust me. But the proposition is to allow a corporation to do that very thing—it is to allow it to take property against the owner's consent

by paying the amount of damages assessed by a jury. For one, sir, I will never vote for such a proposition.

The gentleman from Laporte has discussed all the amendments which have been offered to this section, those that have been disposed of as well as those now pending, and as many of the points he has discussed are not relevant to the present question, I shall not follow him through his entire argument, and attempt to reply to all he has said.

I repeat what I before remarked, the issue is plainly made between the people on the one hand and the corporation on the other. It is for us now to determine what guards shall be thrown around the citizen for his protection against the encroachments of organized and incorporated bodies. Of all the propositions which have been presented, I am satisfied with that of the gentleman from Dearborn (Mr. Holman). As amended by that gentleman, the section would read:

"No man's particular services shall be demanded without just compensation.

No man's private property shall be taken or applied to public uses, without just compensation, and, except in cases of the State, such compensation first assessed and tendered to the owner."

I shall not detain the Convention with any further remarks at this time, but I shall go against every proposition which would leave this question unsettled, so that subsequent Legislatures may have the decision of the question left to them. There the power of corporations will be brought to bear against the rights of the individual; therefore I shall vote to settle it here, and shall, for that purpose, support the amendment of the gentleman from Dearborn.

Mr. KILGORE. The only point of difference between the advocates of the principles of the old Constitution and those disposed to favor provisions similar to those of the section now before the Convention, is embraced substantially in the amendment proposed by the gentleman from Jefferson, to strike out the latter part of the pending amendment. Should this proposition prevail, it will leave the whole section the same as in the old Constitution. The great cause of difference between the friends of the one proposition and of the other is, that the one requires the damages for private property taken for public use to be pre-assessed, to be assessed and the amount tendered before possession is taken of the property. The other party is willing to provide that a fair compensation shall be made to the owners of private property condemned for public use, but simply object to the stringency of the provision which requires that the property shall not be taken until the damages are assessed and tendered.

There is one serious difficulty in my opinion, which will certainly grow out of the adoption of the pending amendment. In many cases it

will be impossible to know the nature and amount of the damage done, until after the property is taken. To give an example illustrative of the difficulty which I apprehend must grow out of this provision, requiring the damages to be assessed and tendered *before* the property is taken;—and I will take the same case alluded to by the gentleman from Laporte, (Mr. Niles,) so far as the nature of the work to be constructed is concerned. Suppose a company desires to take timber from the land of an individual for the purpose of constructing a bridge. Now the provision is, that damages must first be assessed, and the amount tendered. A jury must be empaneled and sent out into the woods and assess the damages for taking an uncertain amount, and an uncertain quantity of timber for the bridge. Now what is to be done. A tree must not be felled until the damages are assessed. The jury cannot go about and mark the trees and set a value upon each one. The number, size, and value, must all be known to the jury before the damages can be ascertained. Suppose that they mark a certain number of trees, and judge as near as may be, to their value; the damages therefor are assessed, and the amount tendered. Very well, after all this awkward formula, the company can go on, cut down the marked timber, and proceed in the construction of their bridge. But suppose the amount proves insufficient? Another jury must be empanelled, proceed to the work, and assess damages for another lot of trees before the work can proceed. And it is quite possible that a second deficiency may be discovered, for, inasmuch as the company must pay the money in advance for all the timber they use, they will be very particular not to get more than they think they absolutely need; then a third jury must be empanelled, go into the woods again, and go through the process of assessment, before the last timber can be put in the bridge. All this must be gone through with, in order to build one bridge.

Much has been said about the danger of granting special and particular privileges to corporations. We only ask that corporations shall be put upon an equal footing with individuals. We compel no man to pay a debt until it is contracted—we do not provide that a man shall make compensation for a trespass before the trespass is committed. There is, no legal liability for debt, until a consideration is proved. But you demand that these "soulless corporations," as the gentleman from Marion (Mr. Morrison) sees fit to designate them, shall not be allowed to take a stick of timber or quantity of stone, until a jury has assessed the damages, and the money is paid. The property may not be used for months after if is necessary to locate the road or other work; no matter, the money must be paid to the owner, whether that amount be great or small. The company may be one of limited means, and the outlay of a large sum of



money in advance may seriously embarrass their operations. No matter, as the gentleman from Laporte (Mr. Niles) remarked, no matter how exorbitant the damages assessed, there is no remedy; the amount must be tendered and paid over. The right of appeal may be left, but the money is to be paid and then you may prosecute a law suit to its final and uncertain termination. And suppose, sir, that in the meantime the owner of the property taken, and for which you have paid in money an exorbitant price, becomes insolvent. Where is your remedy? Nay, more; suppose the owner of the property for which exorbitant damages have been assessed, is known to be hopelessly insolvent at the time? You have no remedy but to pay over the amount. The jury before which the case is finally tried, may decide that the damages assessed were exorbitant and may reduce them four hundred per cent. If the party is insolvent, the company has no recourse; it has been obliged to pay over a large sum of money for damages not sustained, and now they must do as best they may to complete their work. Is this the equal and exact justice we declare shall be meted out to all?

Do gentlemen who are so fearful of the encroachments of corporations, and so urgent that they shall be placed upon an equal footing with the individual, desire to see corporations put thus far below the private citizen in point of rights and privileges, and is this the way the gentleman from Marion (Mr. Morrison) would encourage the spirit of private enterprise?

It has been urged, in debate, in favor of providing for the pre-assessment of damages, that companies and associations might become insolvent, and, in some cases, a loss thus incurred by the owner of property taken for public use. In the first place it is a very rare thing that a company organized and incorporated for the construction of a public work becomes insolvent to this degree; but, sir, the risk that owners of property incur in this way, enters into and forms a part of the every day transactions of life. Carry out this principle, and it would result that we should have none of that confidence between man and man, which is now the basis of all business transactions. Individuals may become insolvent, individuals may commit trespass and become insolvent, but these are among the risks which all members of society must incur.

Reference has been made, frequently, in the course of this debate, to the scenes of 1836.

Mr. President, I am the only man now living who was in the Legislature of this State in 1836, who had anything to do with the system of internal improvements projected at that time [laughter]; strange as it may appear, it seems that I am the only survivor. There were many here in that memorable year, sir, and they are not all dead, but a strange and unaccountable obliviousness has come over them; they have for-

gotten that they were ever here. [Renewed laughter.]

But, sir, I was here and however much that Legislature may be denounced by those now walking in the light of its experience, I shall never deny that I was a member. I admit frankly that the policy then adopted was a mistaken one, but the State has learned a great and most valuable lesson. True, the cost was great but the experience has proved most invaluable. And, sir, it should be remembered by those who, in 1850, so violently assail the policy adopted by that Legislature, that they are now looking at *results*, and that if they were placed back in 1836 it might be as difficult for them to foresee the future and judge of the best policy to meet the wants and developments of that future as for us who stood there unaided by the light of experience that now shows us that private enterprise is the only secure and legitimate basis for an extensive system of internal improvements.

There is a discrepancy in the arguments of those who are opposed to all corporations, to which I desire to call attention. They argue that companies and associations should be required to have private property assessed and should tender the amount in money before they should have the right of possession for the reason, they tell us, that corporations are very liable to become insolvent, in which case the owner of property would lose his damages. And then again we are warned, the people are warned, of the power and influence of those mighty corporations—their wealth is represented so great that they can always defy competition from individuals. In the language of the gentleman from Marion (Mr. Morrison) “the issue is made between the people and these wealthy and powerful corporations.” Now what consistency does this exhibit in the enemies of corporate bodies? They would have the people prejudiced against them on account of their leviathan power and untold wealth by means of which they are able to buy up the consciences and votes of Legislatures and to crush all opposition, and then, a moment afterward, to defend some weak point (as for instance the impractical proposition that no private property shall be taken for public use until damages are first assessed and the amount tendered in money); they tell us that these same companies are irresponsible and liable to insolvency.

—I regret to see this opposition coming from the source it does. Among the strongest opponents of the adoption of a liberal policy towards the associations of private enterprise in corporations which are now proposing the construction of a magnificent scheme of internal improvements, are the gentlemen from Marion and Jefferson. I am not hasty to impute improper motives and I will not be. I will not suppose that the gentleman from Jefferson (Mr. Bright) is actuated by selfish motives in his de-

sire to discourage the construction of new lines of railroad. He himself gives us a clue to the cause of his prejudices. He had a client whose rights had been encroached upon by the company owning the Madison Railroad. The client's private property had been taken without a just compensation, and it was natural that his sympathies should be enlisted in behalf of his client; it was right they should be. But with all this exercise of charity, I must say that the plain effect of the policy pursued by that gentleman is to secure his own Railroad in the enjoyment of her present profitable monopoly, and prevent competition by imposing such restrictions upon corporations as shall discourage the construction of other railroads. As the gentleman from Hancock (Mr. Walpole) remarked, having secured the right of way for their own Railroad, having had the greatest facilities for its construction, they are not anxious for the building of rival lines. Having "got out of the brush" themselves they are disposed to forget the wants and interests of other portions of the State.

Mr. President, I have an interest myself in that Madison Railroad. Being the only surviving member of the Legislature of 1836 I feel somewhat like a foster father to that road. [Laughter.] That Railroad, sir, was one of the works of the Legislature of 1836, and I have a right to feel and manifest an interest in the bantling, but I do not wish it to grow too powerful. I do not want those iron rods, like the insatiate rod of Aaron, to swallow up its neighbors. [Renewed merriment.]

This case of the Madison Railroad reminds me of a story.

[Mr. K. proceeded to relate an anecdote which was inaudible at the Reporter's desk, but was understood to relate to a child that had been found destitute, taken in and fostered by strangers, supported and educated until he grew to manhood, when he ungratefully turned round and expelled his benefactors from their home and estate.]

Mr. KILGORE proceeded:

So with Jefferson and Marion counties. We have befriended them; we have made the deep excavations at a great expense for their railroad, and now they would put their feet upon the neck of competition. I do not impute selfish motives, I am describing the effect of the action of gentlemen.

Indianapolis is the city of railroads; she has reaped, and will continue to reap, great advantages from her position. Her representatives are now opposed to granting to other roads the same facilities enjoyed in the laying out and construction of those converging to this point. And why? Because every new road must be lateral, and must terminate at some other point than Indianapolis. Rival interests are springing up at other points, and if they can be crippled, so much the better for this city and Madison.

I am deeply interested in a thoroughfare terminating in the city of Indianapolis; but we have secured the right of way and stand in need of no provisions of a fostering character. We have secured all the materials necessary and occupy the vantage ground in this respect, over other roads. Companies for the construction of other roads that would subtract from the business of ours, are now forming and have yet to secure their materials and the right of way. Now, sir, although they must be competitors of the road in which I am interested, I am willing to see them upon the same ground we occupied; I am willing they should enjoy the same facilities and privileges for the construction of their roads which we enjoyed.

Mr. President, I trust that the restrictive propositions which have been made here will not be adopted. The true policy of the State is to encourage and foster the spirit of private enterprise, and this can be done without the sacrifice of individual and personal rights. Regard corporations in their true light, as the associations of energy and capital for the accomplishment of great public undertakings; for the construction of those works of public improvement upon which the future growth and prosperity of the State depends, and we shall come to a correct conclusion.

Sir, there has not been a solitary instance that has fallen under my observation—and I can say without affectation that I have had some little experience on this subject—where strict justice has not been done to the landholder. During the last two years I have been concerned in making assessments for damages on the Bellefontaine Railroad, and in not a single instance has the jury refused to give the claimant damages who was justly entitled to them. In some instances where the road did no material injury to farmers, the benefits that would certainly result to the owners of the property upon which the road was constructed, was set off against the damages. Now, sir, I ask if we should not trust this matter to a jury at all times? Men trust their lives, their liberty, and their property in the hands of juries, believing that they are honest and will do justice to all parties; and certainly if they will do this, they ought not to fear their decisions in the small matter of compensation. A certain individual may imagine that his property is injured in consequence of the construction of a road. Let a jury then examine all the facts in the case, and take into consideration the advantages as well as the disadvantages that will result to the man's property, and then strike the balance between the two, awarding strict justice. This is the true mode of operation. But do not allow the petty spirit of a few individuals who may object to the construction of the road to hinder or obstruct its progress. I have met with several such cases, and if we had not had the power given us on the Bellefontaine railroad to assess



in the manner provided in the charter, two or three individuals on that road would have defeated its construction, and not a rail would have been laid on the road. The very moment a road is projected an excitement is gotten up near its supposed vicinity, and every one professes to be willing to give a release of the right of way; but after you have entered upon its construction it may then be the very men who first offered a release of the right of way, come forward and claim damages. The stakes being struck, the road commenced, and the company having expended money at the time these claims are presented, of course cannot get clear of the claims by changing the location of the road; and although those damages may be unjust and exorbitant, if the provision on the subject now proposed is inserted in the Constitution, the company must pay them; for if they correspond in amount to the assessment of the jury of freeholders, they have got to tender the amount of damages that has thus been assessed, to the claimants, leaving out of consideration the immense advantages which will result to the claimants from the construction of the road. Is this fair? Is it just? Is it equitable?

There are many men who make money out of every operation in which they engage. I heard an anecdote of an individual who had been engaged in money-making all his life, and who never did a single act without being paid for it. Unfortunately he accidentally fell one day into the water, and was being rapidly carried away by the current. Some kind soul grasped at him ineffectually several times while he was in the water, and at last succeeded in dragging him by the hair of the head to the shore. When this man had got on his feet, and was considering over the matter, he began to think that on the whole his ducking had been rather an unprofitable operation—that he had made nothing out of it—and in order to realize the darling object of his ambition he concluded that he would make a good thing out of it by suing the fellow who had dragged him out of the water, for pulling his hair. So it is in relation to a good many men. Once get a road permanently located and they will avail themselves of every means to bring an action for damages against the company for pulling their hair, or, in other words, for having made their fortunes.

When a claim for damages is a just one, let the company make compensation in money; but I am opposed to giving the claimant a two-fold compensation first in money, and then in benefits. I am also opposed to assessing damages, and tendering them in dollars and cents, before a single step is taken in the prosecution of the work. Say what we will, sir, in relation to this subject, it is my opinion that it should be left to the Legislature. There is no danger of the people's representatives allowing their rights to be trampled on. The same people who elected

us, will elect representatives to come here and make laws for them; and the people will require of those representatives that they guard the rights and interests of the minority. I venture the prediction, sir, that there is not a gentleman who has a seat in this Convention, who has discussed this question before his constituents, that has been instructed by them to vote for a change in the old Constitution, on this important question.

There are, I acknowledge, a certain class of corporations for which I have no particular love—those corporations, however, that are disposed to build up the interests of the country, I am disposed to aid as far as possible. I hope the amendment of the gentleman from Jefferson, (Mr. Dunn), to strike out the portion of the amendment which I have been considering, will prevail, and that the amendment will be left, in substance, the same as the provision of the old Constitution on the subject.

Mr. TAGUE. I desire, Mr. President, to make a few remarks upon this question, before it shall be voted upon. I expect, sir, that the brief remarks with which I have occasionally introduced resolutions, have acted as a kind of notification to the members of the Convention that I am somewhat illiterate—that I have not been educated in the manner I should have been, and that the language I use to express my ideas is not the most choice or grammatical. Another defect in addressing an assemblage of the character of the present one, is, that I am, by birth, a Dutchman, and cannot speak the English language with the plainness that should always mark the efforts of public speakers. But, sir, if any gentleman should fail to understand me, I hope that he will call upon me to explain more satisfactorily, my ideas upon the subject under consideration. I believe, at any rate, that a Dutchman is permitted to speak twice upon a subject, and, if he is not then understood, he has the right to occupy the floor until he can make himself understood. This is the course, if members are willing, that I should like to pursue; I should like to do this, because I have some rights as a member here, and I desire to have a chance equally with the more talented members, of making my views known to the Convention, and to my constituents. [Cries of "consent," "consent."]

Mr. President, I regard this subject now before us, as a very important one; a subject as momentous in its character, and one in which our constituents are as deeply interested, probably, as any that will come up before this Convention for consideration.

This question involves the rights of men—the privileges of the citizen; and it may be said that the future action of this Convention, in regard to the rights of men, depends, in a considerable degree, upon the manner in which we treat it. If we, in this particular matter, fail to regard the rights of men—fail to protect and shield them,

we will set a precedent that may be but too easily followed—a precedent, too, that, in the future action of this Convention, and of the Legislature, may lead to the most dangerous consequences.

I must confess, sir, that it appears to me this discussion has taken a very wide range, in a general way, and has not been so closely confined to the point at issue as it should have been. I have discovered this fact, sir, because I have been a patient and attentive listener to the speeches that have been made, and have been engaged in watching the general features and force of the arguments that have been presented.

I have found, sir, by observation, that the lawyers, with a few exceptions, have taken but one course upon this subject. They are entirely in favor of corporations or large and wealthy companies. I myself view these corporations favorably, because I think they are of much service—that they advance the public interests, and I like to see them organized. I argue, sir, that we should protect and guard the rights of individuals, and as these corporations or companies are composed of individuals, I hold that when the rights of individuals are guarded, the rights of these corporations or companies are guarded.

In regard to the amendments that have been proposed, I must say that the amendment offered by the gentleman from Dearborn suits my mind better than any that have yet been offered. To be sure, the original amendment reported to the Convention is a very good one, and probably will answer the purpose as well as the amendment of the gentleman from Dearborn; I do not see much difference between them. I consider, sir, that some gentlemen, in offering these amendments, have presented propositions that take too wide a range—have soared, as it were, too high above the interests of their constituents. If they would look over the past, and study the past and the present condition of their constituents, and reflect upon the distress and the many evils which have resulted from an undue exercise of authority by corporations to their constituents, I think they would be a little more careful as to their action on the present question.

I have had the honor, Mr. President, of a seat in this House as a representative of the people; and well do I recollect, during the last several years, and particularly some six years ago, the numerous claims and presentments here for damages, which strict justice should have settled long ago, when the cause of their being presented first originated. A great many of these claims could get no hearing at all. Another fact, sir, that I have noticed since these new improvements first originated and have become so numerous is, that the time of the House of Representatives has been consumed in discussing the merits of the various corporations and the advantages to result from granting them

charters to an extent that has cost the State in money for its expenses as much as it has realized from the contemplated improvements. [Several members. "That's true."]

In view of this state of things, I am in favor of modifying the present system, so as to guard against any unnecessary delegation of power to corporations, or any unjust exercise of power by these bodies towards individuals. I consider that the provisions in the old Constitution in regard to this subject are very excellent, as far as they go; still I am of opinion that a change for the better can be made through the medium of amendments in the new Constitution. The amendment reported to the Convention, or the amendment proposed by the gentleman from Dearborn, (Mr. Holman,) if engrafted in the new Constitution, will, I think, do away with the evils that have hitherto resulted from an unjustifiable construction and exercise of the provisions of the old Constitution.

There was an argument advanced here the other day by a member of the Convention, which I beg leave briefly to notice. The gentleman made use of an argument something like this: He stated that an individual might own forty or fifty acres of land, or even a quarter section, and if a canal or railroad should be constructed through that land and damage it to the amount of one hundred dollars, that the advantage he would derive from such public works would probably benefit him five hundred dollars; and he concluded by saying that he would like to have his property damaged that way every day of his life. I would state, in addition, that he calculated that any such improvement would take up about five acres of land. Now, sir, suppose a man owning forty acres of land should have eight different roads constructed through his farm in various directions, and allowing five acres of land to each improvement, how many acres would he have left? Would not his forty acres be entirely gone, and he left without a cent, without a farm, and without money to buy another one? [Great applause.] Apply the same rule to a quarter section of land. Suppose that thirty-two new works of various kinds were constructed through such a section, each improvement occupying five acres of ground, how would the owner fare? I rather think, sir, that, with his own cattle, he would be turned out upon the commons to graze for a living. [Much laughter and applause.] His five hundred dollars for each improvement would be weighed in the balance and found—wanting. [Laughter.] I hope, sir, that gentlemen will look into this more thoroughly than they seem yet to have done. I may be wrong in holding these views, but they are views which the present aspect of the question compels me to entertain. I think, sir, that in regard to the action of these corporations, and with reference to the assessment of individuals for damages that the rights of the citizen or individuals should be



strictly guarded, and, if this course is pursued, corporations or companies, which are composed of individuals, will necessarily have their rights protected also.

I consider, sir, that we should first guard individuals from any unjust exercise of authority by these corporations. There is no danger but that a large body of men will have their rights; but there is danger that isolated individuals may not have their rights. I know that where a road is constructed through a farm, say forty acres in extent, or more if you please, that the owner of that farm has the right to claim damages. But under the old Constitution hundreds of individuals have not received one dollar of damages for the damage done their farms. The argument is that they will be repaid in the course of time by these improvements tenfold, for the losses they may have incurred from the construction. But says a gentleman, you can sue the company for the damages. Why, I ask, what chance does an individual stand in suing a company of a thousand men, with perhaps, a million of dollars capital? An individual might as well attempt to place obstructions in the Ohio River to prevent its running towards the Mississippi, as to attempt to obstruct companies from going on with any works which they are resolved to carry through. [Great applause.]

I have, Mr. President, consumed more time than I intended to when I arose. [Cries of "go on! go on!"] I am not in the habit of making public speeches; this is the first time that I have ever occupied the time of the Convention at any length in an address since its organization. I have made a few remarks when introducing a resolution or by way of inquiry, but nothing further.

[A member here thinking that Mr. T. had concluded endeavored to get the floor.]

Mr. T. proceeded to say however that he would give way in a few moments. Just let the old Dutchman alone for a little while. [Cries of "hear him! go on!" &c.]

As I before observed, sir, I shall support the amendment of the gentleman from Dearborn, (Mr. Holman,) unless one that I consider more satisfactory and conclusive is presented. At present I regard it as about as good an amendment as can be offered; and I do hope that gentlemen who are seeking to introduce other amendments having a wider range, and of a less practical character, will consider the situation of individuals who may be materially affected by this question and give their votes so as to satisfy their constituents at home.

This is a question which, if decided now, is to be decided for years; for the new Constitution which is to embrace this provision will not be altered again, probably, for a generation to come, and there is every probability that as we form it, it will be accepted by the people.

There is another idea upon this question I wish to present. I would here remark that I had several ideas I wished to present when I first arose, for I have a mind to think though I may not possess the ability to speak, but as is generally the case with me, those ideas have in a measure departed. [Much merriment.] Here, sir, is the State of Indiana, a State as susceptible of improvement and cultivation as any in the Union; for during the last twenty-five years I have traveled through some sixteen States of this Union, and I have, also, traveled through this State, have been in nearly every county in it, and I consider that this State is as well adopted to agricultural pursuits as any State I ever put my foot in. [Applause.] It is destined to be a great and prosperous and wealthy State. [Great applause.] It will yet be checkered over with railroads, canals, and McAdamized roads, and internal improvements of every character. The day is not distant when incorporated bodies, organized to carry out these public improvements will absorb nearly every citizen of note or property in the State. There will of course be some individuals, and those are the ones I am now pleading for, who from their want of means will not be able to own stock. Probably more than one half of our citizens will yet be enrolled as members of these corporations; and the great danger to which I wish to call the attention of this Convention is, that you will leave the new Constitution or the provisions in it relating to this subject so open and unguarded as that they may be construed to suit the wishes and designs of these corporations.

Here will assemble the representatives of the people, probably men of wealth—not that I am a man of wealth however but such are generally sent up here if they can be put in nomination and elected because their wealth naturally gives them a preponderating influence. I say then, sir, that when these individuals, belonging to incorporated bodies come up here to perform the duties of Legislators, that if the provisions of the Constitution are left open and unguarded on this subject they will be construed in a different way from what it was designed they should be, to the benefit of these corporations and not to the benefit of the individuals who may be so unfortunate as not to own any of the stock of those companies. This view of the matter I think is justified by experience. I have lived a long time, sir, and those that live long ought to learn something during their lives. I have noticed that men assembled to legislate in large bodies act too much upon self interest; and it will be just as natural for the members of future Legislatures, deeply interested in these various corporations of which I have spoken, to meet here and legislate for their own interests, as it will for them to legislate impartially and justly for the good of the whole people. I say it will be just as natural, and if I may be so al-

lowed to speak, it will be a little more natural and more in accordance with the teachings of the past and the precedents set by other bodies, for those members to legislate with an eye single to their own interests. It is to guard against any such perversions of the powers of our government then that I desire to see the provisions of the old Constitution appertaining to this subject modified and restricted, so as to protect such individuals as may not be members of these corporations from any unjust or unlawful usurpation of authority on the part of such organizations.

#### PERSONAL EXPLANATION.

Mr. RARIDEN. Mr. PRESIDENT: I wish to say a few words on—

Mr. SMITH of Scott. I rise to a point of order, Mr. President. The gentleman I believe has spoken two or three times on this question, and there are others who wish to speak who have not yet had an opportunity.

The PRESIDING OFFICER. Has the gentleman from Wayne spoken on this question?

Mr. RARIDEN. I do not rise to speak on the question now before the Convention, but for a personal explanation, and the floor having been assigned to me by the Chair, I conceive I am entitled to make it.

PRESIDING OFFICER. The gentleman is entitled to make a personal explanation.

SEVERAL MEMBERS. "Consent, consent," and "hear him, hear him."

Mr. RARIDEN. I have already spoken on the subject now before the Convention, and have said perhaps all that is desirable I should say in regard to it. I do not rise to engross the attention of the House on that subject, but merely to say a few words by way of explanation, which I think in justice to myself I ought to give. It is in regard to some remarks which appeared in this morning's paper and which are attributed to the gentleman from Monroe (Mr. Read). As I am involved in these remarks I wish to make a correction. The remarks attributed to that gentleman are as follows:

"Mr. President, I rise not to a correction of our journal—hardly to a correction of our reports. But if good jokes are to be interpolated in our debates, we have as many in this corner as in any part of the Hall, and I would be glad to know how they may go into our reported debates. A scene is represented to have occurred in another part of the Hall, of which the gentleman from Wayne (Mr. Rariden) is made the hero, which did not occur."

Now, however fond I may be of playing the hero, I am not anxious to do so in borrowed or stolen armour. The exception which I take to this is, that the gentleman allows himself to say that this scene never did occur in this Hall. The scene to which I refer is one which occurred some days ago, and is to this effect: The gentleman from Monroe (Mr. Read) had read

to the House the valedictory address of General Jackson. At the close of the reading of it, I am reported to have said, "Now give us the song of Moses; it is equally as applicable to the subject, and is a much better composition." [Laughter and applause.] This scene, or I should say, this remark, the gentleman from Monroe says I never made. In another part of the same speech, the gentleman complains of the remark. I was not in the Hall when that speech was made, but I had heard from others that the remark had been cause of complaint to him, and I went to him and asked him whether he felt any cause to complain. I told him that I had not made the remark on the floor in debate, nor even in my own seat; but that I was sitting in the vacant space between the front row of seats and the Secretary's desk, and that the remark had been heard by the reporters, and that I certainly had made it. I further told him, that I understood him, in reading the valedictory address of General Jackson, as holding a rod over this House, and that, with that feeling, I had made the remark in perhaps rather a loud whisper, "Now give us the song of Moses; it is equally as appropriate to the subject under debate, and is a much better composition." I told the gentleman that myself; and other gentlemen told him so also. He is made to say, in another part of his remarks, that what was said on this floor was not reported, and that what was not said was reported. Now, so far as that remark is intended to apply to this correction, I beg to contradict it. There are fifty men in this Hall who know that I made the remark, both here and at the desk at which I am in the habit of sitting. Now, at the bottom of the column in which this correction appears, is a note in very small print—so small that a man might very readily pass it over—making me, as it were, creep out of a gimblet hole. [Laughter.] The note says,

"Mr. Rariden informs me that he did make the remark imputed to him, while sitting at the Clerk's desk; that probably not a dozen heard him. D. R."

Now the gentleman says that the remark never was made; that the scene never did occur; that the report of the matter is a report of that which never did happen, and that it is an omission to report what actually did occur. Now I aver, that the report is as literally correct as it can be, and that I so informed the gentleman before. As I understand, the gentleman himself drew up this speech, and sent it to the press. I believe his speech was not reported by the reporters, but that he reported it himself. I must say to the gentleman, that I think it is ungenerous to make me figure in this kind of way, and it is also ungenerous to the reporter, because he is directly charged with doing that which he ought not to do, and leaving undone that which he ought to do. I have no wish, sir, to be represented as wearing



borrowed clothes. The gentleman, in the small typed note at the foot of the column, says that I told him that probably not a dozen persons had heard me make the remark. Sir, I told him, at the time that I explained to him that I had not made the remark on the floor in debate, but in the hearing of DOZENS of gentlemen—that I had heard DOZENS of gentlemen telling that they had heard it. I do think that I am exhibited in a rather awkward position here, and I have taken this occasion to put myself right.

Mr. READ. I have but one word to say in reply to the remarks of the gentleman from Wayne. I do not deny having drawn up my remarks myself, which I believe I had a right to do, and of which the reporter can have no cause to complain, as it is so much labor saved to him in writing out the remarks. I must also say, that I showed these remarks to the gentleman from Wayne before they were sent to the press. I showed him the very words, and this very note of which he now complains as putting him through a "gimblet hole." [Laughter.] I made that note for the express purpose of satisfying him; and I understood that he *was* satisfied with the report, as well as with that note, which I here say I made at his own request. I made the remarks that I did on the previous morning, because gentlemen told me that the remark, as reported, had not been made by the gentleman from Wayne, and the gentleman himself told me he had a notion to make it, from which I inferred he did not make it. He has seen, I repeat, every word which is in this report, written out by my own hand, for the very purpose of preventing mistake, and exhibited to him before going to press, in order that he might be entirely satisfied in the whole matter. I distinctly understood him as being satisfied; and I am greatly surprised that he should now come forward and complain in the manner in which he has complained this morning.

Mr. RARIDEN. One word more by way of explanation. It is perfectly true that the gentleman from Monroe read to me the remarks which appear in the paper of this morning. He had a perfect right to write what he pleased, and I had no right to dictate to him what he should put upon paper. I have no recollection whatever, of expressing my approbation of what he read. My recollection is rather the reverse of that. I believe that I remarked to him that he had a perfect right to put into the paper what he pleased; but if I was, by him, put into a false position, I should have a right to explain upon the floor of the Convention. I do not know that I manifested any dissatisfaction at what he had written. My sole object in speaking to him on the subject was to impress upon his mind that I had made the remark.

Mr. READ. The gentleman from Wayne tells us now that there were fifty men who heard

him make the remark; I here aver that he told me there was not a dozen, and I so put it down at the time in the note which I showed him.

Mr. RARIDEN. Then you are greatly mistaken.

Several MEMBERS. Adjourn, adjourn.

The PRESIDING OFFICER. The gentleman from Wayne is entitled to the floor. Does he give way for the motion to adjourn?

Mr. RARIDEN. No, sir; this is a mere matter of personal explanation which may as well be finished now.

The PRESIDING OFFICER. The gentleman certainly has a right to explain. The Chair hopes he will not be personal in his remarks, [a laugh].

Mr. RARIDEN. I assure the Convention I shall not be personal at all. Mr. President, it is utterly impossible that I could have known how many gentlemen heard me; I may have used the expression that probably not more than a dozen heard me. As I stated in the beginning, I told the gentleman that the remark was not made upon the floor in debate, and that probably not more than a dozen gentlemen heard it. But on further examination I found that every body about me heard it, and are ready to state that the remark was made. But why does the gentleman want to tie me down to the number of a dozen? What purpose can that limitation serve? I used the remark; and when I used it I did not mean to give him any offence by any means. I did not call for the song of Moses out of any design to wound the gentleman's feelings, for that would be a liberty which I should feel to be unworthy of myself. I simply meant, as I stated to the gentleman himself, to convey the idea that I regarded his reading that document as being out of place, and as shaking the rod over this House, and that he might as well read to us the song of Moses, which would be equally as appropriate, and which was a better composition. And so say I yet.

Mr. READ. When did you state that to me.

Mr. RARIDEN. I stated it to you here in this hall. You must not allow yourself, under any feelings of irritation; to forget the whole matter; for I assure you, that however much you may have felt, I meant nothing personal—nothing offensive. At the same time, as I told you before, when you read that speech to me, I felt that if there were anything in it which I might regard as injurious to myself, I should take occasion to reply to it as soon as it made its appearance in print. I cannot possibly see, therefore why the gentleman should take offense.

I repeat it again now on this floor, in the hearing of the whole Convention—and I mean no offense to the gentleman when I say it—that the song of Moses would have been equally as appropriate to the subject under discussion, as the valedictory address of General Jackson, and that the former was a much better composition.

This ended the explanation, and the discussion of the subject previously under debate was resumed.

Mr. KENT. Mr. PRESIDENT: I believe it is generally conceded that the agricultural, as well as all other great interests of the State, are more immediately involved in the prosecution and completion of plank roads, than any other branch of improvements. I believe, too, it is estimated that companies have been formed, within the last two years, under the general plank road act of 1848, for the construction of more than five hundred miles of these roads, and I have never heard of any inconvenience in the construction of them, arising from the provisions of this act.

If it be true then, that the present general act works well, and the community suffers no evil from it, in prosecuting these improvements, it certainly renders the arguments of gentlemen, that the amendment of the delegate from Dearborn will retard improvements, of very little force.

In the 9th section of this general act the following is provided:

"In case such company shall require for the use of said road, any stone, gravel, or other material, from the land of any person adjoining, or near said road, and such company cannot contract for the same with the owner thereof, such company may proceed in like manner to have the value of such material assessed, as is above provided for assessing the value of lands, and in every such case of land and material, such company may take possession of and use the same immediately after having paid such justice for the use of the owner of such land or materials, the sum, if any, which may have been assessed therefor."

Here it is expressly declared, that no company shall take lands or other property, until the damages are first assessed and paid over to the proper officer for the use and benefit of the owner. And this is the provision of the amendment under consideration.

The gentleman from Clark (Mr. Gibson) is entitled to the credit of calling my attention to this provision of the general plank road law.

Mr. SMITH of Scott said, that he intended to make a few remarks upon the subject now under discussion, but the hour of adjournment having nearly arrived, he would prefer to address the Convention in the afternoon.

SEVERAL MEMBERS. "Go on, go on," and "proceed now."

OTHER MEMBERS. "No, no," and "adjourn, adjourn."

Mr. SMITH. I move that the Convention now adjourn.

The Convention accordingly adjourned to meet at two o'clock.

The Convention having met pursuant to adjournment, the discussion of the subject under debate in the early part of the day was resumed.

Mr. SMITH of Scott said: Mr. PRESIDENT, On the subject now under discussion, I shall occupy the attention of the Convention but a very short time. I should not venture to trespass upon the time of the Convention, were it not that I feel that I cannot consent that we should take a vote upon this proposition, without first presenting to the Convention the views which I entertain as to the propriety or impropriety of the adoption of the pending amendment.

If I am correctly informed as to the position in which the question now stands, it is this: The gentleman from Laporte offers to amend the original section by striking out "no man's particular services shall be demanded, or his property taken and applied to public uses without just compensation being made therefor." To that, the gentleman from Franklin offers an amendment, by striking out all after the word "man's" and inserting "no man's services shall be taken without compensation; and no man's private property shall be taken for any public improvement without compensation; and when it may be taken for this purpose, the value thereof shall be paid to him in money irrespective of any extrinsic benefits, in such manner as shall be directed by the General Assembly." The gentleman from Dearborn offers to perfect the section in the following manner:

"No man's property shall be taken by law without just compensation for the same; nor in case of the State, without such compensation being first assessed and tendered to the owner." To that I understand the amendment offered by the gentleman from Jefferson is pending, which is to strike out the latter clause of the section and leaving it to apply to a man's personal services only.

The PRESIDENT. The pending amendment is to strike out the first part of the clause; that is, to strike out all after the word "compensation," which will leave it, that no man's property shall be taken by law, without just compensation, &c.

Mr. SMITH. Well, I have an objection to the amendment, as it stands, because it leaves unsettled, a very important principle, which, I am fully convinced, ought to be determined by this Convention.

In the discussion which has taken place on this subject, there seem to be three distinct parties, each occupying separate positions. On the one hand, we hear gentlemen contending that the right of corporations to seize upon and appropriate private property to their own use and benefit, ought to be held inviolate. And the strongest argument which I have heard adduced in support of that position, appears to be that of the gentleman from Delaware, (Mr. Kilgore).



His testimony in favor of the proposition, seems to me to amount to this: He claims the honor of being in the Legislature in the year 1836, and voted for the internal improvement proposition, with this provision in it—that corporate companies might seize upon private property and convert it to their own use, and pay the owner of that private property by setting off the benefits which he would derive from the improvement thus made. He claims to be the author of that proposition, and the Madison and Indianapolis Railroad Company, having derived the benefit of it, he thinks it would be unjust and ungrateful to drive off other companies without allowing them to participate in the benefits resulting from that provision. The whole question, and the only proper question to be kept in view, as I regard it, appears to be this: Shall powers and privileges be granted to corporate bodies, that are to be refused to private individuals? That seems to me to be the only question that ought to be discussed under all these propositions and amendments. Shall incorporated companies, throwing all their funds together, because they are in a corporate capacity—shall they have the privilege of seizing the property of individuals, and converting it to their own use; and, after having done that, compensate the individuals for the injury, by saying to them, "Gentlemen, there are some prospective benefits to be derived by you from the improvements which we are making, and these benefits will be an ample remuneration to you for all the property we take, and they are all the compensation you are to have." Corporations have done this hitherto, and the question is, are we now going to make it a fundamental principle of law, that they shall continue to do so?

Now, the gentleman from Madison, (Mr. Bright), offered an amendment, to the effect that, when private property was taken for any purposes of public improvement, it should be paid for without any regard to extrinsic benefits to be derived from such improvements. On that proposition we find that all the friends of corporate bodies are against him. They say, in effect, "How ungrateful on your part, after having had the benefit of this provision yourselves, and got your road so cheap, after having satisfied your voracious maws in full, with the property of other men—after you have enjoyed all this, how ungrateful it is on your part, to seek to prevent us from enjoying the same privilege!" That is the amount of it. The argument seems to be about this: Suppose that, instead of giving the privilege to corporations, it had given it to individuals; suppose that it gave me authority to seize upon the property of my neighbor, and appropriate it to my own use, and that I had done so to my entire satisfaction. Suppose, again, that the law was about to be changed, and gentlemen were to come and say, "I have not had the same opportunity which you have

had of making myself rich out of the property of my neighbor, and I protest against the passage of such a law until my wants, in that respect are also satisfied." There is not a member of this Convention that does not, at a glance, see the absurdity of such an argument. Why, then, should corporations be put upon a different footing to individuals? Of what greater advantage to a man is it, if a corporation deprives him of his property, rather than an individual? None whatever; and I, therefore, conclude that corporate bodies ought to be placed upon precisely the same footing in this respect, as an individual, and that they, in their corporate capacity, should have no more power to take a man's property, without the fullest compensation, than an individual would have. If powers of this kind are to be given to corporations, we may create corporations which will trample upon the necks of men until eternity.

The gentleman from Franklin offered an amendment similar, in part, to the amendment offered by the gentleman from Jefferson, which I believe would settle a question which has caused no small degree of litigation and trouble in this State on the part of private individuals. The majority against that amendment was only one vote, which clearly shows that a goodly number of the representatives of the people on this floor are willing to act as they should act, that is, to allow to corporate companies every right which they ought to enjoy, and no more. I ask, are gentlemen prepared to grant to corporations rights and immunities which they would never dream of granting to men in their private capacity? The proposition is anti-republican—it is monstrous, and ought never for a moment to be guaranteed by the laws of the State. What, sir! Place "prospective advantages" in the scale as a balance against private injuries? The proposition is wrong; it is outrageous; there is no justice in it; there is no reason in it; there is no equity in it.

The gentleman from Laporte (Mr. Niles) asked us with much emphasis "what can be more just than justice itself?" Mr. President, I, too, can ask the same question, and so can hundreds of thousands of others; but I cannot put my seal to his definition of justice. "What is more just than justice itself?" says he. Sir, justice is all that we ask for; but if we are to guarantee to corporate bodies the right to pass through a man's farm and take his land, whether he will or not, and convert it to their own use, I say there is no justice in it. It is in my estimation, absolute, downright, legal robbery.

Now let me put a case by way of illustration. Suppose that I was an owner of a good mill site on a stream passing through a country rich in grain products, but in which there was not a grist mill. It occurs to me that by erecting a mill upon this spot, I will not only make a good speculation for myself, but confer a

great benefit on the surrounding inhabitants. I go to work and erect my mill. I build a dam across the stream, and cause the land of my neighbor on the other side to be submerged in water so that he cannot use it as he would. In other words, I do him great damage, and he comes to me and makes complaint and asks, as he would have a right to ask, that I, as an honest man, should make reparation for the injury inflicted. What would he think—what would any body think—were I to reply to him, “oh, my good friend, I cannot make you any compensation for this. It is true that your land is overflowed in consequence of my having erected this dam, but then you should take into consideration the fact that this mill will be a great benefit to your neighbors and the country round about, and you must, therefore, suffer the inconvenience and loss arising from having your land overflowed for the general benefit of the neighborhood?” Why, sir, who does not see the absurdity, the injustice of the answer? Again: take another illustration. Suppose I cut through a man’s farm in order to make a mill race. I take, perhaps, some of the best of his land and so divide it by the race as to put him to great inconvenience in the management of his farm. He complains of the injury, and I answer him, “oh, my friend, this will be a prospective benefit to you; it will make your land more valuable in consequence of the proximity of my mill. I will therefore pay for your land by this ‘prospective advantage.’” What would be likely to be his answer? Would he not say, “well, when I am content to take ‘prospective advantage’ in pay for my land, then you may have it and dig your mill race; but until I agree to take that kind of pay you will please to walk off, and put a spade in my land at your peril.” Would not that be his answer? Undoubtedly it would, and the law would sustain him in it. Where then is the difference? On what principle of right, I ask, may a number of individuals, associated together, do that which a single individual may not do? But the law has already settled the principle that companies building railroads, or digging canals, or making plank roads, may, in estimating the amount of remuneration to be given for land taken for these purposes, set off the “prospective benefit” to the parties whose land is thus taken, and this principle adopted and sustained by the Legislature has been found to be a crying evil, and the people demand a Constitutional provision to protect them from injustice so gross, so flagrant as this. To arrive at the justice of the case, then, we must put corporations upon precisely the same footing in this respect, as we would place individuals, and until you adopt a principle in your Constitution allowing a man to seize upon his neighbor’s property and appropriate it to his own use, you ought not to grant such right to corporate bodies. This, sir, I regard as the very gist of the question, and if the amendment of the gentleman

from Franklin had been adopted, I should have regarded it as being settled forever.

Well, Mr. President, let us ask ourselves “what we are here for!” We are here to settle great and fundamental principles. A gentleman who addressed the Convention to-day very properly enquired whether we were going into ordinary legislative action, or whether we would keep steadily before our view the purposes for which we were sent here? I say that we are not here for the ordinary purposes of legislation, but for the settlement of great and leading principles which shall form the basis of future legislation. And if by our action here we should authorise, at any future time, powers to rise up and trespass upon the rights of private individuals, so far from performing the duties which have been committed to our charge, we shall be trampling upon one of the most sacred rights of the citizen; a right that ought to be both secured and safely guarded by the organic law of the State.

But it has been argued that this is a matter which we ought to leave to the General Assembly. Has it not been left to the Legislature already? and what have they done? The gentleman from Delaware (Mr. Kilgore) cast his vote in favor of this principle. Complaint after complaint has been made to the Legislature that poor men’s lands have been taken for these public improvements without their receiving any compensation but a “prospective benefit.” Those of them who were able have appealed to the courts for redress, and those of them who were not able have been obliged to submit to the injustice without redress. And those who appealed, what did they get? The principle was settled by the Legislature, and according to that principle the practice has been carried on.

But, sir, so far as I can understand it, it appears to me that the great quarrel since this debate began has been between the companies who have completed their improvements, and who have enjoyed all the benefits of this unjust law, and those whose improvements are still in a state of progress. The latter party claim that it would be a great hardship if they cannot take every man’s property which they may require, just as the former party have taken it. They say, “you want to keep us down; you will not allow us to enjoy the same privileges which the other companies have enjoyed.” That is their complaint. Now I am ready to admit that the Madison and Indianapolis Railroad have had all that they wanted under that provision. The gentleman from Delaware himself admits that he voted for it; and now when others want an extension of it, he and his party wheel round and—

Mr. KILGORE. The gentleman mistook me. I did not vote for this principle merely as applicable to the Madison and Indianapolis Railroad, but I voted for it as part of a general system of internal improvement.



Mr. SMITH. That settles the very question that private property should be taken and that the prospective advantage a man might derive, should balance the loss. That is what the gentleman voted for. This company have converted as much of the private property of the people of the State to their own use as they needed for their purpose under the provisions of the Legislature. Now I do not know by their anxiety that this principle should be discontinued, that they at all repent of what they did. They may have repented; I cannot tell. But if they have repented, I think it would be quite as well that they should give us some evidence of it by making an ample, full, and complete restitution of the property thus taken, or its equivalent in money (applause). However, sir, you will find that these companies that have got organized and their improvements completed, are paying up in their peculiar coin of "prospective advantage." And how do they pay up, sir? Why, the gentlemen whose property they have taken to build their road upon have the privilege of traveling upon the road over their own property by paying three cents per mile, in advance. No credit, gentlemen! (Laughter.) No credit, sir. It is all "pay in advance." Yes, I should like to see a gentleman go from here to Madison, without paying three cents a mile in advance. Why, sir, he cannot do it. And that, sir, is the compensation—that is the "prospective advantage." (Cries of "hear, hear.") Nay, more, sir. There are yet some other "prospective advantages." If the cars run off the track, and the man whose land has been taken to build the road happens to be traveling and enjoying the "prospective advantages" at the rate of three cents a mile, and is detained—detained he must be. What remedy has he? He may be compelled under heavy bonds, to be in Madison at a given time—but there he is stuck in the mud—fast—cannot get away; he sustains all the damage of failing to be in Madison at a given time; and what redress has he? None, whatever. And thus are we called upon to give to these companies these peculiar advantages and to take their still more peculiar "prospective benefits" in payment.

Sir, I am not prepared to give my vote for any such system. I am not prepared to vote for putting these companies on any other footing than that of private individuals. I am quite of opinion that the rights should be guarded, but I see no reason why any stronger guard should be thrown around their interests, than should be thrown around the interests of individuals, or any greater privileges accorded to them than are accorded to the private citizen. Suppose that I, as an individual, had capital sufficient to build a railroad—would this body, would the Legislature, would any deliberative assembly, grant to me with this capital, a right which they would not grant to any other individual? Not at all. And if they would grant

me such rights would not the universal voice be raised against them in one loud and deafening acclamation, that they were making one law for the rich and another for the poor? No, sir, such exclusive privileges can only be obtained by a union of interests so long as the matter is kept open. If it would be unjust to grant a wealthy individual such privileges—an individual whose wealth could do all that the wealth of a corporation could do—then it would be equally unjust to grant such privileges to a corporation, and hence the necessity for settling this matter as a general question. I admit that it would be a great change from the formerly existing state of things; but it would only be a change from wrong to right, from injustice to justice, from knavery to honesty. I think that we should come up to the amendment of the gentleman from Franklin, which settles the question emphatically—that no man's private property shall be taken and converted to public uses, or seized and appropriated by any individuals at all, unless it is paid for without regard to "prospective benefits," or "extrinsic advantages." This then settles the whole question. It places it upon the basis of equity. I recollect that the gentleman from Hancock, (Mr. Walpole,) in speaking of the gentleman from Marion, and of the position which he took in this matter, said that he was trying to make it a democratic question. For my part I do not see how it can be a democratic question, unless it is that it goes for equal rights. That is democracy; and whenever you are willing to abandon the rights of private individuals and surrender them to any corporate body, then the private individuals will surrender you. I have noticed it all my life that the people never abandoned a man while he adheres to them. But when the people see that their property may be taken from them with impunity, they will murmur, and they will continue to murmur, and they would do wrong to themselves if they did not murmur.

Now there is a railroad which passes through my county. I know that there was a competition got up within the neighborhood for another line. Gentlemen tell us, however, that if we adopt an amendment to the Constitution changing the present practice, we will cripple the energies of the State, and no doubt it will be said that we will cripple the energies of private enterprise. Now let us look at this for a moment. When a new line is proposed, men owning large tracts of land through which it is to pass, will readily surrender a portion of their land for the benefit of the line. And why will they do this? Simply because they have a large amount of land, and the small quantity which they give for a road running through the centre of a large tract, is not for a moment to be taken into consideration in comparison with the advantages they will derive from the increased value of their land. This is in the nature of a

voluntary surrender, and operates so as to make the rich man richer. Widely different, however, is it with the small land owner who perhaps has not more than thirty-five or forty acres, upon which, perhaps, he entirely depends for his own support and that of his family. If you run a line diagonally through his little farm is it likely that he can receive the same benefit in proportion to his amount of land that the large landholder does? No, sir. It is as obvious as demonstration that the large landholder will be benefited while the small one will be damaged. Can you, then, talk to him of "prospective advantages," when the fundamental law would operate thus unequally? Not at all; not at all. Let us, then, place corporate bodies upon the same footing on which you place private individuals, and when they want land for any public improvement, let the value of the land be honestly estimated; and if there be any dispute, let it be settled by a jury of freeholders to say what is right. You will not countenance a poor man going upon the lands of the rich man and helping himself to what he may find there; and why should a rich corporation go upon the land of a poor man and take it from him, and pay him with an imaginary advantage—something which he can never realize? As well might you say that a man who goes on to the prairies and enters a farm where there is no timber, but finding it in the neighborhood goes and helps himself. He might as well enter upon the timbered land of some landholder and take the timber, and when complaint was made, reply, "Oh, I am improving your land; I am improving the country, and by my improvement you will derive a prospective benefit." The man who would thus argue, would argue quite as logically and quite as morally as he who argues that it is lawful for corporations or associations of individuals to seize upon private property and appropriate it to their own use, and offer "prospective advantages" in payment.

I am then for doing away entirely with this provision; and I do verily believe that when gentlemen upon this floor investigate the subject and consider the injustice which it works, I think that they will be cautious in embodying such a principle in the organic law of the land which may last for ages; and I hope that they will come up as they did when the amendment of the gentleman from Jefferson was voted upon and put it in the organic law of the State as it ought to be, and settle the general principle as it ought to be settled here. Leave it not to any Legislature. Here is the place for the determination of the general principle; here is the place where the question ought to be definitively settled. There has been little said upon the real question at issue since the defeat of the amendment of the gentleman from Jefferson. The whole question has been between gentlemen representing those public works that are

finished, and those representing those that are unfinished; the one party contending that it was time to cease the odious practice, and the other saying that they were not satisfied, and wanted it to go on a little further. Now I think we ought to come to the main point and say that every company incorporated by a general charter should enjoy all the privileges that one individual should enjoy, and no more. This I regard to be perfectly in accordance with the general principle implied by the gentleman from Laporte, (Mr. Niles,) who asked "what can be more just than justice itself." That would bring the matter down to an equality; and there is no equality in any law which would allow a party to seize upon the property of another without paying the full value of that property in dollars and cents. If persons owning property are willing to surrender it to corporate uses they have the privilege of doing so; and in ninety-nine cases out of a hundred of persons owning large tracts of land it will be done; but when persons owning but a small amount of land are to be absolutely injured in their property in the outset, and are to wait for prospective advantages to repay them, the principle would operate unequally, unjustly, and inequitably.

Let me give another example. We know that along some of the canals in the State, it is not uncommon for persons working upon them, to go and cut down a tree, and take, perhaps, only a part of it. No compensation is offered for it. Perhaps the party owning the timber may get his pay if he sues the company. Now, suppose that I was to enter upon the lands of the gentleman from Jefferson, and cut down his choice timber, and put it to my own use; I would be a violator of the law. I might suppose that I was benefiting him, while all the time I am doing him a positive injury. But the "benefit," which *may be no "benefit,"* is made such by express provision of the law. Now, what benefit would the gentleman from Jefferson be deriving under the circumstances?

If, on the other hand, there was an express provision of law that the profits of the money invested in any public improvement, should be proportionately divided between the investing parties and those whose land might be taken for such improvement, then there would be some equity in the proceeding. Where is the individual who invests his money in the enterprises of corporate companies, without anticipating some profit from the investment? Nowhere.

Tell me not that men invest their capital for the purpose of advancing the general interests of a State, regardless of benefits to be derived by themselves. There is not an instance of the kind to be found. Then, if the object be to advance individual interests in a corporate capacity—then, if the primary object in chartering companies, be the advancement of individual interests in a corporate capacity, why grant



them the privilege of taking private property for their own use?

Sir, I repeat again, that there never was any equity in it: there never was any reason in it: there never was any justice in it. So long as the practice exists, the men of small capital will be subjected to the will of the aristocracy; and I feel, therefore, that we are called upon here to settle the question that no corporation shall take the property of individuals, without giving for the same, *present* and adequate compensation. As I have several times repeated in these remarks, that is a question which ought to be settled here. Every right which is denied to individuals should be denied to corporations; and every right which is conceded to individuals should be conceded to corporations. Then we would come to the subject itself. Justice would operate most justly. The principle would operate equally, and in a way that would give general satisfaction, and we would then have a system that never could operate unequally upon the people of the State. [Applause.]

Mr. EDMONSTON. Mr. President: It is with great reluctance that I rise to say anything upon this subject after it has been so lengthily debated; but I feel that it is due to myself, and to this House, and to the country, that the question should be placed in its proper attitude. The question has been placed in a false position before the Convention. It is made to appear here that the object of those gentlemen who are in favor of the amendment of the gentleman from Dearborn is to cripple the improvements of the country. Those who have heard the debates in this Hall, or who read them in the newspapers, cannot view the matter in any other light. Such, however, is not the question before this Convention. I presume that there is no delegate upon this floor that would wish, in the least degree, to throw any hindrance in the way of the improvement of the country. But the question is, after having granted certain powers to these companies, shall we say to them, "You shall take the land and make it a debt of honor?" Now I view the question in this light. What is it, let me ask gentlemen in this House, what is it that constitutes one of these companies if it be not wealth, talent, and self-interest? Does any gentleman here suppose that men would form themselves into companies for the purpose of constructing any work of improvement unless they had in view some exclusive benefit to be derived to themselves? Does any body suppose that there is so much patriotism in these companies that they institute these improvements for the benefit of the masses? No man will be found to entertain such an opinion. Then it is clear that if patriotism and a desire to benefit the masses be not the object, it must be self-interest. When, therefore, you pass an act of incorporation endowing a company with the privilege of others, you pass an act which

no deliberative body would attempt for a moment to grant to an individual.

It has been said that the legislative body are the guardians of the people's interests, and that this is a subject which may safely be left to them. Sir, we have had some experience in this respect, and experience, after all, is the best teacher, though often an expensive one. What is the course that has been pursued before? Have past Legislatures guarded the rights of the people in this matter? Our experience shows the contrary. How many injuries of this kind have been perpetrated upon individuals without their receiving any remuneration whatever? Then, sir, if a legislative body, or this Convention, will not guarantee to an individual the right to take his neighbor's property and appropriate it to his own use, why leave a question of this sort to the discretion of a Legislature to make a provision for the purpose of guarding against the overpowering influence of combined wealth and talent?

We have already seen that they are governed by motives of self-interest; and we all know how little such a motive is likely to respect the interests of others. Look at the matter now, for a moment, in its operation upon the small landholder. Say that a man has a farm of only forty acres, which supports his family and himself. A chartered company enter that farm and run a line diagonally through it, thus destroying the value of the entire tract. The owner of the land complains, and asks the company for damages. The company laugh in his face, and exclaim, "Damages! damages! my good man! why, don't you know that it is a great benefit to you that we should take your land!" Thus mocked, he appeals to the Legislature, and the Legislature again mock him by telling him that he may have recourse to law, and force from the company the amount of damages assessed. I ask any lawyer here to tell me what prospect of success a poor man has in commencing a suit against one of these rich companies? In the first place, you could hardly get a lawyer to commence a suit against one of them short of a fee of a hundred dollars, and in all probability when it comes to trial the plaintiffs will be non-suited on some technicality, and be thrown in for the whole costs. Now is this right? Have we come here to guard and protect the rights and interests of those who have wealth and influence, or the dearest rights of the more indigent classes of the community, whose interests—if any distinction is to be made—it is more especially our duty to protect? Money can always protect itself. The whole history of the world shows it; and although we are here to frame Constitutional laws that shall operate equally upon all, if there is to be a leaning on the one side or on the other, for heaven's sake let it be on the side of those who stand most in need of the law as their shield from the encroachments of capital.

Now, as it regards leaving this question open for the Legislature to settle, I again repeat that legislative bodies are not usually composed of the same class of men as this Convention is, or at least as it should be. Members of Legislatures usually have sectional and local interests to subserve, and they not unfrequently pass laws under these influences which are opposed to fundamental principles. I trust, however, that no man comes here to subserve any local or sectional interests, but that he comes here with feelings and interests common to every citizen of the State; looking only to one interest—the interest of the whole; dealing out justice equally to all, and taking each under the protecting wing of the whole community. This is the great purpose for which we have come here. But you never can find it so in a merely legislative body.

It never has been so in my experience, and if we may judge of the future by the past, it never will be so in the experience of mortal man. You will see them holding on to their local interests; and combination of interests not unfrequently lead to extravagant legislation. It is said that a general law will be passed governing all these corporations. Grant that it may be so; will that remedy the evil? I think not, because a general law may be as easily amended or altered as a local law. There is no difference. Legislatures make inroads upon the charters of general corporations, as readily as they do upon local charters. You cannot affect it in that way. You must, on the contrary, with clearness and carefulness in your organic law, protect the rights of the honest portion of the community from all oppression that may be attempted by the influence of wealth or incorporated power. There should be no argument used here to the effect that, because the Madison and Indianapolis corporation had had exclusive privileges, therefore they should be granted to all other corporations. Sir, there is no force in such an argument. It simply amounts to this: that because a law has been in force granting to me the power of trespassing upon my neighbor, and because I have availed myself of the benefit of this law, therefore it should be continued in force, so that every other man may trespass upon his neighbor. And is this a doctrine to be maintained in this progressive age? No, sir; it surely cannot be. Rather let us, where we see wrongs committed, endeavor to correct them. Where an error is found to exist it is the duty of a legislative body to correct it, and not to perpetrate it again because it has been perpetrated before. If one man has stolen a horse, that is no reason why the Legislature should sanction any man in stealing another horse, [cries of "hear," "hear"]. This would be a poor mode of argument indeed.

Mr. President, I did not intend troubling the Convention with any remarks on this question,

but from the course the debate has taken, I felt that it was due to myself and the country to endeavor to set the matter right. It is not by any means a question as to crippling the improvements of the State. There is no man on this floor who would be more happy to see the progress of the country in every respect than myself; at the same time I must say that I hold so much in my esteem the poor unassuming laborers of the country, that I would be the last man to throw into the hands of corporate powers the right to take the property of any man without giving him just compensation.

Now what is the purport of this amendment? It is that a man's property should not be taken, except in case of the State, unless there be an appraisement and the value in money tendered to the owner. You cannot compel a man by law to credit his neighbor; and why not then leave it optional with the individual himself who is possessed of the property. He may compromise with the company, and in many instances will do so; but whether he should or not, I hold it to be wrong in this body not to guard a man in this right against a corporation, as you would guard him against an individual. If you give to corporations these powers you give them powers sufficient to overturn the rights of all the people of the State.

Mr. STEELE said—

Mr. PRESIDENT: I do not rise for the purpose of extending this debate. For argument has been piled upon argument so much, that I wish only to explain the reason of my vote as it will be placed upon the journal. Not long since—perhaps last Saturday—I voted to prevent the amendment of the gentleman from Dearborn (Mr. Holman) from going to the table. I gave that vote for the express purpose of hearing the subject further discussed. I thought the amendment had merit in it, and I desired to see it illustrated and set forth; but, I was all the time in favor of the amendment of the gentleman from Laporte (Mr. Niles).

Sir, I wish to vote consistently; and I intend that the vote which I shall give upon this question shall tally with the votes which I have already given in this Convention; and they have been uniformly cast against restrictions.

At the time I was last upon the floor, I desired that the election of officers should be placed in the hands of the people, and let them rotate their servants as they might think best, in their sovereign capacity; I have the same feeling to-day. And with reference to our public works, I want them to progress; and I tell you, sir, they will progress, whatever we may do in this Convention; and as they shall progress, I want the Legislature, the courts, and juries of the country, to assess the damages of the individual whose private property may be taken for public use. I find, upon examination of the journal of debates in the New York Convention, that they have settled this question



in nearly the same language of the proposition of the gentleman from Laporte, namely—that no man's property shall be taken without just compensation—leaving it open for the Legislature to provide the law, the courts to adjudicate, and the jury to determine the amount of damages which the individual shall receive.

I have uniformly yielded much confidence to the words of the gentleman from Posey, (Mr. Owen,) and to-day he has enlightened my mind by telling us that the people of the county of Posey have invested and applied between seventy and eighty thousand dollars towards the construction of plank roads; and that they have had no difficulty about securing the right of way under the law as it now stands. And I confess that I was strongly impressed with the gentleman's argument, which, as I applied it, was, that it would be wise policy for us to "let well enough alone." [A voice, "consent."] I believe that no man can show any important point of difference between the amendment of the gentleman from Laporte and the old constitutional provision; and I believe also, that the Legislature, the courts, and the people, to whose hands these cases have been so long entrusted, are just as honest as the members of this Convention, and can do their duty just as well. [Applause.]

Mr. BRACKEN. Mr. President: What is the question?

The PRESIDENT. The pending question is upon the adoption of the amendment of the gentleman from Jefferson (Mr. Dunn) to the amendment of the gentleman from Dearborn (Mr. Holman).

Mr. BRACKEN. I understand, then, that if the amendment of the gentleman from Jefferson carries, the amendment of the gentleman from Dearborn will be equivalent to the proposition of the gentleman from Laporte (Mr. Niles).

The PRESIDENT again stated the question, and rehearsed the amendment, and the amendment to the amendment.

Mr. BRACKEN. This question has been debated for some days, and it is rather a curious matter to me that the question has not yet been plainly answered. What is right, just, and honest in the case? For this is the question upon which we are this day called to vote. Does not justice belong to the people? Is it not their right to claim justice? The question has been argued here on the score of expediency, and gentlemen have gone so far in this way to support the power and influence of corporations, that it seems they have so bewildered their minds that they have forgotten that there is any such thing as right and justice.

They say, leave all to the management of the Legislature and the people. Well, sir, if I understand myself, we are the people, and there is no Legislature that ever has been, or ever will be, convened, which may be called the people,

with the same propriety that we may be so called. This government has been, and will continue to be, divided into three branches—the Executive, the Legislative, and the Judicial branches. We are the people, and, if this be so, it is for us to settle and determine what is right and what is wrong—whether right or expediency shall govern. There never has yet appeared, in all the history of men, a single case of public injustice, which has not been justified upon the score of expediency. Every tyrant has been justified in this way; and, for every act of his oppression he has had preachers and courtiers, to come up and advocate his conduct upon the score of expediency. But, sir, the question before us, is not a question of expediency; it is a question of right. Expediency is a very different thing from the establishment of organic law. We have come here, so to speak, to post up the books of the political knowledge of the State, to have to do with fixed, axiomatic truths. The Legislature comes here to make experiments. Legislation is always experimental. Well, sir, what does experience teach us? Does not all experience most conclusively settle this one fact: that, unless you put the bit and curb upon corporations, they generally run away with private rights? I repeat, sir, that right is often a different thing from expediency; and this question is but another feature of the old contest for the antiquated principle, that, if the government take care of the rich and well born, they will take care of the masses. But, sir, this is not my doctrine. We have come up here to take care of the masses, and we will take care of them.

One gentleman says, this question has not been agitated amongst the people. But, I have reason to entertain a different opinion; for I was elected a delegate here upon this very question. I was able to carry my county by two hundred majority,—and a whig county at that—upon this very principle, of the necessity of curbing the power of corporations. Should we then go back?—who, in this body, would be willing to go back and legislate for the benefit of the rich and well-born? I know that wealth and talent commonly go together, and, that they have a certain community of interest and influence. But it is not so with the honest yeomanry—they do not move together in phalanxes. Hence, it is, that the crafty and the wealthy often take them by surprise, and overreach and get the advantage of them. Therefore, I have said we ought to post up the books, so that this advantage may not be so easily taken.

Sir, it is an outrage to take private property without pay. None but the hand of the sovereign can do that, and I doubt whether it should be done at all. Take a man's property without pay!—why, sir, it is an outrage upon every principle of right—it is wrong, sir, radically wrong. Gentlemen may cover it up as much as they please, and still it will be oppression and wrong

—one of those means, as all experience shows, by which power and influence gradually slips away from the many to the few.

Gentlemen have raised the cry of "mad dogs" against the Madison and Indianapolis railroad, showing that, with this improvement, there was established a system of stealing from the citizens of Indiana. They acknowledge this—their very argument shows that they have given an advantage to corporations; and, because they have succeeded in the case of this railroad, they desire to let them carry the same system all over the State. This is the deliberate argument. But, I insist that we are not here to settle principles which will favor any such doings, but to settle what is true, politic, and right. For example; if we intend to pay the public debt, should we not come up and make the Constitution say so? And, if we intend to compel corporations to pay their just debts, should we not say so?

Mr. NAVE. About five minutes time is all I ask. I am very much gratified that the gentleman who has just taken his seat succeeded so handsomely in his canvassing for the Convention; yet I am sorry to say, that he does not seem yet to understand very well the principles which should govern in the establishment of the organic law. The organic law consists of definite and well established principles; and I ask, if we should go further than to say that the Legislature shall never pass a law authorizing the taking of property for public use without just compensation? Should we go one step further than this, we would place ourselves in the same ridiculous attitude of the framers of the Constitution of 1816, when they appropriated all fines and forfeitures for the purpose of building up schools at the county seats. If they had stopped in that section of the Constitution at the word "education," the constitutional reform in this respect would never have been called for.

Gentleman ask us to gag and trammel the power of the Legislature for the purpose of carrying out their party views. Sir, is there anything like Democracy in tying up the hands of the people and the Legislature of the State, and crippling their most rightful power and influence.

Are we the people of Indiana? No, sir. We are but the delegates of the people. We are not clothed with the power of the sovereign; and, therefore, we should never pretend to restrain that power beyond those restraints which pertain to the organic law. I hope, then, to hear no more about Democracy, as opposed to corporations; but that the Convention will be allowed to go to work and construct the organic law, with an eye single to the protection of human rights and human liberty, taking care not to establish any restrictions upon the power of the people in any way whatever.

Mr. PETTIT. I ask for the yeas and nays upon this question.

And there was a second.

Mr. TAYLOR. I hope the Convention will indulge me, to call for the reading of the amendment.

The PRESIDENT then rehearsed the various amendments, and stated the question to be upon the amendment of the gentleman from Jefferson, (Mr. Dunn,) proposing to strike out all after the word "compensation" from the amendment of the gentleman from Dearborn (Mr. Holman).

The yeas and nays having been demanded and ordered, were now taken, and reported, yeas 45, nays 74, as follows:

YEAS.—Messrs. Badger, Balingall, Beach, Beard, Bicknell, Blythe, Bourne, Bright, Butler, Carter, Colfax, Davis of Parke, Dunn of Jefferson, Farrow, Foley, Frisbie, Gordon, Gregg, Hall, Hawkins, Helm, Helmer, Howe, Kilgore, Kinley, Maguire, Morgan, Mowrer, Murray, Nave, Newman, Niles, Pepper of Crawford, Rariden, Read of Clark, Robinson, Sims, Steele, Stevenson, Taylor, Thomas, Thornton, Walpole, Watts, and Wolfe—45.

NAYS.—Messrs. Alexander, Allen, Anthony, Barbour, Bascom, Beeson, Berry, Bracken, Chapman, Clark of Tippecanoe, Coats, Cole, Cookerly, Crawford, Crumbacker, Dick, Dobson, Dunn of Perry, &c., Duzan, Edmonston, Fisher, Foster, Garvin, Gibson, Gootee, Graham of Miami, Graham of Warrick, Haddon, Holliday, Harbolt, Hardin, Hitt, Hugin, Holman, Hovey, Huff, Jones, Kent, Kendall of Warren, Lockhart, Logan, March, May, McClelland, McFarland, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Morrison of Marion, Morrison of Washington, Nofsinger, Owen, Pepper of Ohio, Pettit, Prather, Read of Monroe, Ritchey, Schoonover, Shannon, Sherrod, Shoup, Smiley, Snook, Smith of Scott, Spann, Tague, Wheeler, Wiley, Yocum, Zenor, and Mr. President—74.

So the amendment to the amendment was rejected; and the question renewed upon the adoption of Mr. Holman's amendment.

Mr. PETTIT. I am thoroughly satisfied myself, that this matter has been long enough debated, and that no gentleman can reasonably desire to debate it any further. Therefore I shall demand the previous question.

There was a second to this demand, and the question, shall the main question be now put? was decided in the affirmative.

And then the yeas and nays being ordered and taken upon the adoption of the amendment of the gentleman from Dearborn, they were reported; yeas 86, nays 35, as follows:

YEAS.—Messrs. Alexander, Allen, Anthony, Barbour, Bascom, Beeson, Berry, Bicknell, Bourne, Bracken, Carter, Chapman, Clark of Tippecanoe, Coats, Cole, Colfax, Cookerly, Crawford, Crumbacker, Davis of Parke, Dick,



Dobson, Dunn of Perry, Duzan, Edmonston, Fisher, Foster, Garvin, Gibson, Goozee, Graham of Miami, Graham of Warrick, Haddon, Holliday, Harbolt, Hardin, Hitt, Hogin, Holman, Hovey, Huff, Kent, Lockhart, Logan, Maguire, March, May, McClelland, McFarland, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Morrison of Marion, Morrison of Washington, Mowrer, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Read of Clark, Read of Monroe, Ritchey, Schoonover, Shannon, Sherrod, Shoup, Smiley, Snook, Smith of Scott, Spann, Stevenson, Tague, Taylor, Terry, Thornton, Wheeler, Wiley, Yocum, Zenor, and Mr. President—86.

**YAYS**—Badger, Balingall, Beach, Beard, Blythe, Bright, Butler, Dunn of Jefferson, Farrow, Foley, Frisbie, Gordon, Gregg, Hall, Hawkins, Helm, Helmer, Howe, Jones, Kendall of Warren, Kilgore, Kinley, Morgan, Murray, Nave, Newman, Niles, Rariden, Robinson, Sims, Steele, Thomas, Walpole, Watts, and Wolfe—35.

So Mr. Holman's amendment was adopted.

The **PRESIDENT** stated that the question in order was the amendment of the gentleman from Franklin, (Mr. Berry,) to the substitute of the gentleman from Laporte (Mr. Niles).

**Mr. NILES'** amendment was now read by the Secretary, and is as follows:

"That no man's particular services shall be demanded, or property taken and applied to public use, without just compensation being made therefor."

**Mr. BERRY** proposing to amend the substitute as follows:

"Strike out all after 'man's' and insert 'services shall be taken without compensation. Private property shall not be taken by law against the consent of the owner, for any other purposes than the defense of the State and the right of way for public improvement, and when taken for these purposes, it shall be paid for in money, irrespective of intrinsic benefit, in such manner as shall be directed by the General Assembly.'"

**Mr. EDMONSTON.** I move to lay the amendment to the amendment on the table.

The **PRESIDENT** said: that motion could not be in order, for the reason that the whole subject was under the operation of the previous question. If the gentleman would turn to the eighteenth rule adopted by the Convention, he would find that the operation of the previous question was very broad; and he read the following extract from said rule:

"The previous question shall be in this form: 'shall the main question be now put?' It shall be admitted only when demanded by a majority of the members present; and its effects shall be to put an end to all debate and bring the Convention to a direct vote upon amendments reported by a committee, if any; then upon pending amendments, and then upon the main question."

**Mr. PETTIT.** Is the question now upon an amendment to the section as originally reported by the chairman of the committee on rights and privileges? And was not the amendment of the gentleman from Dearborn, which was adopted, also an amendment to the section reported by the Committee?

The **PRESIDENT.** The Chair would remark that the gentleman from Dearborn originally offered an amendment to the section reported by the committee, and the gentleman from Posey offered an amendment to the amendment of the gentleman from Dearborn, which that gentleman accepted.

**Mr. PETTIT.** The gentleman from Posey accepted the amendment of the gentleman from Dearborn?

The **PRESIDENT.** No; the gentleman has got it wrong end foremost.

The yeas and nays being now demanded, ordered, and taken, upon Mr. Berry's amendment to Mr. Niles' substitute, the vote was reported; yeas 35, nays 85, as follows:

**YEAS**.—Messrs. Alexander, Allen, Bascom, Beach, Beard, Berry, Bourne, Bright, Carter, Chapman, Cole, Cookerly, Crawford, Dobson, Dunn of Perry, &c., Edmonston, Foster, Goozee, Hardin, Hitt, Jones, Lockhart, March, May, McClelland, McFarland, Miller of Clinton, Miller of Gibson, Ritchey, Sherrod, Smith of Scott, Spann, Terry, Wiley, and Mr. President—35.

**NAYS**.—Messrs. Anthony, Badger, Balingall, Barbour, Beeson, Bicknell, Blythe, Bracken, Butler, Clark of Tippecanoe, Coats, Colfax, Crumbacker, Davis of Parke, Dick, Dunn of Jefferson, Duzan, Farrow, Fisher, Foley, Frisbie, Garvin, Gibson, Gordon, Graham of Miami, Graham of Warrick, Gregg, Haddon, Hall, Holliday, Harbolt, Hawkins, Helm, Helmer, Hogin, Holman, Hovey, Howe, Huff, Kent, Kendall of Warren, Kilgore, Kinley, Logan, Maguire, Miller of Fulton, Milligan, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Morrison of Washington, Mowrer, Murray, Nave, Newman, Niles, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Rariden, Read of Monroe, Robinson, Schoonover, Shannon, Shoup, Sims, Smiley, Snook, Steele, Stevenson, Tague, Taylor, Thomas, Thornton, Walpole, Watts, Wheeler, Wolfe, Yocum, and Zenor—85.

So the amendment was rejected.

The **PRESIDENT** stated the question to be on the adoption of the amendment of the gentleman from Laporte (Mr. Niles).

**Mr. RARIDEN.** That is the motion to strike out and insert "no man's particular services shall be demanded without just compensation. No man's property shall be taken without compensation therefor." Is that the substance of the amendment?

The **PRESIDENT.** It is.

**Mr. RARIDEN.** Then that is the proposition which I desire to see adopted. I believe it

is going far enough and I think that it is now evident that it is the best proposition upon which the Convention can agree.

Upon this motion the yeas and nays were demanded by ten members, and being ordered, resulted yeas—47, nays—72, as follows:

YEAS.—Messrs. Badger, Balingall, Barbour, Beach, Beard, Bicknell, Blythe, Bourne, Bright, Butler, Colfax, Dunn of Jefferson, Farrow, Foley, Foster, Frisbie, Gordon, Gregg, Hall, Hawkins, Helm, Helmer, Howe, Kendall of Warren, Maguire, Milligan, Morgan, Morrison of Marion, Murray, Nave, Newman, Niles, Pepper of Crawford, Prather, Rariden, Read of Clark, Robinson, Sims, Steele, Stevenson, Taylor, Thomas, Thornton, Walpole, Watts, Wolfe, and Zenor—47.

NAYS.—Messrs. Alexander, Allen, Anthony, Bascom, Beeson, Berry, Bracken, Carter, Chapman, Clark of Tippecanoe, Coats, Cole, Cookerly, Crawford, Crumbacker, Davis of Parke, Dick, Dobson, Dunn of Perry, &c., Duzan, Edmonston, Fisher, Garvin, Gibson, Graham of Miami, Graham of Warrick, Haddon, Holliday, Harbolt, Hardin, Hitt, Hogin, Holman, Hovey, Huff, Jones, Kent, Kinley, Lockhart, Logan, March, May, McClelland, McFarland, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Moore, Morrison of Washington, Mowrer, Nofsinger, Owen, Pepper of Ohio, Pettit, Read of Monroe, Ritchey, Schoonover, Shannon, Sherrod, Shoup, Smiley, Snook, Smith of Scott, Spann, Tague, Terry, Wheeler, Wiley, Yocum, and Mr. President—72.

So the amendment was rejected.

Mr. SHOUP. If it is in order I will move the previous question, on engrossing the article.

The PRESIDENT. Is the call for the previous question seconded?

The call for the previous question was sustained.

Mr. FOSTER. I question whether the motion, in the shape in which it was made, is in order.

Mr. COLFAX. There is certainly one section in this article which has never yet been read.

The PRESIDENT. The whole article has been before the Convention for several days.

Mr. PETTIT. Mr. President: I rise to a question of order. The pending question is not upon the engrossment of the article which is endorsed "number two," but upon the section of that article relative to compensation for private property taken for public use. It cannot be upon the whole article for there is a section therein which has not yet been touched. The question must be upon the engrossment of the section for a third reading.

The PRESIDENT. It is not customary to take the question upon engrossing a single clause or section of a bill or article.

Mr. PETTIT. But I call the attention of the Chair to the fact that we are suddenly re-

quired to vote upon an entire article, one section of which has not yet been read to the Convention.

The PRESIDENT. All the sections of the article have been printed together and read the first time. The whole article has now been before the Convention.

Mr. PETTIT. The article has not yet been read a second time.

Mr. COLFAX. If it would be in order to move a re-consideration—

The PRESIDENT. It is out of order, we are now under a call for the previous question.

Mr. COLFAX. Advantage has been taken of members in this matter by springing the previous question upon the engrossment of the whole article for a third reading.

The PRESIDENT. Are the yeas and nays demanded upon the engrossment of the article for its third reading?

The requisite number having risen and demanded the yeas and nays, the clerk was about to call the roll when:

Mr. PETTIT rose and said: Mr. President, I feel constrained to take an appeal from the decision of the Chair. I do not do so with any desire to embarrass the Chair, nor yet to find fault with the Chair—further than is really necessary. I feel constrained to take an appeal from the decision of the Chair, that the pending question is properly upon the engrossment for a third reading of an article, one section of which has not received a moment's consideration, although that section is intensely interesting and important to the great majority of members. The section to which I allude is the last section in the article and is this:

The General Assembly at its first session under the amended Constitution, shall pass laws prohibiting negroes and mulattoes from coming into or settling in this State; and prohibiting any negro or mulattoe from purchasing or otherwise acquiring real estate hereafter.

I do not think, sir, that the question should be taken on the engrossment of an article for a third reading when sections of that article have not been read a second time. I know of no rule allowing the engrossment of an isolated section of an article. On the contrary, the rule is that we should vote upon propositions by sections, and not by articles. I hope that the question may be taken upon the engrossment of the third section and not upon the whole article.

Mr. COOKERLY. I think the whole article has been read—though I may be mistaken.

Mr. PETTIT. No, sir, the whole article has not been read a second time.

Mr. RITCHEY. Has not the second section of this article been engrossed for a third reading?

The PRESIDENT. It has not.

Mr. MILLER. It strikes me, sir, that gentlemen do not view this matter in its proper



light. It seems to me that gentlemen have forgotten the course taken. We have taken up the article under consideration, (on the rights and privileges of the people of Indiana) debated it for several days, concluded the consideration of several articles and now the previous question has been called for on the adoption of the whole article. The Convention has sustained the call for the previous question, which, not only cuts off all debate, but precludes all amendments to any part of the article. This is the state of the case, and the President, now that the Convention has sustained the call for the previous question which cuts off all amendments to or discussion upon any part of the article, can take no other course than the one he is pursuing. This is my view of the matter which seems to be exciting an unjustifiable amount of feeling.

Mr. PETTIT. The previous question was so suddenly sprung upon us that we had no opportunity offered to discuss or amend the last section.

Mr. DOBSON. We have had nearly a week of discussion upon this article and may perhaps have still more. I hope that gentlemen will keep cool. It is certainly the duty of the Chair to put the question as demanded by a clear vote of the Convention.

The PRESIDENT. The question is, shall the article now be engrossed for a third reading.

Mr. COLFAX. One word, Mr. President. I desire to call the attention of gentlemen and of the Chair, to the twenty-first rule of this Convention. That rule provides that, "the article or section shall be subject to be debated and amended by clauses, before a question to engross it be taken."

Now I would inquire of the Chair, whether the last section of this article has ever been debated, or so before the Convention as to be "subject to be amended?" There has, as the gentleman from Tippecanoe observed, been no opportunity to do this. As it seems to me, that sections must be read separately at the Clerk's table, and be subject to debate and amendment, before a question to engross it can be taken.

I would ask if a motion to lay the article on the table would take precedence of the previous question? If so I should be glad to get this matter into such a shape as to relieve the Convention from its unpleasant position.

The PRESIDENT. The Chair would remark, that it has no feeling upon this subject upon either side. Personally it is a matter of indifference what decision the Convention comes to. But the Chair understands the rule differently from the gentleman from St. Joseph (Mr. Colfax.) Reports may sometimes contain but one section, then again several. So far as my knowledge of parliamentary usage extends, and I admit my observation has been limited, I have never heard of such a proceeding as the engrossment of one section, or of several sec-

tions of a report, a bill, or an article, leaving one section or several, "hanging loose" (if the expression may be allowed.) I have neither seen, read or heard of, such a course being pursued. If the Convention shall decide to consider this section by itself and to order its separate engrossment for a third reading, I have not the least objection and shall not have the least feeling. This article has now been under consideration for about one week and if gentlemen have seen fit to direct all their energies to the consideration of one section, it certainly is not the fault of the Chair.

I would remark, however, that gentlemen who desire the further consideration of the last section will accomplish their object by voting against the motion to engross the article for a third reading.

Mr. COLFAX. If a majority votes against the engrossment, will it not defeat the article entirely?

The PRESIDENT. No, sir, not necessarily. The gentleman can move a reconsideration of the vote.

Mr. PETTIT. If it is the pleasure of the Convention, I will withdraw my appeal from the decision of the Chair. I had, as I stated, no intention to embarrass the Chair.

The PRESIDENT. The Chair is not at all embarrassed.

Mr. PETTIT. Well, then, I did not intend to embarrass the Convention. [Laughter.]

Mr. GRAHAM. I move a reconsideration of the vote sustaining the call for the previous question.

Mr. BERRY asked if he could withdraw his call for the previous question?

The PRESIDENT. The question is, shall the main question be now put?

The gentleman from Franklin can attain his object by voting against putting the main question now.

The Convention decided against putting the main question now.

A MEMBER. Would an amendment now be in order.

The PRESIDENT. The further consideration of the article lies over for one day, under the rules.

On motion, the Convention adjourned.

TUESDAY, Nov. 12th, 1850.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. MYERS.

The journal of yesterday was read and approved.

Mr. WALPOLE moved to take from the table a motion which he had made on a former day, in reference to amending the rules.

The motion was agreed to, and the resolution was taken up.

It is as follows:

"Strike out all after the word, 'majority,' in the beginning of the third line, and insert the following:

"To move for the reconsideration thereof, on the same, or any other day, during the session of this Convention."

The question was taken on the agreeing to the amendment, and decided in the affirmative.

So the amendment was adopted.

Mr. OWEN, pursuant to notice given yesterday, moved the adoption of the following resolution:

"Resolved, That the rules be so amended that each section of the amended Constitution may be separately engrossed."

The resolution having been read by the Secretary,

Mr. HALL said: Mr. President, it occurs to me that we shall be involved in difficulty by the adoption of this rule. Such a thing as engrossing a section of a bill by itself, is never heard of; and as it occurs to me, the different sections of the same article are placed almost in the same position as the different sections of the same bill passed by the Legislature. I am not opposed to the principle, but I think that we shall embarrass ourselves if we determine that we will take a separate vote upon each section.

Mr. GRAHAM of Warrick, moved to amend the resolution of the gentleman from Posey, (Mr. Owen,) by adding the words, "or passed." I look upon each section, said Mr. G., as forming a distinct proposition, and, in my opinion, each ought to be passed separately.

Mr. FOSTER. I differ a little with my friend on my right, (Mr. Graham,) in regard to the position that each section should form a distinct proposition. The committee have reported merely blank sections, and it will be the duty of the committee of arrangement hereafter to arrange them under their appropriate heads. What can be more distinct and different than the section which we had under consideration the other day, and the one that will come up to-day, in relation to negroes. They are entirely different, although they have reference to the same subject; therefore, we should pass them separately.

Every section of a bill passed by the Legislature must have some relation to the preceding section; but here, until the final arrangement takes place, they are entirely incongruous. Under these circumstances, I conceive that the proposition of the gentleman from Posey (Mr. Owen) is correct. Pass them separately, and let the committee of arrangement arrange them under their proper heads.

Mr. STEVENSON. I have but a single objection to the proposition of the gentleman from Posey, and that is, the immense number of times that it will occasion the calling of the yeas and nays.

The object of the gentleman I suppose to be this: to give each member an opportunity to express his opinion of each section, by recording his vote upon its adoption. But this object is accomplished by proposing amendments. If a gentleman disapproves of a section, he can move an amendment and call the yeas and nays. This he may do as many times as he pleases. Well, now, the proposition of the gentleman will give the yeas and nays on every section separately, in addition to all this. It appears to me, that if gentlemen have an opportunity of showing what their views are in relation to each section by amendments, and by recording their votes upon those amendments, it is sufficient, without having the yeas and nays on the final engrossment; and an immense amount of time will be saved. I desire to show how I stand in regard to all these propositions, but that I can do by amendments; and upon their final passage it is wholly unnecessary to put the Convention to the trouble of repeating the yeas and nays upon each section by itself. It will occasion an immense amount of trouble, and I think there is no necessity for it.

Mr. OWEN said he would accept the amendment of his friend on the left, (Mr. Graham,) to insert the words "or passed."

He would remark to the gentleman from Gibson (Mr. Hall,) that although it was customary to take the question on the engrossment of all the sections of a bill together, yet the sections of a bill and the sections of the Constitution were entirely different things. Take for example, said Mr. O., the case of the two sections that are to be considered by the Convention this day. What possible connection is there between taking a man's personal services or property, on certain conditions, and the policy of excluding negroes from the State? Nothing in the world can be further apart. A section reported here, stands not only in the place of the bill, but sometimes in the place of a whole class of bills. Gentlemen will perceive that in the resolution as I proposed it, the word "may" is used. It is not imperative. It does not direct that each section shall, under all circumstances, be separately engrossed. When no necessity exists therefor, and no desire is manifested to call the yeas and nays upon the engrossment of a particular section, they will not be called; but it merely provides that the yeas and nays may be taken upon the engrossment of each section separately if the Convention desired it.

The gentlemen from Putnam says, that we may at all times express our views by our votes on amendments; but I put it to the good sense of the gentleman, whether, as the matter now stands, we have an opportunity of showing whether we are willing to take the section just as it stands or not. There will be on the proposition to exclude negroes, an opportunity to propose amendments and modifications, but the question will recur at last whether we will adopt



the section at all or not. And so of other sections.

The question being taken on the adoption of the resolution, it was decided in the affirmative. So the resolution was adopted.

Mr. SHERROD in pursuance of notice previously given, asked and obtained leave to introduce the following resolution:

*Resolved*, That no member, in making a speech upon an original proposition or resolution, shall occupy more than thirty minutes; and on an amendment more than ten minutes.

The adoption of this resolution, said Mr. S., will not only have a tendency to condense the proceedings and debates of this Convention, but will greatly facilitate and hasten our deliberations to a speedy and happy close, which should be greatly desired by every member. Sir, I hope the resolution will be adopted.

Mr. GRAHAM of Warrick said, he certainly could not go for the proposition of the gentleman from Orange. There were questions yet to be debated, upon which gentlemen would find it exceedingly inconvenient to express their views within the time prescribed by the resolution. Unless some gentleman desired to discuss the resolution, he would move that it be laid upon the table.

Mr. WATTS rising to address the Chair,

Mr. GRAHAM withdrew his motion to lay the resolution on the table.

Mr. WATTS. I will move to amend the resolution by adding the words "without leave of the Convention."

Mr. SHERROD. I do not desire, sir, to deprive the gentlemen of an opportunity of expressing their views upon every question that is presented here; but we have talked a great deal in this Convention about placing restrictions and limitations upon the people, in the Constitution that we are about forming, but not a word has been said about restrictions upon our debates. I am of opinion, sir, that there is no question that can be brought before this body, upon which any gentleman upon this floor cannot give his opinion in thirty minutes. I have noticed, particularly, the course that has been pursued by delegates in this Convention, in the debates that have taken place. In speaking upon the various questions that have been submitted, they have frequently referred to the proceedings and debates of the Constitutional Convention of the State of New York; and sir, what was the course pursued there? Members were restricted in debates, to fifteen minutes each; and the volume containing their debates and proceedings is a very interesting one; why? because the ideas and opinions of men in that Convention, and of distinguished men, too, are condensed within fifteen minutes in the delivery. Why, I might get up here and talk for two hours on many of the important questions that will engage the attention of this body, but there is no necessity for so much

talking, and what I want is to induce gentlemen here to condense their ideas, and not talk eternally on a question which may not be of any practical interest.

As I have said, it is not my purpose to suppress debate. But thirty minutes, I think, is long enough for the full expression of opinion upon any question. But more than that, if there should be a question before the body which is interesting and important in itself, and any delegate discussing it should be throwing light upon the subject, by general consent he may be permitted to proceed.

I hope the resolution will be adopted.

The question being upon the amendment proposed by the gentleman from Dearborn (Mr. Watts) to add the words, "without leave of the Convention."

Mr. SHERROD said he would accept the amendment:

Mr. CRUMBACKER said, that as he was not one of the debaters, and had not troubled the Convention with any long speeches, it might not be considered inappropriate for him to make a few remarks in reference to the resolution just submitted.

If I have not, said Mr. CRUMBACKER, taken any great part in the debates, it is not because I have not felt a deep interest in the questions that have been debated; and there are some important questions yet to be presented for our action—questions of so much importance that I trust the wisdom, and sound, and enlightened views of all the members of this Convention may be brought to bear upon them, in order that they may be settled and adjusted in such manner as will be calculated to promote the best interests of the people of the State.

I should be very sorry, indeed, to see a gag law enforced in this Convention; and I am of opinion that this resolution should not prevail, from the fact that there are questions requiring argument, which will come before the Convention for our decision. I am desirous of hearing all that may be said, in order that I may be prepared to come to a correct conclusion upon each proposition. I do hope there will be no effort at this early stage of our proceedings, to restrain free discussion upon questions of so much importance as those which will necessarily be presented to us. I shall vote against the resolution for the reason that I think it entirely too soon to endeavor to limit or restrict the free course of debate.

Mr. GRAHAM of Warrick. The gentleman from Orange, in accepting the amendment of the gentleman from Dearborn, has so modified his resolution that it will be entirely inoperative. It amounts now to nothing more than this, that no gentleman shall speak more than thirty minutes, unless he desires to speak longer; because the Convention will certainly not be so discourteous as to refuse to hear a gentleman who asks to be heard; and one gentleman be-

ing permitted to exceed the prescribed time, it would of course be considered an act of injustice towards others to refuse to extend to them the same privilege. If the gentleman desires to have such a stringent rule adopted that members shall not occupy more than thirty minutes at any one time in addressing the Convention, he ought not to have accepted the modification. But I am opposed to the adoption of any such gag law. We are sent here by the people to transact certain business; and we are not directed to do our work within a given time, we are not limited to any particular time; we are sent here to discuss calmly and deliberately, all those questions that are presented for our consideration. There are many questions on which my mind is not yet made up, and I am anxious, therefore, to hear arguments advanced by gentlemen upon those questions, in order that I may be enabled to form a correct judgment.

Sir, there are men who can tell all they know in thirty minutes. There is no doubt about that. I never expect to make a speech thirty minutes long, or the half of thirty minutes. But there are others who have more thoroughly investigated the subjects that are to be debated here whose views and opinions I desire to hear, and who will require a longer time than thirty minutes to explain their views fully. Some gentlemen may say that their opinions are already formed, and that they are not to be changed by argument. But opinions have been changed, and will be changed by the arguments of those who have qualified themselves by a thorough investigation of a subject to give us the benefit of a matured judgment.

If no gentleman desires to discuss this question I will move that the resolution be laid upon the table.

Mr. PETTIT. Consent.

Messrs. SHERROD and PEPPER of Crawford, demanded the yeas and nays.

Ten members rising, the yeas and nays were ordered, and being taken were, yeas 62, nays 52, as follows:

YEAS.—Messrs. Alexander, Allen, Anthony, Badger, Balingall, Barbour, Bascom, Beach, Carr, Chapman, Clark of Tippecanoe, Crumbacker, Dobson, Dunn of Jefferson, Duzan, Edmonston, Foster, Frisbie, Gibson, Graham of Miami, Graham of Warrick, Gregg, Hall, Hawkins, Holman, Hovey, Jones, Kent, Kendall of Warren, Kilgore, Kinley, March, McFarland, McLean, Miller of Clinton, Miller of Gibson, Milligan, Milroy, Mooney, Morrison of Washington, Mowrer, Murray, Nave, Niles, Owen, Pepper of Ohio, Pettit, Prather, Read of Monroe, Ritchey, Shannon, Shoup, Sims, Snook, Spann, Steele, Terry, Thornton, Wiley, Wunderlich, and Mr. President.—52.

NAYS.—Messrs. Beard, 'Beeson, Blythe, Bourne, Bracken, Butler, Coats, Colfax, Cookery, Crawford, Davis of Parke, Dick, Dunn of

Perry, &c., Farrow, Fisher, Foley, Garvin, Gootee, Gordon, Haddon, Holliday, Harbolt, Hardin, Helm, Helmer, Hitt, Hogin, Howe, Huff, Lockhart, Logan, Maguire, May, McClelland, Miller of Fulton, Moore, Morgan, Newman, Nofsinger, Pepper of Crawford, Read of Clark, Schoonover, Sherrod, Smiley, Stevenson, Tague, Taylor, Watts, Wheeler, Wolfe, Yocum, and Zenor—52.

So the resolution was laid upon the table.

Mr. MORRISON of Washington, from the committee "on education," submitted the following report:

Mr. PRESIDENT: The committee on education to whom was referred a resolution of the Convention instructing them to inquire into the expediency of authorizing the General Assembly to invest the profits arising from the State Bank in State stocks, or in State Bank stock, have had the subject under consideration, and have directed me to report that the committee are unanimous in the opinion that the General Assembly should be left free to select the best and safest investment for the common school funds. They, therefore, report the resolution back to the Convention, with a recommendation that it be laid on the table, and ask to be discharged from the further consideration of the subject.

The report was concurred in.

#### RIGHTS AND PRIVILEGES.

The Convention then proceeded to the consideration of the order of the day, being the section relating to taking private property for public use.

Mr. HOLMAN. Is the section still open to amendment.

The PRESIDENT. No, sir. The Convention yesterday sustained the call for the previous question, and afterwards refused to order the main question to be put; but reconsidered the vote seconding the demand for the previous question. The question now is, will the Convention second the call for the previous question.

Mr. PETTIT. What will the vote be upon if the previous question is sustained?

The PRESIDENT. On the engrossment of the article.

Mr. PETTIT. We have just adopted a rule that the question shall be taken upon the engrossment of each section separately.

The PRESIDENT. The question *may* be taken upon each separately.

Mr. PETTIT. Well is not the motion to engross amendable?

The PRESIDENT. If the Convention refuse to sustain the previous question it will leave the whole bill in the power of the Convention to amend, or otherwise, as they may determine.

Mr. EDMONSTON. Mr. President—



**The PRESIDENT.** The Chair will remark to the gentleman that debate is not in order.

The question being put on seconding the demand for the previous question; it was not seconded.

**Mr. EDMONSTON.** I now move that all the sections which were agreed to yesterday, that is all the sections except the last, be engrossed.

**Mr. LOCKHART.** Is it in order now to offer an amendment?

**The PRESIDENT.** It depends upon the character of the amendment.

**Mr. LOCKHART.** It is to amend the section by adding certain words.

**The PRESIDENT.** Such an amendment will be in order.

**Mr. LOCKHART.** The amendment is the following:

*"Provided, That if the owner thereof, shall be a non-resident, a feme covert, infant, idiot, or lunatic, or in any way incapacitated from transacting business, it shall be deemed and taken as a valid tender or payment, to pay the amount of such assessment into the clerks office of the circuit court of the proper county, for the use of the owner: Provided further, That either party to such assessment shall have the right of appeal, under such restrictions and limitations as the Legislature shall prescribe."*

The amendment having been read,

**Mr. PETTIT.** I rise to a question of order. It seems to me that this matter was fully settled yesterday. The previous question cuts off all further amendments.

**The PRESIDENT.** The Chair will remark to the gentleman from Tippecanoe, that the Convention has reversed its action of yesterday, in reference to the previous question.

**Mr. EDMONSTON.** It does seem to me that the amendment of the gentleman from Vanderburg, is entirely legislative in its character. Unless some gentleman desires to make a speech upon it, I will move that it be laid upon the table.

**Mr. LOCKHART** rose to address the Chair.

**Mr. EDMONSTON.** If the gentleman wishes to make any remarks, I will withdraw the motion to lay the amendment on the table.

**Mr. PETTIT.** If in order, I will move that the three sections that we have perfected, be engrossed.

**The PRESIDENT.** That motion is already made.

**Mr. PETTIT.** Then I call for the previous question.

**Mr. EDMONSTON.** I was under the impression that we were first to have a vote on the amendment of the gentleman from Vanderburg.

**Mr. PETTIT.** Was it not withdrawn?

**Mr. EDMONSTON.** No, sir; the motion to lay the amendment upon the table was withdrawn.

**Mr. LOCKHART** said, that the section about to be engrossed, was far superior now to what it was when it came from the committee; but that it was yet radically defective. As it now is, any public work, it matters not how trivial, or how important, might be retarded for an indefinite period. By the provisions of this section, it is made imperative on any railroad or plank road company, or other corporation that may desire to construct any public work through any tract of land, that the damages shall first be assessed and paid, or tendered to the owner. In many cases a tender could not be made without great expense and vexatious delays. Suppose the owner to reside in New York, Boston, or Liverpool: the company must hunt him up and pay him, or tender payment. It sometimes happens too, that the owner is incapable of receiving pay. In such cases, neither payment or tender would be of any service.

By adopting the amendment he proposed, the section would read, that "No man's particular services shall be demanded without just compensation. No man's property shall be taken without compensation; nor, except in case of the State, without such compensation first assessed and tendered to the owner: *Provided, That if the owner thereof shall be a non-resident, a feme covert, infant, idiot or lunatic, or in any way incapacitated from transacting business, it shall be deemed and taken as a valid tender or payment, to pay the amount of such assessment into the clerk's office of the circuit court of the proper county, for the use of the owner: Provided, further, That either party to such assessment shall have the right of appeal, under such restrictions and limitations as the Legislature shall prescribe.*"

**Mr. L.,** continuing, said, it seemed to him that no proposition could be plainer, than that the Convention should adopt this amendment, or else come back to the amendment offered by the gentleman from Laporte (Mr. Niles). That amendment, he thought preferable to any yet proposed. He begged to assure the Convention that, in proposing this amendment, he did not wish to retard its action; his only aim was to make the section as palatable as possible.

**Mr. PETTIT.** I am satisfied, sir, that we have had debate enough upon this subject. I move that the amendment be laid upon the table.

The question being put on the motion of the gentleman from Tippecanoe, it was, upon a division—yeas 65, noes not counted—decided in the affirmative.

So the amendment was laid upon the table.

**Mr. PETTIT.** I now move that the first three sections of the article, that have been already acted upon, be engrossed, and ordered to a third reading.

**The PRESIDENT.** That motion is already made.

Mr. PETTIT. I move, then, the previous question.

The PRESIDENT. The question before the Convention is, will they second the demand for the previous question?

On this motion, a division being called for, it was decided in the affirmative—57 yeas, 24 nays.

So the previous question was seconded.

The PRESIDENT. The question for the Convention to decide is, shall the main question be now put.

This question was also decided in the affirmative.

The PRESIDENT. The main question is upon ordering the three sections of this article to be engrossed for a third reading.

The question was put and decided in the affirmative.

The PRESIDENT. There are now two articles which have been under consideration, portions of each of which have been ordered to be engrossed. No time has been fixed, as yet, for their third reading, and the rule is, that after the engrossment of articles or sections, a day shall be fixed upon for their third reading. Will the Convention fix upon a day for the third reading of those articles?

Mr. READ of Clark moved that the sections engrossed be read a third time on to-morrow.

The question was put, and decided in the negative.

Mr. PETTIT. Although the rule on this question appears to be imperious, yet it is within our control. It is not of so imperative a character as that it is necessary to appoint a day now. It is true, that when articles are engrossed a day should be appointed for their third reading, but it does not matter whether we appoint that day immediately after their engrossment or subsequently.

The PRESIDENT. The Chair is under the impression that immediately after the engrossment of articles, a day must be fixed upon for their third reading. As the Convention were about passing over the subject, the Chair thought it necessary to call their attention to the rule in relation to it.

Mr. READ of Clark. I move that these sections be read a third time on Monday next.

Mr. PETTIT. I should like to inquire of the Chair whether, in case the motion of the gentleman is adopted, the third reading of these sections will be the special order for Monday next, or whether it will come up as a general order? It is not to be expected that we will read them a third time on that day; the fixing of the day, it appears to me, is merely a matter of form.

The PRESIDENT. The Chair understands that the third reading of these sections will not be the special, but the general order for Monday next.

Mr. DOBSON. I hope the usual course of procedure on this subject will be adopted. It

is always customary when an article is engrossed, say to-day, to order its third reading on to-morrow. If this rule is not carried out, I fear we shall get into confusion. If we say to-morrow, we need not necessarily read the articles to-morrow. It is only the usual form of procedure.

The question was taken upon the motion of the gentleman from Clark, (Mr. Read,) and it was agreed to.

#### RIGHTS OF NEGROES.

The Convention then proceeded to the consideration of the fourth section of the second article, reported from the committee on the rights and privileges of the inhabitants of the State.

Mr. HOWE moved to strike out the entire section.

Mr. HOWE said, I consider it my duty. Mr. President, to offer this amendment to the present section at the earliest practicable period. I offer it, sir, because I object to the measure contained in the section, and because I would avoid, if possible, the consequences that will necessarily follow from its adoption, without, at the same time, submitting it separately to the people. If it is to be forced upon us *no lentes aut volentes*, I am in favor of submitting the question, in a distinct form, to the people under whose authority we have assembled here. If we had assembled here in accordance with the present Constitution, which was adopted some thirty-four years since, and which is, in my judgment, binding in all things, as to the time when and manner in which it may be amended, or a new one established, I should not have offered an amendment of this kind, but the Constitution we are about to make, if adopted, will receive all its efficacy—whatever that may be—from the consent of the people, and therefore there is no greater impropriety in submitting a distinct proposition than in submitting the entire Constitution. If the fiat of the people is to make this Constitution valid and binding, then their fiat may also make any distinct proposition that may be submitted to them valid and binding. I state this by way of explanation, to show the ground on which I have offered this amendment. I again repeat, that if we were assembled here agreeably to the provisions of the organic law, under which we have lived for the last thirty-four years, and under which we can only amend the same once in twelve years, which provision is as binding as any other in that organic law, we could not validly submit any distinct proposition whatever to the people. Such a proceeding would be unauthorised.

If it is objected that we have no express or implied authority to submit anything to the people but an entire Constitution, and not its parts, I answer that we are *estopped* from setting up this objection. Assembling, as we have



done, agreeably to the votes of the people, and the law of the Legislature, only the Constitution we shall make—if adopted by vote—will become *de facto* the organic law in virtue of that adoption, and consequent acquiescence under it, and a similar vote may, with equal propriety, adopt or reject a single section.

The Constitution we are about to make, then, may, by the consent of the people, become the organic law *de facto*. We are therefore all interested in making it as perfect as possible, and avoiding, if possible, the danger of its rejection as a whole. So much for the object had in offering this amendment.

One other ground I may urge under this head although not strictly in order; but it comes within the scope of the argument. There is another section in this article which has already passed, and which will most probably succeed on its third reading. I refer to the section immediately preceding the one now under consideration. There are many important consequences which will follow from the insertion of this section into the organic law, which but few gentlemen have appeared to consider in their true light. I refer to the section in regard to compensation for personal services and property. Gentlemen have not reflected upon the fact that by this section some hundred thousand dollars of additional expense may be entailed upon this State. They may not be aware of the fact that this section, by a just construction, will require the State, in every instance of criminal prosecution, to pay her own costs where she is cast. Will the people of this State, I ask, be willing to submit to such a consequence as that? To say the least, this will be a novel practice, and one that has been adopted in no other State of this Union to my knowledge, and if there is any honor at all connected with it, it will result from its novelty alone. Under the practice elsewhere before many criminal tribunals informers, when acting from malicious motives, may be mulcted with the costs. The non-payment of witnesses in a criminal cause, where the State does not prevail, is a grievous wrong, but the whole subject, with all its exigencies, should be provided against in a code and not in a Constitution. This section then, if left as it is, enhances the danger of a rejection of the whole.

In view then of the fact that this Constitution is to undergo a trying scrutiny by the people, let us endeavor to make it as perfect as possible, and prevent the insertion of any provision which will endanger its adoption.

In relation to the section now under consideration; although I must say that I am not prepared to declare what are the sentiments of the people of other portions of the State; yet, I know that I speak the minds of those I more immediately represent, when I say that if the sentiments of the people in my part of the State shall generally prevail, the rejection of the Constitu-

tion, if this section is engrafted in it, is sure and certain. Why, sir, a more tyrannical and unjust provision could not be inserted. It is not only opposed to the fundamental principles of liberty, justice, and equality, but I undertake to say it is in defiance of the Constitution of the United States itself. It is unfashionable to talk about guaranteed rights, contracts, Constitutions, and the ordinance of '87, or any ancient obligations in questions of this sort, when the sentiment of a popular majority is in the way; but at the same time, as an honest man, I believe I am bound by them wherever they apply.

I view this section then, sir, as not only opposed to the principles of justice and equity, but as opposed to the Constitution of the United States, and as such it receives my hearty condemnation. This is a plain proposition, and under a free government, any argument in its favor ought to be impertinent and unnecessary. It is such a law as might suit the genius of a despotic government, but it does not suit the free governments of the Anglo-Saxon race.

Gentlemen talk much about liberty and equality, and their extension to all men in our republican States, but can not a majority in a republic, I demand, inflict as much injustice and oppression upon the minority, as a despot on his throne upon his subjects.

What is tyranny? It is the action of the Supreme power, without, or in defiance of Constitutional limits, and it makes no sort of difference, so far as the exercise of the power is concerned, by whom it is exercised, whether by a despot on his throne, or by a triumphant majority of the people, in defiance of their own Constitution and solemn guaranties. This wanton abuse of power, and defiance of right, is one of the causes which subject our country to so much denunciation abroad. It is constantly placed to our account, and with great justice too, that under the pretense of right, we are constantly sacrificing the rights of minorities and individuals, through an unjust exercise of power by the majority.

If there is anything that ought to make the last dying speech of the great statesman, Calhoun immortal, it is the expression that there may be as much tyranny in the exercise of power by the majority, as there is in the edits of a despot on his throne. And the remark is emphatically true in reference to this country. We are constantly going from one extreme to another. This is the tendency of republican institutions; this is the tendency of a people possessing the active minds that are a characteristic of the Anglo Saxon race, and thus is exemplified the truth of the maxim—"The price of liberty is eternal vigilance"—vigilance against the inroads of passion and prejudice. Here sir, is the rock upon which we are destined to split, unless wise counsels prevail; and it is the duty of every conservative who has the interests of his country at heart, to stand up

and oppose fanaticism and faction, in every quarter. As much as I am opposed to the faction of the abolitionists, to the same degree and extent do I hate and abhor the faction of the opposite extreme.

I desire to occupy a position between these two extremes. While I am willing to stand up and defend the Constitutional rights of my fellow citizens, at the same time I sincerely deprecate the fanatical spirit which now exists among us.

I have said that the tendency of the people of all republican governments, more especially the American, is to adopt extreme opinions and measures. Two or three years ago what would have been said if a proposition, in character like the present, had been originated in this State, in a body of this kind, or in the Legislature, if it had assumed to pass an act embodying the provision of this section. Why the man who should have introduced a proposition of this kind would have been considered stark mad. How is it now? Public opinion has been reacting, and in its reaction it has gone over to the other extreme. I affirm then, in view of this state of things, that it is the duty of all the true friends of liberty—all thinking men who have the interests of their country at heart, to take the middle ground and oppose fanaticism and faction on either hand. I have said there is another ground of objection to this section, and that is its utter defiance of rights, guaranteed under the constitution of the United States. Gentlemen are doubtless well aware that I refer to the section which declares that the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several states. Under that section we all learn, that several of the States have conferred, *sub modo*, upon negroes and mulattoes, the rights of citizenship.

What is the meaning of the term citizen? There are two kinds of citizenship or domicile—political and social. I apprehend that every State has the right to determine who shall be her citizens, and to say who shall have a political and who a social domicile within her boundaries. The States of New York and Massachusetts have given negroes and mulattoes certain qualified rights. In New York, in particular, a negro who has a certain amount of property is entitled to vote. That State then has given to the negro and mulatto a political domicile, and under the Constitution of the United States, if one of them emigrate into this State or any other, he is entitled to the same privileges that any other citizen of the State he enters enjoys, in respect to the right of social domicile.

Gentlemen may insist—and there is nothing so absurd as not to find supporters—that a negro is not susceptible of civilization—is not capable in point of fact of becoming a citizen. To this I answer, that it is an elementary principle in a free government, that every State has

a right to judge whether there are any persons residing within her borders to whom should be extended political and social rights. There is no appeal from her decision. And if the States of New York and Massachusetts have seen proper to assent that a negro, under certain qualifications, is a citizen, what right has the State of Indiana or any other State to declare the contrary. But the Constitution of the United States settles the question by declaring, as I have before stated, and what rights of a citizen are referred to here? Not political rights, but the rights of social domicile. I do not affirm that, because the negro has the right of voting in New York he has, therefore, a right to vote in this State. That provision of the Constitution is merely intended as a guarantee of the rights of civil liberty, that kind of civil liberty which has been the theme of British and American jurists, and of which Lord Mansfield remarked that true liberty consists in the administration of equal justice to all—to the king as well as the beggar. That is the kind of civil liberty referred to in the Constitution, and which faction has not the power to overturn. One of the elementary principles of social citizenship is the right to acquire and enjoy property; and it is clear, that in introducing such a proposition as this, we are treading on dangerous ground, because we are taking upon ourselves, not only the violation of natural rights, but the violation of guaranteed rights.

Let us now, for a moment, look at the question of the expediency of this provision. As I said before, it is incumbent upon every conservative of sound and intelligent mind, and who is honestly inclined, to stand on the middle ground between the two extremes; and it behooves all such to enquire, is it expedient to introduce a section of this character into the organic law? Clearly it is not. Much difficulty and much inconvenience may result from the emigration of negroes into the State. This I am not prepared to dispute. But it is a mere temporary embarrassment, an existing difficulty, which will be done away with in a few years. The difficulty is not at all permanent; and shall we merely for the sake of removing a slight embarrassment which will exist but a few years, incorporate so obnoxious a provision as the present one, which will remain for a score or more of years as a portion of the organic law?

Gentlemen may say that they would vote against this section, were it not that they feel bound to vote in accordance with the wishes of their constituents. Now, I affirm, sir, that we are not to represent counties merely, but the whole State;—and it is our duty, as citizens of the State, and representatives of the people not to introduce anything into the Constitution that is repugnant to the principles of civil liberty, or established rights. If our constituents do not like our action we cannot help it—we must do our duty. For one, sir, I take my position ab-



strictly, without regard to the views or feelings of any particular section of the State—but having regard to the interests and well being of the entire community. And let me warn gentlemen that those who advocate this measure, are wielding a two-edged sword.

While with the forward stroke they are cutting out the liberty and guarantied rights of the free colored citizens of other States, with the backward stroke they are assassinating their own liberties. They thereby declared, that natural rights, Constitutional guaranties, and the most elementary principles of liberty, are not worthy of regard, when in the way of a tyrannical majority, and manifestly exhort posterity to follow their example and improve upon their measures. In all history there can not be found a more tyrannical act of State. No *coup d'Etat* of Revolutionary France, no ukase of the autocrat of all the Russias, no inhuman mandate of any of the masters of the Roman world, can exceed this measure in severity and injustice. It is of itself, a mere *coup d'Etat*, a mere odious decree of banishment and confiscation, without law and without trial.

But gentlemen have become familiarized with this measure, until they have gradually, and *only* gradually become its advocates;

"And grown familiar with its ugly face,  
They first endure, then pity, then embrace."

The drift of the argument on the other side, will be the expediency and necessity of this measure. Whatever is expedient, it will be said is right. But Heaven has decreed the damnation of such a doctrine. No expediency can compensate in political affairs, for the sacrifice of a great and elementary principle. *Expediency*—without and in defiance of principles—may be palatable now, but it will be bitter in the end.

And last of all, have gentlemen duly reflected that public opinion at the north, now occupies an extreme, the reverse of that occupied a short time since, and that it may soon oscillate to the latter and beyond it.

"He who of old would rend the oak dreamed not of the rebound." It is our duty to disregard all extreme opinions.

If this General Government, or the State is destined to become the prey of faction, anarchy, and tyranny, then extreme opinions form the introductory part in this awful drama.

Let us all bear in mind this maxim, that under the cover of the "will of the majority," the most abominable tyranny may be introduced, which will soon sap all the foundations of liberty.

Mr. GREGG moved to amend by striking out all after the word, "section," and inserting the following:

"That the general, great, and essential principles of liberty and free government may be recognized and unalterably established; we declare that all men are born equally free and independent, and have certain natural, inherent,

and unalienable rights; among which are the enjoying and defending life and liberty, and of acquiring, possessing, and protecting property, and pursuing and obtaining happiness and safety."

[Mr. G. advocated the amendment at considerable length. His speech is withheld for the purpose of revision.]

Mr. READ of Monroe said—

Mr. PRESIDENT: I do not propose to detain the Convention many minutes. What I say, I shall endeavor to compress within the smallest possible compass. Least of all shall I attempt any thing like eloquence.

While I accord to the gentleman from Jefferson, (Mr. Gregg,) and those who act with him, honesty of purpose, benevolence of heart, and love of liberty, I have a right to claim the same for myself, and those who, on this subject, act with me.

All the gentleman has so graphically said on the horrors of warring and dissevered States, I most heartily respond to. I may, perhaps, not so clearly as himself, see its bearing on the present subject.

Before taking our seats as members of this body, we went forward to the Secretary's table and swore to support the Constitution of the United States. We are now considering a section proposed by the committee, which is held to be in conflict with that instrument. The words of the United States Constitution relating to the subject are the following:

"The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

If negroes and mulattoes are citizens within the meaning of the Constitution, and if every State is bound by that section to admit to a residence within its territory all citizens of other States, the question is settled. It is our sworn duty to vote against the section reported by the committee. The Constitutional question, are negroes and mulattoes such citizens? meets us at the very threshold.

I hold, Mr. President, that they are not.

In determining the scope and meaning of a law, we are to look at the *intention* of the law-making power. We are to look at the law in all its parts, and, if possible, give it a construction which will make it a reasonable and consistent whole. We are to consider the time, the circumstances, the condition of society, the meaning of language in use when the law was enacted.

What, then, was the intention of that body of men who framed the Constitution of the United States? Did they contemplate negroes or mulattoes as citizens?

But, first, what is a citizen? The lexicographer, Dr. Webster, who was also a professional lawyer, says in the United States it means a person native or naturalized, who has the privilege of exercising the elective fran-

chise, and of purchasing and holding real estate.

Any word may be used in different senses. The word "inhabitant," for example, may mean simply a dweller. It means, also, one who has gained a residence—one who is a legal inhabitant—and this last is the technical meaning of the word. So the word *citizen* has different meanings, according to the connection and style of language in which it is used. In a loose sense, I do not doubt, but the word has always been used as nearly synonymous with the word inhabitant or resident. But the question for us to settle is the meaning and import of the word, in the legal phraseology of the day when the Constitution of the United States was written.

What, then, was the condition of society in 1787, when that instrument was formed? Why, then as now, there were three races of men in the States composing the American confederacy. There were white men, negroes, and Indians. To the first alone belonged political rights. To them alone, at that time, belonged those attributes which, according to Webster, make the American citizen. The two last, as citizens, did not exist in legal contemplation. The African race, as a body, were slaves. Not a single State, in our present sense of the word, was a free State. Even Massachusetts and Connecticut had not long previously passed their acts of gradual emancipation, and at that time there were few free blacks even in those States. Washington, the illustrious President of the Convention, owned more than one hundred slaves, and held them as property. Most of the members of that Convention were slave-holders. That is a simple fact which it is useless to disguise. The Constitution itself, though avoiding the use of the word slave, still, by a periphrasis, recognizes slavery. The same persons cannot be slaves and citizens. That is a contradiction in terms—an absurd use of words. Nor did that Convention ever contemplate one portion of the African race as their *property*, and another portion of the same race as their *fellow-citizens*. The inquiry is not now whether the views of the statesmen of that day were right or wrong on this particular subject. But it is evident enough, that they not only did not regard the black, whether free or slaves, as citizens, but they did not intend that they should ever become citizens.

In the first Congress, after the Constitution was adopted, and composed of many of the same men who formed that instrument, the very first naturalization act was passed.

The following exact and technical language is used in that law: "Any alien, being a *free white person* may become a citizen &c." In 1795, a further regulation was made, and the following language is used: "any *free white person* may become a citizen." The same language is used in four subsequent acts. So

also in the Post Office law, Congress early marked the distinction of color. No person of color can be engaged in the Post Office, or in the transportation of the mail. These laws were enacted for the very purpose of putting the Constitution into operation and may be regarded as expressing its true intent. If negroes were citizens of the States, within the meaning of the Constitution, Congress clearly mistook its duty.

The current of judicial decisions is uniform in the same direction. Judge Daggett, the late eminent Professor of law in Yale College, Connecticut, in the Prudence Crandall case, instructed the jury, that *free colored persons* are not citizens within the meaning of the Constitution of the United States. In his charge to the jury, that eminent judge uses this strong language. "To my mind, it would be a perversion of terms, and the well known rule of construction, to say, that slaves, *free blacks*, or Indians were citizens, within the meaning of that term, as used in the Constitution."

In the State of Tennessee in 1838, it was also decided in the case of the State vs. Clabourn, that *free blacks* are not citizens according to the meaning of that word in the Constitution of the United States.

But the different States have always by pauper laws, excluded paupers, though citizens of other States, and prohibited their immigration, and I believe these laws have been held to be Constitutional in the highest courts. The State is surely not to be hindered from excluding a bad or dangerous population. In the emphatic language of Judge Washington in the case of Corfield vs. Coryell: "These fundamental rights are secured to the citizens, subject nevertheless to such restraint as the government may justly prescribe." By a different and more strict construction, a State against its own consent, might be overrun with paupers and vagabonds from other States and there would be no remedy.

But, again, as showing the restricted construction of the section above referred to in the United States Constitution, I may remark, there is not a State Constitution, which, without limitation, confers upon the citizens of other States, the political privileges and immunities of its own citizens. Upon removal into a new State, no man at once enjoys the privilege of voting or of holding office. He must wait six months—a year—and in the case of holding the highest offices in some States, several years, before he can enjoy every privilege of citizenship. By the Constitution of the State of Maine, students from other States cannot vote upon any term of residence. And who would hold, that a negro because he can vote in some State, has a Constitutional right to vote in all the States?

But I have not time to look up and collect all distinctions of this sort which exist in the several State Constitutions, the Constitutionality of



which as measured by the United States Constitution, has never been questioned.

The laws and Constitution of the United States contemplate negroes and mulattoes, in what relation and condition? Why, in the language of the late Chancellor Kent, as "essentially a degraded caste, of inferior rank and condition in society." "Marriages," he says, "are forbidden between them and whites, in some of the States; and when not absolutely contrary to law, they are revolting, and regarded as an offense against public decorum."

How is it possible that a race of men so contemplated by the laws and usages of society, should be regarded as citizens in the same society? It is proper, however, that I should state that Chancellor Kent, notwithstanding the strong language which he uses, expresses the opinion rather doubtfully, that they are to be regarded as citizens, *sub modo*—laboring under disabilities—as citizens not having the rights of other citizens. The very decisions, however, which he quotes, are all adverse to this opinion. I may remark that in addition to the above judicial decisions, he gives also the *official* opinion of the United States Attorney General (I believe the late Mr. Wirt) that free blacks are not citizens in the contemplation of the Constitution of the United States.

Mr. President, the provision, as contemplated in the reported section, for excluding the further settlement of blacks among us, may seem harsh and severe, but if we look at it in the spirit of candor, I cannot but think, we must all admit, that the true interests of each race, and more especially those of the black race, imperatively demand under all practicable circumstances, their complete separation. The blacks can never compete with our powerful and overbearing race. That wise and philanthropic society which founded the colony in Liberia, made it a fundamental regulation in their system, that white people shall not be permitted to settle there. This regulation is founded not only in the soundest philosophy, but in a tender regard to the black race. The settlement in Liberia is one of the most remarkable, and I may add, benevolent schemes, in which our age, so distinguished for noble and generous undertakings, has been engaged. But the philanthropy which planned it, was obliged to take into consideration the distinction of race, and wisely forbade in the very organization of their system, the immigration and settlement of the whites. This same prohibition is incorporated in the new constitution of Liberia, formed by the blacks themselves. They thus recognize the necessity of separating the races in their organic law. The negroes are surely best off by themselves. Let us, then, afford no encouragement to their coming among us. To those who, unhappily for us, and still more unhappily for themselves, are among us, let us even by our organic laws, provide for giv-

ing a home, so far as they are willing to accept the boon—a home where they may attain all the elevation which their nature permits. Let us furnish them no motive to come in or remain among us, to be bondsmen and worse than slaves to us and to our children.

In Virginia, the annual sum of \$30,000 for five years to come, has been appropriated to convey their free blacks to Africa. Let us oblige the other slave States to make a similar provision, by refusing to receive to our bosoms the shufflings off of slavery.

Policy, justice, humanity, self-defense, require this at our hands.

Mr. HALL. I believe that the question is on the motion to strike out and insert. It is in order according to parliamentary usage, to amend the original section before the question on the motion to strike out can be taken.

The PRESIDING OFFICER (Mr. Morrison of Washington). It is not now in order to amend the original section, but it is in order to amend the amendment.

Mr. HALL. I understand that it is in order to amend the original section before the question on the motion to strike out can be taken.

The PRESIDING OFFICER. The pending question is on the motion to amend the original section by striking out a part of it, and inserting some other words.

Mr. HALL. The motion is to strike out and insert, and before the question is taken on that it is in order to move to amend the original section.

The PRESIDING OFFICER. The Chair understands that the gentleman's amendment is for the purpose of perfecting the original section. The Chair is of opinion that it is in order to amend the amendment.

Mr. HALL. I do not propose to amend the amendment. I understand that the amendment is to strike out the original section and insert a new proposition. Now I want to amend the original section as it stands, before the question on the motion to strike out is taken.

Mr. THORNTON. It is in order to amend the original section before the question can be taken on a motion to strike it out entirely. The proposition of the gentleman from Gibson is perfectly in order. It suspends or rather supersedes, for the time being, the motion to strike out. The friends of a proposition have a right to perfect it as much as possible before any proposition can be entertained to destroy it entirely. The proposition of the gentleman from Jefferson is to strike out the original section entirely, and the proposition of the gentleman from Gibson is to amend the original section, which he has a right to do.

The PRESIDING OFFICER. The Chair has heretofore decided that it will be in order to amend and perfect the original proposition before a motion to strike it out can be entertained.

Mr. HALL. Then I move the following amendment to the original section, that is by adding after the word "mulatto," in the third line the words "hereafter coming into this State." I will now read the section as I propose to amend it.

The gentleman accordingly read the section.

SEVERAL MEMBERS. It read that way before. [Laughter].

Mr. HALL. Well my object in the amendment I have offered is to have the clause so worded as not to operate upon the present inhabitants of the State—I mean the present negro population. I wish then to have the same right secured to them that they now enjoy, of purchasing and holding property. If that is secured, that is all I want.

Pending the question on the amendment,

On motion of Mr. KILGORE, the Convention adjourned until two o'clock.

#### AFTERNOON SESSION.

The Convention met, pursuant to adjournment.

The PRESIDENT stated that the subject under consideration when the Convention adjourned, was an amendment offered by the gentleman from Gibson.

Mr. BRACKEN. I wish to offer an amendment. It is to strike out all of the original section after the word "assembly."

The PRESIDENT. The Chair would inform the gentleman from Rush, that there is no such word in the amendment.

Mr. BRACKEN. Then I cannot reach my object till that amendment is disposed of.

Mr. THORNTON. I would like to learn what the amendment of the gentleman from Jefferson is.

The Secretary read the amendment offered by Mr. Gregg.

Mr. BRACKEN. But my amendment was to the original section, and not to the amendment.

The PRESIDENT. The pending question is an amendment to the original section, and the gentleman's amendment does not apply to that amendment, as there is no such word as "assembly" in it.

Mr. THORNTON. I understood the amendment of the gentleman from Jefferson was to strike out the whole paragraph.

The PRESIDENT. All but the word "section."

Mr. THORNTON. I understand the amendment of the gentleman from Jefferson is to strike out the whole section, and substitute another. Now, according to parliamentary law, the friends of a bill, or section, or resolution, have a right to move to amend before any motion to strike out can be entertained. A motion to amend has preference over a motion to strike out.

The PRESIDENT. The Chair has so deci-

ded. The Secretary will read the amendment offered by the gentleman from Gibson.

The Secretary read the amendment as follows: Insert after the word "mulatto," the words "hereafter coming into the State."

A MEMBER. Read the section as proposed to be amended.

The Secretary read as follows:

"The General Assembly, at its first session under the amended Constitution, shall pass laws prohibiting negroes from coming into or settling in this State, and prohibiting any negro or mulatto hereafter coming into this State, from purchasing or otherwise acquiring any real estate hereafter."

Mr. HALL. I would modify my amendment by adding, strike out the word "hereafter," at the end of the section.

Mr. THORNTON. I do not think that the proposition of the gentleman from Gibson, to strike out the word "hereafter," at the end of the section, and insert what he proposes to insert, would answer the object which this Convention has in view, and I cannot, therefore, vote for this amendment.

Mr. HALL. If the section, as reported by the committee, be read over, it will be found that it prohibits negroes and mulattoes from hereafter purchasing or holding real estate. That is the sense of the section. It is not those negroes who may hereafter come into the State, but it applies to the resident negroes; and surely, it is not the intention of the Convention to prevent those negroes who now reside within the State, from purchasing or holding real estate within its limits. The object of my amendment is to apply the restriction to negroes and mulattoes that may hereafter come into the State. The language of the section will, perhaps, accomplish that; and then the word "hereafter" will make it apply to those who may come in, and not to residents.

The question was then taken on the amendment, and it was not agreed to.

Mr. THORNTON. I move to amend the section by striking out the words "or otherwise acquiring;" and insert the word "holding," so as to make it read "prohibiting any negro or mulatto from purchasing or holding any real estate hereafter." The object of the amendment which I have proposed is to obviate a difficulty that might arise, if the words were retained. I know of many persons of color who possess real estate, and if they should die, this provision would prevent their heirs from coming into possession of their property. Now I am willing to go as far as any other man in passing the most stringent laws to prevent negroes from coming into the State, but I cannot sanction a principle, which in my estimation is tantamount to robbery. I can name a man of color in the city in which I live, who owns real estate to a large amount. Now that man may die; and the question is, would you, by retain-



ing the words "or otherwise acquiring," prevent his heirs from inheriting his property. This clause of the section as reported by the committee, would prevent them from "acquiring" real property by descent. The object of my amendment is to preclude them from purchasing or receiving real estate by gift; but I have no intention of holding with the idea that would rob these people of property which would come to them by descent from their parents. I understand well enough, that the preceding part of the section goes to exclude all those persons from coming into the State hereafter. The section as it stands now, will not only apply to them but to those who are here now; and, although I would even go so far as to say that those negroes who are now in the State, and do not possess real estate, should be prohibited from purchasing, or otherwise acquiring it, I cannot and will not vote for any provision which might result in excluding them from holding property which might descend to them from their parents. My proposition is to strike out the words "or otherwise acquiring," because that provision is so broad that it would prevent them from acquiring property by descent. I would then fix it in such a way as to preclude them from purchasing or receiving by gift; but I never could consent to say that children should not "acquire" real estate by descent, because, in my opinion, that would amount to absolute robbery.

Mr. GIBSON. I agree with the gentleman from Floyd in many of the observations he has made, but I cannot agree with his amendment, because I regard it as going further than the original section. It goes further than I am willing to go. The effect of the amendment, if it should be adopted, would be to force those negroes who hold real estate in our State to dispose of it. I do not go that far. I intend to propose to amend the section by striking out the words "or otherwise acquiring," and that, I should think, would meet the gentleman's views much better than the amendment he proposes.

There are only two modes in which real property can be acquired, and these are by purchase or by descent. If you acquire real property by "gift" or devise it is a purchase in the language of the law. If you strike out the words "or otherwise acquiring," you will, I think, accomplish all that is desirable. I am willing to leave it in that position, for while it will not interfere with the descent of real property from the parent to the child, it will have this good effect, that whenever the holders of real estate among the colored race are disposed to sell, they must of necessity, sell to a white man. They cannot sell to another negro, because the provision prevents them from "purchasing," and the property thus held will, therefore, in the course of a very short time, pass into other hands.

While I am upon the floor, I will detain the Convention with a very few observations; and I will observe in the outset that I hope, with the exception of the amendment which I have proposed, the Convention will reject all others, and adopt the section. That a stop should be put to the immigration of negroes into our State, I believe to be the will of almost the entire people. I believe that there is no question on which the will of the people has been so clearly and definitely given, as on this. In canvassing the county which I represent, in every stump speech and in every public assembly I proclaimed this doctrine—that the immigration of negroes should be prevented; and I must say that the doctrine met everywhere with the most hearty response on the part of the people. In the whole course of that canvass, I found but one solitary man who did not agree with me. An old gentleman whom I met in one of the back townships came to me and expressed his surprise and horror that the people of Indiana, so well known for their hospitality, should advocate such a doctrine as that of excluding from our borders the poor unfortunate negro. The observation struck me with surprise, inasmuch as he was the only man I had met with in my canvass who did not appear not merely willing, but anxious, that this influx of negroes into our State should be stopped. Well, I inquired who he was; and who do you think he was? Why, he proved to be a Virginia slaveholder, who was there on a visit. On learning that, I was not surprised that he should wish that our borders should be left open for all their worn out and cast off slaves.

In considering this question, it divides itself into two branches. In the first place, the question is, have we the power to make such a provision? That is an important inquiry; for if we have not the power, there is no use whatever in talking about the expediency of the thing. On that question I see no necessity to trouble the Convention with any observations, for I conceive that my friend from Monroe (Mr. Read) has set that matter effectually at rest. I have never had any doubt on that point. I have no more doubt that the State of Indiana has the power to exclude that class of persons from coming within her borders than I have that she has the power to exclude the paupers that might be sent from other States, or the felons that might be disgorged from their penitentiaries. No rational man would doubt that we have this power. I have no more doubt on this subject than I have upon any other question that could be raised. We were told some ten years ago, that no sane man would have thought of making such a proposition. Times however have changed, and with the change of times has come a change of circumstances. Ten years ago the same state of things did not exist. Had things been then as they are now, we should have heard a very different expres-

sion of opinion. Look at the action of the other States. What have they done? One of them has incorporated a provision in her organic law to the effect that if any free negro shall immigrate to, or any slave hereafter emancipated in, shall refuse to leave said State, or, having left, shall return to and settle in said State, he shall be deemed guilty of felony, and shall be punished by confinement in the penitentiary of such State. I agree with the gentleman from Jefferson in his denunciation of that law. I say it is an insult to human nature for these men to say that when their slaves are old and worn out they should be cast off and driven from the State under pain of confinement in the penitentiary should they dare to return. But to use again the illustration of the old horse again put in harness by the gentleman from Jefferson. If your neighbor turns out his old horse to die, or rather if he turns him into your garden, or your pasture, is there any moral obligation on your part that you should suffer him to remain there? None—none in the world. And on the same principle, I contend that we are under no obligation in the world to receive within our borders the worn out and cast off slaves of Kentucky or any other slaveholding State. Sir, the action of other States has placed us in this situation. Look around you and see what is being done. Illinois has shut her door against the immigration of negroes into her territory. Ohio will, in all probability, do the same. Everywhere you see the slave States thrusting out their old and worthless negroes; and unless we would become the Liberia of the South, it is necessary for us to act, and to act promptly. And it is time for us to act now. I am not fond of reading extracts from the newspapers to establish any position; but I cannot refrain from reading one taken from a North Carolina paper (*The Aurora*) to show the feeling which exists in that State:

"A STAMPEDE.—The people of this district being excluded from all participation in the common property of the United States, by a recent act of Congress, have wisely determined to compel all free colored persons to emigrate to their brethren of the North. We understand 700 have lately left here for New York, Philadelphia, and Boston, and about 800 more are making preparations to remove as soon as the ensuing Legislature adjourns, unless they succeed in their petition to that body to be recognized as State property, receiving support and protection in consideration of their services on the public works.

We would advise every district in North Carolina to adopt similar measures, as the Guinea population, deprived of all outlet by this act, will very soon supplant the whites, unless they are sent off—thereby ridding ourselves of one great nuisance in the way of free negroes. Let us try and oblige the Northern fanatics. If they want negroes, let us send them these, the most

worthless race upon earth. Then if they desire more we will endeavor to accommodate them from time to time, as fools and dotards shall see cause to emancipate their slaves."

That, sir, is the tone of the whole southern press. And even in Canada, where the fugitive slave law is driving thousands of fugitive slaves within their borders, the people are beginning to wake up, and in three different Canadian papers I have seen calls upon the Government to take action in the matter, and do something to prevent the great influx of negroes there. I am told by some delegates here, that in the counties which they represent, there are not, perhaps, more than half a dozen negroes, and such gentleman have expressed surprise that any such feeling should be manifested against that race as is implied in the section reported by the committee. Their counties, however, stand in a position different from many others. In my county there are from 1800 to 2000 negroes, and within the last twelve months more than 150 cast off slaves have settled within that county. I know of one tract of 500 acres owned by a man in Kentucky, who liberated his slaves, and settled them upon that tract. Now what is the result? These negroes are there upon that tract, and the land in the neighborhood of their settlement can now be bought for half the price for which it could have been bought two years ago. One man, living in the neighborhood of this settlement, was obliged to sell out, for the reason, as he alleged, that he had every thing stolen from him. So it is; they come among us; they wont work, they must live, and they live by stealing.

Sir, I said that we were under no obligation to receive them into the State. On the contrary, I hold that we are under the highest and holiest obligations to ourselves, and to posterity, to shut them out. We are bound to do this in self-defense. It is not alone in the case of a man assailed by violence that he may defend himself, even if it be at the expense of the life of another. There is a case in the books which I regard as being analogous to the present. It is when in the case of a shipwreck, a man has secured to himself a plank barely sufficient to keep him above the water, and another seeks to get upon it—he has a right, both in the eye of God and the eye of man, to thrust him off into the ocean, and cling to it himself. Now, sir, that is precisely our case. It is an act of self preservation. However much we may pity these men, we know that we and they cannot live together in peace. We know that when we are over-run with them—as we most assuredly will be unless we adopt some stringent measures to prevent it, there will be commenced a war which will end only in extermination of one race or the other.

Does any man in the South believe that the white and colored population would live together there if the latter were freed? No, sir, no man



believes it. If they were freed to-day, then the war would begin, and it would not cease until the whole colored population of the South were driven from their borders. And, sir, if we do not prevent them from coming in here, we shall be made the receptacle for the worthless negro population of every Southern State.

But, sir, there is another reason why we should adopt the most stringent measures in self-defense. As I have already said, I have no sympathy with the men who adopted that clause in the Constitution of Kentucky, to which reference has already been made; nay more, I will say that I regard it as an infamous stain upon the character of that Convention, and upon the State itself. But, sir, if we leave the door open and give them power to impose their worthless colored population upon us, you may depend upon it, that they will enforce that law. But if we say at once, "you shall not thrust your worn out slaves upon us, we will not have them," then they will not dare to enforce that infamous provision; they will not dare to bring upon themselves the universal execration of mankind, by enforcing it; they will not dare to face their God and do it. If, however, by our own negligence, and want of self regard, we leave them the opportunity of doing it, you may depend upon it, that it will be done, and we will have the freed negroes in Kentucky thrust upon us by thousands and tens of thousands. If, on the other hand, we say promptly and determinedly, "you shall not send them here," then I would be willing to stake my existence that no freed negro would be sent to the penitentiary for the offense which by that section of the Constitution of Kentucky is made a felony—no liberated slave will be punished as a felon because he does not do that which he cannot do; because he does not emigrate to a free State, the laws of which State prohibit his entrance there. To punish a man for not doing that which it is impossible for him to do, is too outrageous a proposition to receive the sanction even of a southern slaveholder.

I am not partial to occupying the time of this body with the relation of anecdotes, but I cannot resist the temptation of relating one here, because I not only have every reason to believe in its actual occurrence, but also because it somewhat serves to illustrate the feeling of many slave-holders towards their worn out slaves. Old Major Geiger of Kentucky had an old negro servant, who had lived with him all his life. He had been a great favorite, on account of his fidelity—a sort of family servant, who, all his life, had done pretty much as he pleased. But, he grew old, and, like all old negroes, sometimes he would work and sometimes he would not. He had served his master so long and so faithfully, that he doubtless thought he was entitled to a little leisure in his old days. Well, the Major got tired of him, and he, determining to get rid of him, had his emancipation papers

drawn out in due form. This done, he went to the negro and said to him, "Sam, you have been a very good nigger, and I am now going to do you a great favor." "Ah! massa! what be dat?" replied Sam. "Why," said the Major, "you have been so good; you have served me all your lifetime so well, that I'm now going to give you your liberty—I'm going to set you free." "Ah, massa!" said Sam; "you can't come dat, massa; you done eat de meat, and now you must pick de bone." [Great laughter].

Well, sir, we have been told that, if we adopt this provision, it will be a dead letter in the Constitution: in other words, that the "higher law" of Mr. Seward is to be introduced into the State of Indiana. I would like to know if that "higher law" is one of the cardinal principles of that party to which the gentleman belongs, who enunciated it here this morning? It is important that we should know this, in order that we may have a proper appreciation of his arguments. But, sir, that doctrine of a "higher law" did not originate with Mr. Seward. It originated with the borderers of the west, and is what is more commonly known by the name of a "lynch law"—[laughter, and cries of "good, good!"]—that law which rises above all Constitutions—above all constitutional principles—and which finds its only rule in the breast of every man, accordingly as his feelings or his interests may dictate. The adjudications of Judge Lynch in the west and south-west, are the only reported cases we have of record under the "higher law" of Mr. Seward. [Applause.]

But, suppose we make a practical application of this doctrine to one branch of the question under consideration. One of the arguments of the opponents of this section is, that we are forbidden, by the Constitution of the United States, from adopting such a provision. What if we should answer them, that there was a "higher law" than that Constitution—the law of self-preservation.

Sir, if such a doctrine is to be tolerated in this country, we had better burn our books, and buy bowie-knives and rifles; better go back at once to savage life. For savage life would be infinitely preferable to civilization without laws, or what is the same thing, laws which may be disregarded by every man whose conscience, or whose interest—for, in many instances, the terms are perfectly synonymous—tells him that he ought not to obey them. I did not expect, Mr. President, to hear such a doctrine as this from the gentleman who, this morning, so eloquently denounced all attempts at disunion. That gentleman should remember the old Spanish proverb—"Curses, like chickens, come home to roost." [Applause.] He should have looked to the future; he should have looked to another period in the history of Indiana; he should have looked to the time when your State will be dotted all over with negro cabins—when the white

man will be driven out from the State, and his place be occupied by the African—for that will be the effect of permitting their immigration into the State. You fill your land with negroes, and the white man will either drive them out or he will leave the State himself, and seek another home. If the citizen of that day should happen to pick up our debates and read the gentleman's speech, upon whose head, think ye, his curses would be likely to fall?

Sir, while I am far from wishing to oppress the negro in any form, I must, on the other hand, be allowed to say that I have no sympathy with the abolition faction of the country. I have nothing to hope for from them; nothing to expect from them; nothing to desire from them; and never, by word or deed of mine, shall I be found pandering to their hopes or feelings. But, sir, we have been threatened with a rejection of the Constitution by the people, if a provision of this nature is incorporated into it. Well, sir, I have just this to say upon that question: if a majority of the people of Indiana are so wedded to the negro; if they prefer the company of the black and sooty African to their own race, and would rather encourage their immigration than that of their white brethren from Europe, or from other States of this Union; if they would prefer this to all the reforms contemplated in the new Constitution, why, I say, in such case let the Constitution fall; the people who have such preferences—such predilections, are not fit to enjoy the reforms which were contemplated by the calling together of this Convention: they would be unworthy of them; they would not be worthy to live even under the present Constitution. I say, in such case, let it fall—let it fall. But, I have no fear upon this ground; for I do not believe that there is any question that has been or will be discussed in this Hall, on which the people are less divided than on this.

The gentleman from Jefferson (Mr. Gregg) read a number of extracts from newspapers, with the view of showing the great danger of a dissolution of the Union. I, perhaps, have as many apprehensions on that score as he has. I know that the horizon looks dark and gloomy; I know that there is danger ahead and behind, and all around about us; but that, to my mind, furnishes another and a conclusive argument why we should adopt this provision. Sir, what would be the effect to us of a dissolution of the Union, irrespective of any greater political considerations? Why, sir, the slave States would drive all their worthless slaves across our borders, and we would be perfectly inundated with the vilest and most worthless population on the face of the earth. And what could we do? Where would they go? We must either take them in or drive them back. Without such a provision as this we could not drive them back, and we must, therefore, take them in. We should remember, too, that we are making a

Constitution now, under which we are to live in case the unhappy event of disunion should ever arrive.

If this vast and powerful nation is to be dismembered—if that proud flag which bears hope and joy to the oppressed and down-trodden in every region of the earth—which has waved in triumph over many a field of blood—is to be stricken down and trampled in the dust—if this glorious Union is to become only a thing of history, and to be a reality no more—then let us be prepared for it; let us at least guard, as well as we may, against this great, this immeasurable evil which would follow from it. There is no evil we have to fear more than that from a dissolution of the Union.

And if we do not act now, when should we act? Is it to be next year, or the year after? Is it to be when our negro population is tenfold increased over its present amount, and when the evil will, consequently, be experienced in a tenfold ratio? Sir, by proper Constitutional provisions, you may keep them out of your State, but I defy you to drive them out when once they are in. Once here, you cannot get rid of them. The only way is, to keep them out while they are out; and if we are to do that, we must act promptly and efficiently—we must act now. [Applause.]

Sir, this is a question of vast importance to our State. The negro race and the white race cannot live together; and it behooves us, under these circumstances, not only to furnish no encouragement to the colored race to enter our borders, but effectually to protect ourselves against their entrance. Nay, more; we must not afford any encouragement to those who are already here to remain here. We have a colony on the coast of Africa of his own race, but there the negro will not go if he can help it. No, no; he wishes to be fed and fostered here, with the hope of being put upon an equality with the white man. So long as he has friends among the whites, so long as he may hold property and transmit it, so long as he can find friends in the State, you never can induce him to leave the country and go to Africa, although I believe that the scheme of African colonization is one of the most benevolent that ever was attempted.

Much has been said at various times about the horrors of the African slave trade. Horrible enough has it been; but who can say that even out of this, the greatest evil, good may not come? Providence "moves in a mysterious way;" and I have often thought that even the African slave trade might be the means employed by Providence to Christianize and civilize the negro race. If you compare the condition of the African as he comes from his native country—and I have seen thousands of them land upon the Island of Cuba—you will find that they bear no comparison even with the lowest and meanest of their race who have



been raised in this country. They are scarcely a shade exalted above the brute creation in any respect. Well, sir, they have been brought here and civilized; and though many, even of those who have been raised here, are but little above the brute creation, either in their habits or their intellect, we have made them much better than when they came; and by sending them back to their own country, they may confer benefits upon their race which, perhaps, could not be acquired by them in any other way.

I have detained the Convention longer than I purposed when I arose. I will not detain it further than by saying that I shall vote against the amendment of the gentleman from Floyd. I am opposed to saying that those negroes who are here now, and "hold" real estate, shall not continue to "hold" it. The ground is too broad; but at the same time, I feel the necessity of adopting such a Constitutional provision as will prevent any more from coming within our borders hereafter, and as will prevent those already here, from acquiring any further hold than they now have upon the freehold of the country. The time is not far distant when every foot of soil in Indiana will have an owner. Let us, then, keep steadily in view the fact that every negro freeholder necessarily excludes from the same land, some one of our own race. Between the two, the choice cannot be difficult. [Applause.]

Mr. FOSTER. I have nothing to say in relation to the section as it now stands, or to the amendments which have been proposed to it; but when these amendments are voted down, as I have no doubt they will be, I shall offer an amendment to the section, which, with the permission of the Convention, I will now read for information:

"The General Assembly shall pass laws providing that any free negro or mulatto hereafter immigrating to, and refusing to leave, this State, or having left, shall return and settle within this State, shall be deemed guilty of a misdemeanor, and punished by confinement in the county jail, or being farmed out to the highest bidder for the term of six months, and the proceeds donated to the Colonization Society, in trust for the benefit of those negroes in this State who are willing to emigrate to Liberia."

Now, sir, I feel disposed, for one, to take the bull by the horns at once. [Laughter, and "hear," "hear."] This milk-and-water course I have no opinion of. I disapprove not only of the amendment offered by the gentleman from Jefferson, but also of the section as reported by the committee. They merely give to the General Assembly the power to pass laws, and there is no penal sanction attached to it at all. Now to pass any law which implies a duty to be performed, without attaching a penalty for the non-performance of the duty, amounts, as an Irishman would say, to just "nothing-at-all-at-

all" [laughter]; and I am rather fearful that some gentlemen on this floor, although it may, perhaps, be rather unparliamentary to say it; [several voices, "oh say it, say it; out with it;"] well, perhaps some of them are afraid to take the responsibility of this thing upon themselves, and would rather cast it upon the Legislature. If the matter is left in that way, you may rely upon it that there never will be any law passed at all upon the subject, and this section reported by the committee, will be as nugatory in its operations as the law of the State of Illinois. The chairman of that committee, I believe, told me that this section was an exact transcript of the section provided in the Constitution of the State of Illinois. That provision of the Constitution was referred to the people and they rejected it. And why did they reject it? Simply because it was not sufficiently stringent.

Now, sir, I have one thing to say, and that is, that if there be any one question in which the people of my county feel more deeply interested than in another, it is this question in relation to the immigration of negroes to the State. I have no hesitation in saying that nineteen-twentieths of the people of the county of Monroe, without regard to party, are opposed to the further immigration of negroes into the State; and at a convenient time I shall offer this amendment, because I know it will meet with their decided approbation, as it does with my own.

My attention was directed to this, in the first place, in consequence of a provision inserted in the Constitution of Kentucky. The members of that Convention did not feel disposed to shirk any responsibility devolving upon them; but they met the question in a bold, manly, and open manner. Here is the section in relation to that subject:

"The General Assembly shall pass laws providing that any free negro or mulatto hereafter immigrating to, and any slave hereafter emancipated in, and refusing to leave, this State, or having left, shall return and settle within this State, shall be deemed guilty of felony, and punished by confinement in the penitentiary thereof."

Now, sir, I propose that such negroes shall be deemed guilty of a misdemeanor, and be subjected to the penalties named in the amendment I have read; that is, "confined in the county jail, or farmed out to the highest bidder, and the proceeds of his labor shall be devoted to the Colonization Society," with the understanding that the negro himself shall, with the view of going to Liberia, have the benefit of his earnings. If we merely say that the General Assembly shall have power to pass laws to prevent the immigration of negroes into the State, and thus shirk the responsibility which legitimately devolves upon us, I venture to say that no such laws ever will be passed. And in connection with this subject permit me to say that I hope no propo-

sition will be made to submit it to the people as a distinct proposition—that the Convention will say “yea” or “nay.” I am willing to vote for such a principle as that which I have read in the hearing of the Convention, or any modification, so as to retain the principle in substance. The gentleman from Jefferson (Mr. Gregg) argued his position with great ability; and, indeed, I was fearful at one time that if the vote had been taken when he concluded, the Convention might have been carried away with the torrent of eloquence which he poured out upon us. I felt the same feelings, I presume, that were experienced by many members of the House of Commons of England, when the celebrated Sheridan delivered a philippic against Warren Hastings, in consequence of which, they immediately adjourned, the House fearful of the effect which his eloquence might momentarily have produced. When I say this, I say it not for the purpose of flattering my friend from Jefferson, for I really was afraid that had the vote been taken immediately after he sat down, his eloquence might have produced an effect to my mind by no means desirable. It is true that the gentleman was argumentative, but he was also somewhat declamatory. His speech was very eloquent, and I listened to it with a great deal of pleasure, but I really must confess that I could not swallow his arguments.

The gentleman read an extract to prove that when the Constitution of Missouri was adopted, Congress was opposed to their admission on the ground of the adoption of the fourth article of the twenty-sixth section of the Constitution of that State; and that they passed a resolution to the effect that the Legislature of Missouri would have to take back that provision in the Constitution, or be remanded back to a territorial condition. He read this resolution in support of his position:

“Mr. Clay, from the joint committee appointed on the Missouri subject, reported the following resolution:

*“Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Missouri shall be admitted into this Union on an equal footing with the original States in all respects whatever, upon the fundamental condition that the fourth clause of the twenty-sixth section of the third article of the Constitution submitted on the part of the said State to Congress, shall never be construed to authorize the passage of any law, and that no law shall be passed in conformity thereto, by which any citizen of either of the States in this Union shall be excluded from the enjoyment of any of the privileges and immunities to which such citizen is entitled under the Constitution of the United States: Provided, That the Legislature of said State, by a solemn public act, shall declare the assent of the said State to the said fundamental condition, and shall transmit to the President of the*

United States on or before the fourth Monday of November next, an authentic copy of the said act; upon the receipt whereof, the President, by proclamation, shall announce the fact; whereupon, and without any further proceeding on the part of Congress, the admission of the said State into this Union shall be considered as complete.”

Now, I have the best authority for saying, that Missouri did not comply with the requisition of Congress—and that is the form of the Constitution itself. Well, on this subject I will read another short extract:

“Mr. Adams of Massachusetts delivered his objections to the resolution, on the ground of the defect of the power of the United States to authorize or require the Legislature of a State once admitted into the Union to do the act proposed by this resolution to be demanded of the Legislature of Missouri.”

Now, on looking at the Constitution of Missouri, and the schedule attached to it, you will find nothing in relation to this resolution of Congress; but you find that the provision in the published Constitution of Missouri, is just as it was enacted by the Convention of that State; and speaking of the Legislature, it there says, in short and terse terms—

“It shall be their duty, as soon as may be, to pass such laws as may be necessary,

“1st. To prevent free negroes and mulattoes from coming to and settling in this State under any pretext whatsoever.”

Mr. GREGG. Read the whole article.

Mr. FOSTER. Oh, no; there is no necessity for detaining the Convention; I read just as much as suits my purpose. [Great laughter.] You see, I am acquainted with the gentleman from Jefferson; and I am only pursuing the course which he pursued. [Renewed laughter.] I know the gentleman to be pretty much in the same fix with myself in regard to this thing.

Now, speaking of the organic law of Kentucky, what would be the effect of that law were it enforced? Our State would be inundated with free negroes and mulattoes. The State of Illinois has forbidden them to enter her borders. Ohio will unquestionably do the same; and unless we protect ourselves, the result will be, that Indiana will be the great refuge of all the worthless, the halt, the maimed, and the blind negroes that are to be found in the Southern States. What are the laws of Kentucky with regard to the negroes there? Anterior to the adoption of the present Constitution, the laws of that State provided that no individual should emancipate negroes there unless he gave a bond to the county for their maintenance, and he also had to execute a second bond so as to become responsible for their good behaviour.

Now, we ask, is it fair that the slaveholder there, after having, as it were, sucked the sweat



and blood of his negroes, should send them away to die in the free States, where they can have no friends and no sympathies in their behalf? Suppose a slaveholder in Kentucky has half a dozen of those negroes, old and worthless, how easy for him to come over the river into the State of Indiana, and to enter forty or eighty acres of land and settle these negroes here. What is to prevent him from doing that, and thereby ridding himself of all responsibility for their maintenance? Thus, perhaps, for the amount of fifty or a hundred dollars, he gets clear of an annual expense of several hundred dollars, and palms the expense of maintaining these poor creatures upon a people who have no interest whatever in their welfare. Let me state it as my firm belief, that if we do not pass a law, and a very stringent one, too, to prevent their coming into the State, our State will certainly be filled with these negroes, not only from Kentucky, but from Tennessee and other slave States. Sir, during the canvass last summer, I recollect seeing an account in the papers of some five or six hundred negroes emigrating into this State, and we were assured that there were more who were about to follow their illustrious example. [Laughter.]

Some gentlemen say that such a provision is contrary to all principles of humanity. They exclaim with holy horror: "what! would you prevent human beings from immigrating into the State?" Sir, to that I reply, what course do we pursue with white men? What course do we frequently pursue with those who have fought and bled for our country, in times that were calculated to try men's souls? Why, sir, if a pauper, even though he has rendered these services, should come from one county to another, he is immediately sent back to the county in which he had his residence. If a pauper residing in Monroe should migrate into Vigo, or if a worthless husband should run off and leave his wife and children to the mercy of the world, the overseers of the poor very kindly escort the lady and her children to the next county in a carriage, if her legal residence should happen to be there.

Now if it is not considered improper and inhuman to escort a pauper from one county to another, and these, mind you, white persons, is it improper or inhuman to reject another class of beings coming, not from one county to another, but from another sovereignty. I think not; nor can any reasonable man think it is. We cannot therefore be charged with inhumanity in preventing our State from being overrun with these vermin—for I say they are vermin, and I know it. [Laughter.] I was born and raised in the city of Philadelphia. There are great numbers of them there, and they are everlastingly creating disturbances. I have been on the Island of St. Domingo, where there are vast numbers of them, and a more miserable

race of beings, I think, scarcely ever existed. Talk of their capacity for free government! Go to Hayti and see the celebrated emperor, Soloque, who had formerly been a cook, with his dukes, and earls, and lords, and barons, and knights, and a whole paraphernalia of humbugs! Look again at the Island of Cuba, where there are slaves, and you will find that they are much happier there than in St. Domingo, where they are free. Add all the advantages of sixty years experience of freedom, and you will find that where the inhabitants of St. Domingo then exported twenty hogsheads of sugar and as many bags of coffee, they do not export one now.

Sir, they are a different race from ours, and they will ever remain so. They cannot be amalgamated, they cannot be dove-tailed in any point of view. [Great laughter.]

The gentleman (Mr. Gibson) has alluded to the Island of Cuba, and I can say from observation and experience, that his remarks were correct. Indeed, sir, I have seen the negro race in such low stages of developement, with such inferior mental and physical organizations, that I have been tempted to give credence to the theory of Lord Monboddo, that man originated from a Monkey [laughter]. I do not know but that man is the highest order of a species originating from the Ape, and connected therewith by a regular gradation of races. It may not generally be known that a celebrated philosopher, Professor Agassiz, has promulgated a theory, which, though new, is attracting much attention. He thinks that the negro does not belong to the same race with ourselves. Be that as it may, I do know from Holy Writ that the negro race, whether they belong to the same race we do or to a higher order of animals, are under the ban of Heaven—a curse that was pronounced upon them by Almighty God still remains upon them. The race was cursed, and it was declared that they should be the servants of servants. That curse has never been removed. If any gentlemen doubt my statement I shall be able to quote the Bible, and they will find me as fully sustained as when my statement of the circumstances of the admission of Missouri was questioned.

The right to prohibit the immigration of negroes and mulattoes into the State has been questioned. Now, sir, I do not know what the decision of the Supreme Court will be in this case, but I know the doctrine held by the Supreme Court of the United States upon a collateral subject—the immigration of paupers into the United States from Europe. The case was argued at great length on an appeal, I think, from the decision of a New York court, relative to the landing of paupers from emigrant ships at that port. It was finally decided that the State has the right to exclude the paupers of a foreign country, and to prevent their being landed upon its shores. This being established

I contend that one State has a clear right to exclude the paupers of other States from immigrating and settling within its borders. If the New York Legislature can pass laws to prevent the landing of European paupers, Indiana can provide against the immigration of the worn out and cast off slaves of the slaveholding States.

But it has been said that a law like that which I have proposed, conflicts with the powers of the General Government, and in the language of Chief Justice Taney—"The first inquiry is, whether under the Constitution of the United States, the Federal Government has the power to compel the several States to receive and suffer to remain in association with its citizens, every person or class of persons, whom it may be the policy or pleasure of the United States to admit. For if the people of the several States of this Union reserved to themselves the power of expelling from their borders any person, or class of persons, whom it might deem dangerous to its peace, or likely to produce a physical or moral evil among its citizens, then any law of Congress invading this right, and authorizing the introduction of any person or description of persons against the consent of the State, would be an usurpation of power which this court could neither recognise nor enforce."

I had supposed this question not now open to dispute. It was distinctly decided in *Holmes vs. Jennison*, *Graves vs. Slaughter*, and in *Prigg vs. the Commonwealth of Pennsylvania*.

If these cases are to stand, the right of the State is undoubted. (to pass the law under consideration). And it is equally clear, that if it may remove from among its citizens any person or description of persons, which it regards as injurious to its welfare, it follows that it may meet them at the threshold and prevent them from entering. For it will hardly be said that the United States may permit them to enter, and compel the State to receive them, and that the State may immediately afterwards expel them. There could be no reason of policy, or humanity for compelling the States by the power of Congress, to imbibe the poison, and then leaving them to find a remedy for it by their own exertions and at their own expense. Certainly no such distinction can be found in the Constitution; and such a division of power would be an inconsistency, not to say an absurdity, for which I suppose no one will contend. If the State has the power to determine whether the persons objected to shall remain in the State in association with its citizens, it must as an incident inseparably connected with it, have the right also to determine who shall enter. Neither can this be a concurrent power. It must be paramount and absolute in the sovereignty which possesses it. A concurrent and equal power in the United States, and the States, as to who should and who should not be

permitted to reside in a State, would be a direct conflict of powers repugnant to each other, continually thwarting and defeating its exercise by either, and could result in nothing but disorder and confusion.

I think it, therefore, to be very clear both upon principle and the authority of adjudged cases, that the several States have a right to remove from among their people, and to prevent from entering the State, any person, or class or description of persons, whom it may deem dangerous or injurious to the interests and welfare of its citizens; and that the State has the exclusive right to determine, in its sound discretion, whether the danger does or does not exist, free from the control of the General Government.

But the gentleman on my right (Mr. Gregg) declares that we cannot prohibit the immigration of negroes and mulattoes because it is in violation of that clause of the Constitution of the United States which declares that—

"The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States."

Well, sir, I say negroes and mulattoes are not recognized fully as citizens, with all the rights and privileges thereunto appertaining, in any State of the Union; no sir, not even in Federal old Massachusetts. In New York they are only recognized as citizens, after they become possessed of real estate to the amount of two hundred and fifty dollars. In those States even in which they are allowed to vote upon a property qualification, they are not citizens because they are not eligible to office, and are subject to other restrictions. Therefore, I say, that no provision of the Constitution of the General Government will be violated by the adoption of this section, because in no State of the Union is a negro fully a citizen.

And aside from this view of the case negroes and mulattoes are not regarded as citizens and scarcely as human beings, in Kentucky, Virginia, Tennessee, Missouri, and other slave States from whom this peculiar kind of immigration is most to be dreaded. It is against the immigration of worn out slaves of these States, and their settlement within our borders, with all their impoverishing and demoralizing effects, that we desire to protect the people of Indiana, and especially the inhabitants of the Southern tier of counties. They are not considered as citizens in those, and crossing the Ohio river will not confer those rights upon them. Why any gentleman will contend that crossing the river should convert them into citizens of Indiana, I cannot tell.

Mr. President, although the features of this section seem, at first sight, harsh and cruel, I sincerely believe that it will result to the good of the negro. For them to live in this State is out of the question. Public feeling is so strong against them, that they must ever remain a de-



graded and a wretched class of population. Allowing more to come, will only increase and extend the evil. But, sir, provide in this Constitution that they shall not come into the State, and the result will inevitably be that the slave States will be compelled to colonize their free negroes and emancipated slaves. Now they take advantage of us, because we will allow ourselves to be imposed upon, and they are not driven to the last resort. But let the Free States shut them out, and they must colonize. It is their only resort, for the ratio of the increase of the black population of the South, is so much greater than that of the white, that they would soon be overrun by their negroes. This is already the case in Virginia, and her Legislature has appropriated the sum of thirty thousand dollars annually, for the colonization of her emancipated slaves in the republic of Liberia. Other slave States will be forced to follow her example.

Let me here remark that the negroes cannot complain very bitterly, at least, not with a good grace, of our prohibiting their immigration and settlement amongst us, for it is a fundamental law of Liberia, that no white man shall be allowed to immigrate and settle there.

There is no scheme of philanthropy, no project better adapted to the amelioration of the condition of the African race, than African colonization. In Liberia they can enjoy equal rights and privileges, and live free from the depressing influences of a national prejudice. The climate and the soil is that naturally adapted to them by nature, and there they may yet rise to be a powerful and a civilized nation.

I must be permitted to express my admiration of the sentiment expressed by Daniel Webster, upon this subject. He declared that he would vote for appropriations from the national Treasury to provide for the expenses of a grand national scheme of colonization. He declared that he did not care what amount it would take, he would take the responsibility of voting an appropriation yearly, for the object of transporting the negroes of this country to Africa.

Talk about suppressing the slave trade, &c., by means of armed fleets cruising on the coast of Africa! It is idle—the fleets of England, France, and the United States, have been cruising on that coast for many years, at an annual expense of five millions of dollars, and what have they done? Comparatively nothing. On the other hand, the republic of Liberia, by purchasing several hundred miles of the coast, and extending her dominion over that territory, where once were the largest slave factories, has forever abolished the slave trade of all that coast. I mention this, that the practical effects of colonization may be seen, and I think it is a monument to their credit, that with their slender means, they have accomplished more for the suppression of the African slave trade, than the fleets of the three great nations of the world,

at an expense of five millions of dollars annually.

I have no disposition to protract these remarks. The gentleman who preceded me (Mr. Gibson) has so ably gone over the whole subject, that there is less need of my advertising to all the points involved in the debate. I believe that we owe it to ourselves to prohibit the immigration of negroes into the State, and furthermore, I believe that the practical effect will be that the slave States will be driven to follow the example of Virginia, and colonize their free negroes and emancipated slaves. Thus our provision will result to the benefit of the negro, as there is no doubt of the constitutionality of a provision of this kind. My colleague has ably demonstrated this; not only from numerous authorities, but those of the highest character; and the great majority of members of this body are perfectly satisfied in regard to its expediency.

Mr. President, I have been disappointed in procuring, or perhaps too indolent to seek several of those authorities, upon which I relied to sustain my position; but I think that I have demonstrated to the satisfaction of every liberal and unbiassed mind, that the only correct course we can pursue in this matter is to adopt a Constitutional provision, which shall be sufficiently stringent to completely effect the grand object which we have in view, and thereby, not only subserve the best interests of the State, but promote in a very great degree, the cause of humanity. I have nothing to say in relation to those negroes who are already inhabitants of this State.

It would be inhuman to cast them forth to the cold charities of the world, and to follow the example of Kentucky, in expatriating these free negroes and emancipated slaves. No, sir; let us do the best we can to ameliorate the condition of the colored race which are amongst us, and elevate them in the scale of society, and the blessing of Heaven will attend all well directed efforts for that purpose.

Mr. MILLIGAN inquired what amendment the pending question was upon.

The PRESIDENT. The question is upon the amendment of the gentleman from Floyd (Mr. Kent) to strike the words "or otherwise acquired" from the original proposition.

Mr. THORNTON. I desire to modify my proposition by striking out the word "personal" so that its effect will be to prevent negroes and mulattoes from acquiring real estate hereafter.

Mr. HOVEY. The views of the gentleman can be carried out by adding after the word "hereafter" in the section, the words "except by descent." I think the adoption of that amendment, would make the section more brief and accomplish the object aimed at. I do not wish to strike out the words "or otherwise acquiring" as there might be an advantage taken of that language by negroes, by having property held in trust for them or by purchasing long

leases of real estate. For this reason I hope that any motion to strike out the words "or otherwise acquiring" will be voted down.

I shall not express my views at length upon the expediency and propriety of this section—my votes will plainly declare my sentiments.

**THE PRESIDENT.** The pending question is upon the motion of the gentleman from Floyd, to strike out the words "or otherwise acquiring," so that the section as amended would read :

"The General Assembly, at its first session under the amended Constitution, shall pass laws prohibiting negroes and mulattoes from coming into, or settling in this State, and prohibiting any negro or mulatto from purchasing real estate hereafter."

The question being put upon the adoption of this amendment, the same was adopted.

**MR. BASCOM** moved to amend by striking out all after the word "State."

**MR. BASCOM.** The effect of my amendment would be simply to prohibit the immigration of negroes and mulattoes into the State without declaring that those now here shall not enjoy the rights of property.

The amendment was not agreed to.

**MR. TERRY.** I move to amend by inserting between the words "mulattoes," where it occurs last in the section, and the words "from purchasing," the words "who shall have immigrated into this State since the first of January, eighteen hundred and fifty."

My object in offering this amendment is to secure an application of this provision to those whom, with the original form of the section, it would never reach. It will be two years before the session of a Legislature under the amended Constitution, and all this time the immigration of negroes and mulattoes into the State will be going on with impunity and accelerated and stimulated by the fact of the prohibition which is soon to take effect. Into the county adjoining the one in which I live, three or four hundred negroes have immigrated within the last year. It is for the purpose of immediately securing the State against that class of immigrants that I offer my proposition. If it is not adopted we shall see the free negroes of the adjoining slave States hastening to secure a residence in the State before the new Constitution goes into operation.

**A MEMBER.** The principle of the amendment may be well enough, but as the amendment is proposed to be made, the section will not read correctly. The amendment will have to be so prepared as to "fit in" with the last sentence of the section.

On motion, this amendment was laid on the table.

**MR. HAWKINS.** I move to amend the section by striking out of the first line after the words "the General Assembly" the words "at its first session under the amended Constitution shall" and insert the following: "Whenever

the public interests shall demand it, may," so that the section as amended would read "The General Assembly, whenever the public interests shall demand it, may pass laws prohibiting negroes and mulattoes," &c.

**MR. COOKERLY** moved to lay the amendment on the table.

Upon this motion the yeas and nays were demanded, and, being ordered, resulted—yeas 81, nays 35—as follows:

**YEAS.**—Messrs. Alexander, Allen, Badger, Barbour, Blythe, Bourne, Bracken, Bright, Butler, Carr, Carter, Chapman, Coats, Cookerly, Crawford, Crumbaker, Davis of Parke, Dick, Dobson, Dunn of Perry, &c., Duzan, Edmonston, Farrow, Fisher, Foster, Frisbie, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Graham of Warrick, Haddon, Hall, Holliday, Harbolt, Hardin, Helm, Helmer, Holman, Hovey, Huff, Jones, Kent, Lockhart, Logan, McLean, Miller of Clinton, Miller of Gibson, Milroy, Mooney, Moore, Morrison of Marion, Morrison of Washington, Nave, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Prather, Read of Clark, Read of Monroe, Schoonover, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Scott, Spann, Stevenson, Tague, Terry, Thornton, Vanbenthusen, Wiley, Wolfe, Yocum, Zenor, and Mr. President—81.

**NAYS.**—Messrs. Anthony, Balingall, Bascom, Beach, Beard, Beeson, Clark of Tippecanoe, Colfax, Conduit, Dunn of Jefferson, Foley, Gregg, Hawkins, Hitt, Hugin, Howe, Kilgore, Kinley, March, May, McClelland, McFarland, Milligan, Morgan, Mowrer, Murray, Newman, Niles, Steele, Taylor, Wallace, Watts, Wheeler, Work, and Wunderlich—35.

So the amendment was laid on the table.

**MR. SMILEY** offered the following: "amend by striking out of the first line the words "under the amended" and insert the word "this," so that as amended the section would read :

"The General Assembly at its first session under this Constitution shall pass laws prohibiting negroes," &c.

**MR. SMILEY** remarked, that this amendment would effect the object of my friend on my right (**Mr. Terry**) and will make the section more brief than in its present shape.

**MR. McCLELLAND** moved to strike out all after the word "State" in the fourth line of the printed Section.

**MR. HOVEY** rose to a question of order. An amendment precisely similar to the one just offered had previously been proposed by the gentleman from Wells and laid on the table. This proposition being the same as that, one cannot be entertained.

The **CHAIR** decided the amendment (**Mr. McClelland's**) to be in order.

A motion was then made that the amendment lie upon the table.

The yeas and nays having been demanded



upon this motion, the same were ordered, and resulted—yeas 76, nays 39, as follows :

YEAS.—Messrs. Alexander, Allen, Badger, Barbour, Blythe, Bourne, Bracken, Bright, Butler, Carr, Carter, Chapman, Coats, Cookerly, Davis of Parke, Dick, Dobson, Dunn of Perry, &c., Duzan, Edmonston, Fisher, Foster, Garvin, Gibson, Gootee, Graham of Miami, Graham of Warrick, Haddon, Hall, Holliday, Hardin, Helm, Helmer, Hogin, Holman, Hovey, Huff, Kent, Lockhart, May, McLean, Miller of Clinton, Miller of Gibson, Milroy, Mooney, Moore, Morrison of Marion, Morrison of Washington, Nave, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Prather, Read of Clark, Read of Monroe, Schoonover, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Scott, Spann, Stevenson, Tague, Terry, Thornton, Todd, Vanbenthusen, Wiley, Wolfe, Yocum, Zenor, and Mr. President—76.

NAYS.—Anthony, Balingall, Bascom, Beach, Beard, Beeson, Clark of Tippecanoe, Colfax, Crawford, Crumbacker, Dunn of Jefferson, Farrow, Foley, Gordon, Gregg, Harbolt, Hawkins, Hitt, Howe, Kilgore, Kinley, March, May, McClelland, McFarland, Miller of Fulton, Milligan, Morgan, Mowrer, Murray, Newman, Niles, Steele, Taylor, Wallace, Watts, Wheeler, Work, and Wunderlich.—39.

So the amendment was laid on the table.

Mr. HOGAN moved to amend the section by striking out all after the word "pass," and insert the following: "Such laws relative to negroes and mulattoes as shall be deemed right and expedient." The section would then read, "The General Assembly, at its first session, under the amended Constitution, shall pass such laws relative to negroes and mulattoes as shall be deemed right and expedient."

Mr. COLFAX. Mr. President, before the usual motion "to lay upon the table" is made and carried by the majority, who take this mode of disposing of all amendments to this section, which are proposed by the minority, or which modify the harshness of its provisions, I desire to say a few words. Not because I flatter myself that I shall thereby affect the conclusion of the Convention, or change a single vote. I know the disposition that prevails, too well: he, sir, that wars with prejudice, has but an uphill work. To argue before gentlemen, whose minds are settled and possessed by a strong prejudice against a particular subject, a particular class or race, in favor of that class or race, that, sir, of all other tasks, is most difficult. It might be added, sir, that those who have charged upon the minority a disposition to make offerings to the anti-slavery sentiment of portions of the State, might themselves be charged with pandering to the pro-slavery prejudice that exists in some other portions.

The PRESIDENT. The gentleman from St. Joseph will avoid charging members with improper motives.

Mr. COLFAX. Yes sir, I will endeavor to heed the directions of the Chair.—I am willing to judge charitably of the acts of gentlemen who would deny to any portion of mankind the commonest rights of humanity, and to believe they are acting from a sense of what they deem an expedient and politic course to be pursued. I am willing to believe that they are acting under an appreciation of the responsibilities and obligations of the oath they have taken; but at the same time I look through different spectacles; I cannot but see matters in a different light. And, as they have repeatedly charged upon those who dared to assert the human attributes of the black man and his right to protection from utter social annihilation, a desire to pander to the Free Soil sentiment of the people, and as gentlemen have been unchecked in this by any member upon the floor, or, allow me to say, by the Chair, I must be permitted to state, that while we bore it patiently without complaint, there may be—there is, sir, another sentiment in the State to be ministered to, beside a hatred of the negro and a sympathy with his enslaved condition. Now there appears to be a dominant sentiment, if not avowedly in favor of Slavery, most bitter in denunciation and proscription of all who avow their opposition to acts of oppression and tyranny, perpetrated against that unfortunate class. That sentiment being apparently in the ascendant, it may be more profitable, as well as more popular, to pander to *that* feeling, than to the anti-slavery sentiment of the north, to the sentiment of men who have been reviled and denounced here as agitators, fanatics—the casters of fire-brands and apples of discord into the State and National councils.

But, Mr. President, though gentlemen may succeed in making the names of all those who avow my respector sympathy for this latter sentiment, as it were, a "bye word and a hissing," yet will I not charge them in return with political design in their acts. They are acting as their constituents require of them; they are representing what they doubtless believe to be the feelings of the people who sent them to this Hall. But sir, I ask gentlemen to pause one moment, to look out beyond the narrow circle of this Chamber and of this State, and reflect what position we occupy before the world. Are we in South Carolina—are we sitting in this chamber as delegates of the people of South Carolina—delegates representing their feelings, and making haste to fulfil their behests? No, sir, strange as it may seem, we are the delegates of the people of a Free State—of a State, at least, which claims to be free. We are the assembled Representatives of a State that has lived for thirty-four years under a Constitution which, at its opening, at its very threshold, contains this sublime declaration:

"That the general, great, and essential principles of liberty and free Government may be

recognized and *unalterably* established, WE DECLARE that ALL MEN are born equally free and independent, and have certain natural, inherent, and *inalienable* rights; among which are the enjoying and defending life and liberty, and of ACQUIRING, POSSESSING, and protecting PROPERTY, and pursuing and obtaining happiness and safety."

This Constitution, framed at a distance of more than a quarter of a century from our privileged point of Light and Progress, of vaunted advancement from the narrow and illiberal prejudices of the past, declares that all men—ALL men shall be inalienably entitled to those rights which, in 1850, we propose to strip from one class of men. We propose—for the committee who reported the section under consideration, expressly and purposely omitted that noble declaration—we propose, if I may be allowed the expression, to abolish that great and undeniable truth, uttered in our present Constitution—that truth which was ushered into the world on the auspicious morning of our Nation's birth, which had for its author, Jefferson, and for its vindicators his compatriots of the Revolution. For thirty-four years we have lived and prospered under the beneficent principles of a Constitution which declares as its great, fundamental, primary proposition, that all men shall enjoy the right of acquiring, possessing, and protecting property, and now, after the lapse of a cycle of years, most eventful of human progress, not only in the arts and in science, but in philanthropic enterprises, and great popular movements of reform, it is proposed to take a step—not forward, but most manifestly a step backwards—and adopt a solemn Constitutional provision that one class of men, a class most needing sympathy and protection, shall be prohibited in the enjoyment of the simplest, humblest rights guaranteed to them by our fathers. I appeal to gentlemen if this is in consonance with the spirit of our time—is it a step impelled by the out-gushing heart of humanity, or is it a stride backward into the darkness of past prejudices and oppression? Are we prepared to take such an attitude before the country and the world, because some of the delegates from the Southern portion of the State represent it to be the desire of the majority of their people? Let me cite to you the Constitution of a SLAVE STATE. If all other arguments are ineffective—if all other appeals fall dead—as it appears probable that they will upon the majority in this Chamber, let me ask them to look at the magnanimity of a Slave State. I cannot believe they will consent to do worse than a Convention of Southern Slaveholders! The preamble to the Constitution of DELAWARE declares:

"Through Divine goodness, ALL MEN have, BY NATURE, the right of worshiping and serving their Creator according to the dictates of their consciences, of enjoying and defending

life and liberty, of ACQUIRING and PROTECTING reputation and PROPERTY."

Observe that the language of the Delaware Constitution, the first truth that it annunciates and settles, is that ALL men are entitled to these rights. No illiberal distinction here, no amendment as has been proposed to the Declaration of Independence so that it should read "all men are born free and equal,"—"except niggers" [laughter]. No such proviso finds a place in the organic law of this patriotic slaveholding State, but in an enlightened spirit they laid down, and still maintain a platform broad enough on this question for all classes and conditions of men to stand upon.

We make professions, which seem in strong and marked contrast with a provision like this one proposed for our new Constitution. We say to our constituents, to the nation, and to the world, that we abhor the institution of human slavery. In their presence we fervently exclaim "would to God that slavery were abolished in the southern States, but we have no power over the institutions of a sovereign State, we cannot compel them to abolish slavery, but we would rejoice if they would themselves wipe out that blot." And while we are *professing* such liberal, and, with the people of nearly the whole State, such popular sentiments, what are we *doing* here, what example are we setting to the people of the slaveholding States, whose peculiar institution every gentleman on this floor is ready to condemn! We are showing them, sir, by a solemn Constitutional provision, that the prejudice of this free state against negroes and their descendants is greater, and embodies itself in more oppressive and unjust laws than in the slave States themselves. There the prejudice is against the *condition* of the negro; the dislike is not *personal* in its character. In the South they live in constant intercourse with the blacks, they have them in their families from infancy to old age, from the cradle to the grave. They are their companions, dependent to be sure, but oftentimes trusted at home and abroad. But here in Indiana, one of the great States carved out of that North-Western territory, over which the beneficent ordinance of 1787 was extended, we are about to abrogate what the founders of our State declared to be inherent and inalienable rights, and to declare that the black man shall be prohibited from immigrating within our limits, and from purchasing a homestead with the proceeds of his toil! A delegate of the people rises in the dignity of his place and position, and characterizes the whole class as *vermin*; that, I regret to say, was the language of the gentleman from Monroe (Mr. Foster).

Sir, I shall not deny that the black race of this country is debased, that as a class they are inferior to the whites, that they are poor, weak, and to some extent degraded. I admit their intellectual and social inferiority. But I ask gentlemen who tell me all these things, who,



before the judgment bar of God who created us and them, is responsible for that degradation? They are debased by the lust and avarice of the white race. The same God who made you and I, deemed it expedient in his wisdom, to create them also. Yes, sir, take all the advantage of them that power gives us, still the truth stands, they have the same common Creator. As the gentleman from Steuben (Mr. May) said a few days since in that calm, cool, and firm utterance of his sentiments, (sentiments which, so far as the extension of suffrage to them, by a Constitutional provision, were concerned, he knew were opposed by every other delegate in this Convention,) "the negro is either a man or he is a brute." The moral courage evinced in the avowal of the sentiments which he alone held, gained him honor; and although I did not concur with all his conclusions, I cannot but feel that he has deserved all the commendations I have heard from those most opposed to him, for the fearlessness which, upon that occasion, he so fully displayed.

But that presentation of the case is a forcible one, "the negro is either a man or a brute." If a brute, let us in all respects treat him as we treat other brutes; if he is a man let us act towards him as we should act towards those who, in common with us, received life from the same Creator. If he be degraded and mentally and morally inferior, then reserve, if you will, the bestowal of the highest privileges of citizenship, such as the exercise of the elective franchise. We ask here, we expect here, no extension of their privileges, but we ask you to treat them with humanity, and not to crush them as you would vermin out of your sight. But if you will not do this, let no man on this floor speak against the cruelties inflicted on the race in the Southern States, the slave factories of the African coast, or the horrors of "the middle passage." Your mouths will be stopped, the utterance of your condemnation checked, for by your own solemn and deliberate acts you declare the negro a brute, by excluding him from the commonest, the poorest, the humblest, privileges of human beings—the right to live and to possess the means of living purchased by the sweat of his toil.

Mr. President, do as we may here, our action is not final. Sooner or later this case will receive a fairer hearing, and calmer consideration at the bar of public opinion. That judgment we cannot, if we would, escape. What is done here precipitately, under the influence of prejudice, will receive a searching examination there and thence will come a condemnation of this matter as withering as it will be just. Cover over the matter as you will, with the pleas of expediency, this act will hereafter stand out in its naked deformity, unshielded even by popular prejudice, as an act of inexcusable tyranny done to a prostrate and defenseless class. Public opinion, if not right now, is ripening for an

hour when we shall look back to this act with burning cheeks.

In the days of our Revolution, when those who laid the foundations of the Republic, struggled against tyrannic and sceptred power, why was it that their swords were not alone unsheathed? Why was it that France with her fleets and her chivalry came to our rescue? And why was it, when they had achieved the final victory, that the governments of the old world made haste to recognize our position as independent and our place as a sovereign among the nations, despite the frowns of that overshadowing power, that mistress of the seas, from whom we had revolted! It was because they saw that we had struggled against tyranny, and the hearts of men everywhere leaped instinctively with our own. Why was it in our own time and fresh still in our recollection, that Austria has been summoned to that bar of public opinion, and was sent thence with the brand of a world's reprobation? Because she pressed the iron heel of power into the heaving breast of the prostrate Magyar. And Russia, in spite of her colossal power, for pouring her hordes upon Hungary already struggling with Austrian armies, has been arraigned at the same bar, and stands a nation culprit. Her name has been made synonymous with despotism, and the blot upon her character will grow deeper and darker as coming time shall reveal in clearer relief the blackness of her crime against liberty—of her alliance with oppression.

But, sir, we are told by the gentleman from Clark (Mr. Gibson) and others, that the slave States are expelling the free negroes and emancipated slaves and therefore we in self-defense must prohibit them from immigrating into this State and from acquiring and possessing property. The gentleman (Mr. Gibson) denounced in the strongest terms of his sarcastic eloquence the provision in the Kentucky Constitution prohibiting an emancipated slave from remaining in the State upon pain of confinement in the State's Prison, and yet, such seems the inconsistency of gentlemen in a bad cause, they ask us to engraft a similar provision in the Constitution of this free State. We have not the excuse of Kentucky; we were not born and reared in the midst of slaves, our minds accustomed to treating them as chattels and prejudiced against every assertion of their manhood. We live surrounded by the beneficent influences of freedom, and yet, forsooth, we must follow the example of slaveholding Kentucky! Sir, the argument of the gentleman is bad—two wrongs can never make one right. Let us do right, that by its superior contrast with the wrong it shall condemn that wrong.

But, Mr. President, I wish to ask the majority how they propose to apply their remedy for a black population intermixed with the whites—how will they carry into effect the provisions if ingrafted in the Constitution? Are we to have

perpetual quarantine around the State to prevent them from entering our borders, or are we to fill our county jails and State Prison with colored people and their descendants. I believe neither of these plans are advocated. If I am not mistaken the favorite proposition, and it has been already avowed and advocated here, is, that all persons in whose blood negro descent shall be detected, shall be arrested and sold for a period of six months to the highest bidder and the proceeds applied to the operations of the Colonization Society! And what a spectacle will Indiana in that attitude present to the civilized world? We reprobate slavery and the slave trade, denounce the one as inhuman and the other as piracy punishable with death. And yet what is it proposed to do? Nothing less than to erect shambles at every county seat, enjoin it upon officers to sell, not slaves, but those who are confessedly free, into a slavery, differing only from the Southern States, as to its duration.

Sir, such scenes are denounced in slaveholding States. High minded Southern men themselves openly denounce such revolting scenes but we in Indiana propose to re-enact those horrors. I ask gentlemen to pause; reflect upon the step you are asked to take. Is this to be the wreath of honor to be woven around our fair State?

Mr. President, this evil that gentlemen complain of may be inconvenient. I would not add to it by any act of mine. I would not propose to ingraft anything in the new Constitution that would invite them to immigrate into the State; but I do contend that we should leave them in the enjoyment of the paucity of rights and privileges now allowed them. And suppose other of the free States should be incited to follow our example, what then becomes the condition of things? The slave States drive the free negroes from their borders, and the free States declare they shall not come within their limits. Where shall the negro go? He has not the means to transport himself to his native land, or rather the land of his ancestors, whence, Mr. President, let us remember—we *must* remember—he came not of his own will. The lust and avarice of the white man stole them from their homes, herded them in the slave factories, doomed them to the horrors of the "middle passage," and landed them on our shores to live the bondman's life of unrequited toil. He was dragged from his home, and now by the accidents of life a portion of the race find themselves free but ordered off the earth by constitutional provisions, like the one now before this Convention. Where shall the negro go? Into the Ohio river!

The evil of a black population in our midst may be a great one; the inconveniences in particular localities may be severe; but, sir, through the darkness of the present I see the dawn of a brighter day. I hail the colonization move-

ment as the most beneficent yet projected for the amelioration of the condition of the African, and at the same time, the relief of the people of this country from the evils of a black population in their midst. And when the National Government comes forward and employs steamers to transport the free negroes to Liberia, free of expense to themselves, the work will be consummated. Thus will our country requite to that injured class the wrongs done it as a nation. Thousands will go cheerfully to that land, and especially when a greater aggregate of intelligence amongst them shall convince them that they will thereby improve their social and moral condition, as they can never hope to in a country where they are, and ever must be, inferior.

When the United States thus brings the resources of a mighty nation to bear upon the colonization of Africa, the shores of that Continent which once echoed to the shrieks and groans of the captured native, and witnessed the manacled coffles driven on board the slaver, and consigned to the terrible sufferings of the passage across the ocean, will be lined with republican settlements, instead of slave factories; the slave trade will be abolished, and civilization and Christianity will illumine its dark interior. I look hopefully forward to that day. But no such measures as the one now before the Convention will aid in the realization of this hope; they are calculated rather to intensify the prejudice against the race, and put afar off the day of their deliverance and ours.

Let us not adopt such measures as we shall hate to look back upon, from the future; such provisions as we shall burn with shame to see inscribed on the first page of our organic law. Let us do equal and exact justice, regardless of creed, race, or color. If we value liberty let us not step beyond the Declaration of Independence and declare its sublime truths a living lie.

The PRESIDENT. The Chair would remark that in interrupting the gentleman from St. Joseph at the commencement of his remarks there was no intention to circumscribe him more than other gentlemen in debate. I supposed the gentleman was, perhaps slightly, under the influence of excitement, and might be led into making charges upon gentlemen which he might regret.

One other remark. The gentleman from St. Joseph intimated that the Chair had permitted a greater digression and liberty in gentlemen of the majority on this question. I have no recollection of such a case; my impression was that the charges had been about equal on both sides. The first remark of the kind—in derogation of the motives and influences actuating gentlemen, came, I believe, from the party in this debate to which the gentleman (Mr. Colfax) belongs.

Mr. COLFAX. My recollection differs from



the President, but, of course, I desire no alteration with the Chair.

Mr. KILGORE. I think the President is mistaken. Gentlemen of the majority made the first charge of this kind—one gentleman accused the free-soilers of being factionists and agitators, and of throwing fire-brands into the councils of the nation, and, also, alluded similarly to gentlemen upon this floor.

Mr. EDMONSTON. I presume the gentleman from Delaware makes the allusion for my benefit. I did make an allusion similar to the one mentioned, but it was to the party, not to the individuals of that party on this floor or elsewhere.

Mr. DOBSON. I charged that the resolution of the gentleman from St. Joseph, (Mr. Colfax,) might have a political object in view, and I am not yet prepared to take back the charge.

On motion by Mr. SHERROD, the Convention adjourned.

WEDNESDAY, Nov. 13, 1850.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. CRESSY.

The Journal of yesterday was read and approved.

Mr. READ of Clark moved to postpone the order of the day, for the purpose of taking up the article relating to the Treasurer and Auditor of State, that it might be read a third time.

The motion was agreed to, and the said article having been read,

The yeas and nays were demanded upon its passage.

The PRESIDENT. The Chair will remark that the rule requires that the yeas and nays should be taken.

Mr. PETTIT. I rise to ask for information. I want to ascertain the views of the President, and of the Convention, upon this point, viz.: at what period these sections are to go to the committee on revision and arrangement; whether after they are finally passed by the Convention, or before their final passage.

The PRESIDENT. The Chair is of the opinion that they should go to the committee of revision after they have been passed. The different sections will then be arranged by the committee, and they will come back as a whole.

Mr. PETTIT. There will be a final vote then by the Convention after such arrangement of them shall have been made?

The PRESIDENT. Certainly. The question will be on concurring in the report of the committee.

Mr. PRATHER suggested, that before taking the yeas and nays upon the adoption of this article, there should be a call of the House.

Objection was made by several delegates, and the call was not insisted upon.

The yeas and nays were then taken on the adoption of the article, which reads as follows:

SECTION.—There shall be elected by the qualified voters of this State, a Secretary, an Auditor and Treasurer of State, who shall hold their several offices for two years, and until their successors shall be elected and qualified; they shall perform such duties as shall be enjoined upon them by law, and no person shall be eligible to either of said offices more than four years in a period of six years.

AYES.—Messrs. Alexander, Allen, Badger, Balingrill, Bascom, Beach, Beeson, Bracken, Butler, Carr, Chapman, Clark of Tippecanoe, Coats, Colfax, Conduit, Cookerly, Crawford, Crumbacker, Dick, Dobson, Dunn of Perry, &c. Edmonston, Farrow, Fisher, Foley, Frisbie, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Graham of Warrick, Haddon, Hall, Hardin, Hawkins, Helm, Helmer, Hogin, Holman, Huff, Jones, Kent, Kendall of Warren, Lockhart, Logan, Maguire, March, May, McClelland, McLean, Miller of Clinton, Miller of Fulton, Milligan, Milroy, Moore, Morgan, Morrison of Washington, Newman, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Rariden, Read of Clark, Read of Monroe, Ritchey, Schoonover, Shannon, Shoup, Smiley, Snook, Smith of Scott, Spann, Steele, Stevenson, Tague, Taylor, Thomas, Thornton, Todd, Wallace, Walpole, Watts, Wiley, Work, Wunderlich, Zenor, and Mr. President—90.

NAYS.—Messrs. Barbour, Blythe, Bourne, Dunn of Jefferson, Howe, Nave, and Wheeler—7.

So the article was adopted.

Mr. CHAPMAN'S name being called, he rose and said,

Mr. President, I am in favor of annual elections—

The PRESIDENT. It is not in order to make any remarks.

Mr. CHAPMAN. May I not assign the reasons for my vote?

Mr. PRESIDENT. It is not in order.

Mr. CHAPMAN. Well, then, I will vote "aye." As I cannot get such a provision as I would prefer, I must be content with this.

Mr. FOSTER not having been within the bar when his name was called, asked permission to vote.

His vote was not received. He desired to vote in the affirmative.

Mr. EDMONSTON inquired of the Chair whether it did not require two-thirds of the members to make a quorum. He observed that two-thirds had not voted.

Mr. KENT. The act calling this Convention reads as follows:

"A majority of members shall constitute a quorum to do business."

The PRESIDENT. The Convention will

now take up the section that was under consideration yesterday at the time of the adjournment.

The section is as follows :

**SECTION** —. The General Assembly, at its first session under the amended Constitution, shall pass laws prohibiting negroes and mulattoes from coming into, or settling in, this State; and prohibiting any negro or mulatto from purchasing or otherwise acquiring real estate, hereafter.

The pending question being upon the following amendment, proposed by the gentleman from Grant (Mr. Hugin) :

Strike out all after the word "pass," in the second line, and insert "such laws for the government of negroes and mulattoes as they may deem right and expedient."

Mr. EDMONSTON moved that the amendment be laid upon the table.

The motion was agreed to.

Mr. HALL. Is there any amendment now pending?

The PRESIDENT. A motion has been made by the gentleman from Jefferson to strike out the section.

Mr. HALL. I suppose that a motion to amend the section will have precedence. I have to say, sir, that I am for going as far as the farthest, for the purpose of preventing an additional immigration of black population into the State. I want to prohibit them from coming here to live among us. I am also in favor of going as far as any other gentleman for the purpose of providing the means of colonizing the blacks who are already here—for the purpose of sending them to Liberia. I shall be in favor of any proposition for that purpose. But, sir, I am opposed to placing restrictions upon the blacks who are now in the State, many of whom were probably born and raised here. The section under consideration, prohibits any free black man in this State from purchasing and holding real property. This, I conceive, to be wrong in principle. They are here among us; many of them have been born here, and it occurs to me as being an outrage upon the feelings of the community, to say that they shall not hold real property as well as personal property. It is wrong in principle to deprive them of this right. If they are to be allowed to purchase and hold personal property, upon the same principle they ought to be allowed to hold real property. I therefor propose to add the following proviso to the last section of the article, and shall ask the yeas and nays upon its adoption.

The proviso was read as follows:

"*Provided*, That nothing herein contained shall be so construed as to prevent any negro or mulatto residing in the State from holding real property as heretofore."

Mr. GIBSON moved to lay the proviso upon the table.

Mr. HALL, rising to address the Chair—

Mr. GIBSON said, that if the gentleman desired to make any remarks he would withdraw the motion.

Mr. HALL. I wish to say this, that I should be glad to have a vote directly upon the proposition, but if a majority of the Convention are in favor of laying it upon the table, let us take the vote upon that motion. I shall of course yield to the will of the majority.

Mr. GIBSON said that it could make but little difference whether the vote were taken upon the motion to lay the proviso upon the table, or upon its adoption. The sense of the Convention could be obtained in either way. The only difference, continued Mr. G., is this: if a majority of the Convention are in favor of the amendment, I should like, before its adoption, that there should be an opportunity to make some modification. That is the object I have in view in moving to lay it upon the table. The minority, if there be a minority, will have an opportunity to record their votes upon the motion to lay it upon the table, as upon the adoption of the proposition. But if I am not mistaken, this principle has been directly voted upon, on amendments that were offered yesterday, and voted down by the Convention. I renew the motion to lay the amendment on the table.

The yeas and nays were ordered.

Mr. RARIDEN. Mr. President—

The PRESIDENT. The Chair would remark to the gentleman, that debate is out of order.

The yeas and nays were taken on the motion to lay the amendment on the table, with the following result—yeas 44, nays 57:

**YEAS**—Messrs. Alexander, Badger, Barbour, Blythe, Bourne, Butler, Carr, Chapman, Coats, Cookerly, Davis of Parke, Dick, Dunn of Perry, &c., Edmonston, Fisher, Gibson, Graham of Warrick, Haddon, Hardin, Helmer, Jones, Kent, Lockhart, Logan, McLean, Miller of Clinton, Moore, Morrison of Washington, Nofsinger, Pepper of Crawford, Read of Clark, Ritchey, Schoonover, Shoup, Smiley, Smith of Scott, Stevenson, Tague, Thornton, Wiley, and Wolfe—43.

**NAYS**—Messrs. Allen, Anthony, Balingall, Bascom, Beach, Beard, Beeson, Bracken, Clark of Tippecanoe, Colfax, Conduit, Crawford, Crumbaek, Dobson, Dunn of Jefferson, Farrow, Foley, Foster, Frisbie, Garvin, Gordon, Graham of Miami, Hall, Hawkins, Helm, Hitt, Holman, Howe, Huff, Kendall of Warren, Maguire, March, May, McClelland, McFarland, Miller of Fulton, Milligan, Milroy, Morgan, Murray, Nave, Newman, Niles, Owen, Pepper of Ohio, Pettit, Prather, Rariden, Shannon, Snook, Steele, Taylor, Todd, Watts, Wunderlich, Wheeler, Work, Wallace, Yocum, and Mr. President.—58.

So the amendment was not laid on the table.



**Mr. GIBSON.** For the purpose of rendering the amendment definite, I will move a further amendment: to insert after the word "holding," the words, "or purchasing," so as to prohibit negroes from hereafter holding or purchasing real estate, which, I suppose, is the purpose of the proviso. I shall, however, vote against the amendment myself; and, for the purpose of recording that vote, I ask for the yeas and nays.

**Mr. PETTIT.** I wish, sir, to make a brief statement in reference to this matter, simply showing how I shall vote, and the reasons that influence me in so voting.

In the first place, I shall vote to exclude further immigration of negroes and mulattoes into this State, believing it to be for our and their benefit, so to do. All experience has taught me and all research has confirmed me in the opinion that no two distinct races of people can live together for any length of time harmoniously, though one be a slave race, and the other a slave-holding race. Much less will they be able to live together if you attempt to confer equal privileges upon the inferior race. We are confirmed in this by the teachings of all history; even the sacred scriptures themselves, tell us so. In the political economy of Moses, we are taught this doctrine, that two distinct races cannot live together. One of the distinct commands given to Moses, amidst the thunders of Sinai, was, that he should command his people to put to the sword the ancient Canaanites; every one of them was to be exterminated, and the failure to complete the work of extermination, on the part of Joshua, the successor of Moses, brought upon him countless difficulties. In violation of the command from Heaven, to exterminate all the ancient Canaanites, Joshua made a treaty with one of the tribes, and undertook to conciliate them and make them friends and allies of the children of Israel; but a rebellious spirit manifested itself, and he was compelled, after all, to put them to death.

I hope that we shall never be driven to use such harsh means as Moses used, in reference to that people. But no one will doubt the authenticity of the history relating to this matter; we have it upon the authority of the sacred scriptures themselves.

You will find in Mexico, the same condition of things. That country has been overrun by swarms—by waves of population from the north, and at three different times has almost an entire extermination taken place. There is now being made, a vain and abortive attempt, on the part of the Spaniards, who are there settled, to mingle with the Mexicans, or the race originally occupying that country. The attempt will prove utterly futile. It cannot be successful or prosperous.

What has been the condition of things consequent upon the settlement of this country by Europeans? When our ancestors, our immedi-

ate progenitors, landed on this continent, they found here a different race of the human species. What is the condition of that race now? Have we amalgamated with them? Quite the reverse. They have disappeared with the Elk and the Buffalo. They have receded before the advancing wave of civilization,—they have receded and diminished in numbers, as the Anglo Saxon race has advanced. The races cannot commingle. It is contrary to the laws of nature. I shall, therefore, having briefly stated my reasons for believing that it will be better for both races, that they should continue to be separate and distinct in all their political relations, without any affectation of sympathy—without any mawkish sentiment of compassion and philanthropy; believing, as I do, that it will be for the benefit of the negro, that he should not be placed upon a footing of equality with the white man, I will second any measure having for its object the removal of the blacks to their native climate. I shall be ready to aid, by my voice and vote, in the adoption of any feasible plan for colonizing them—for inducing them to go to Liberia.

But, that is not the whole question. If those blacks who are here now, and their descendants, are to be allowed to remain here, I shall be in favor of encouraging them to acquire property, instead of discouraging them. I think this a sound principle; and why is it a sound principle? Sir, if you have a body of men among you, so entirely disfranchised as to have no interest in the harmony, well-being, and prosperity of the community; men who contribute nothing to the coffers of the State, and who have no stake in the country; nothing to lose, and consequently no responsibility: fires may rage in your towns and villages, without an effort, on their part, to save your property. They would rather rejoice and chuckle over your losses: they would behold your dwellings consumed with a feeling of satisfaction; regarding you as inimical to them; entertaining towards you a feeling of ill-will, on account of being deprived of the right to participate in your political privileges. But, if you induce them to acquire property beside you, they will always (self-interest will prompt them to do so) be ready to contribute their aid in the protection of your property. They would then have an inducement to aid in suppressing riots and disorders; you would make them better citizen and safer neighbors. If you cut off from him the right to hold property, you take away from him the inducement to become a good and peaceable citizen. I say to you, sir, show me the country where every man in the community can be a land holder, and I will show you a society, a community, that the world in arms cannot trample on or disturb. I will show you a healthful order of society, a combination of people for mutual support and protection, that no outward oppression can disturb. Every man will stand by his neighbor's rights, and protect

his neighbor's interests. But, under a state of things such as that which existed in ancient Rome, there is no community of interests, and consequently no safety. When all the landed estates had gone into the hands of the nobles, and the common people were appealed to to come forward and to shed their blood in defence of the country, their reply was, "We have no country."

If you would have men stand by the country, and shed their blood in its defense, you must give them an interest in the country. If you would have a law-abiding community, you must give each man an interest in maintaining the law and preserving good order, suppressing riots, and disorders, and protecting property.

I shall vote, therefore, first for excluding the blacks; for preventing them from coming into the State, but if they are to be permitted to come, I shall vote for inducing them, or rather offering them inducements, to hold property, for the purpose of giving them an incentive to suppress disturbances and to maintain order in the community.

The hour having arrived for the consideration of the special order,

#### RIGHTS OF MARRIED WOMEN.

The Convention then proceeded to the consideration of the special order, being the section reported by Mr. Owen, from the committee on the rights and privileges of the inhabitants of the State in relation to the rights of married women.

The gentleman from Posey (Mr. Owen) being entitled to the floor, he rose and addressed the Convention.

MR. OWEN. I confess to my anxiety regarding the fate of the sections that have just been read. No subject of greater importance than that to which they refer has come up, since we met here. No subject of greater importance will engage our attention, till we close our labors and go hence. As in estimation next to the right of enjoying life and liberty, our Constitution enumerates the right of acquiring, possessing, protecting property. And these sections refer to the latter right, heretofore declared to be natural, inherent, inalienable, yet virtually withheld from one-half the citizens of our State.

Women are not represented in our legislative halls. They have no voice in selecting those who make laws and Constitutions for them. There may be good reason for that. I enter not on the inquiry. One reason often given for excluding women from the right of suffrage is an expression of confident belief, that their husbands and their fathers will surely guard their interests, and see fair justice meted out to these, the especial objects of their care.

I should like to have a little more confidence in this opinion than experience has given me. I should like, for the honor of my sex, to be-

lieve, that the legal rights of women are, at all times, as zealously guarded as they would be if women had votes to give to those who watch over their interests, and to withhold from those who pass by and neglect them.

I impute to no gentleman the deliberate intention to render less than justice to the other sex merely because they have not the right of suffrage. I but say, that self-interest is a marvellous sharpening of the wits, and causes us to think of, and enables us to discover, many things, which, without its quickening influence, might escape our observation.

Suffer me, sir, in defense of my scepticism on this point, to lay before you and this Convention, an item from my legislative recollections.

It will be thirteen years next winter, since I (then a member of the Legislature and of its committee to revise the laws) reported, from a seat just over the way, a change in the then existing law of descent. At that time the widow of an intestate dying without children, was entitled, under ordinary circumstances, to dower in her husband's real estate and one-third of his personal property. The change proposed was to give her one-third of the real estate of her husband absolutely, and two-thirds of his personal property; far too little, indeed; but yet as great an innovation as Mr. Marshall of Jefferson, and myself (we were the sub-committee to whom that law had been referred) thought it probable we could carry.

A stormy debate ensued; in the course of which—I remember it well—I was assailed by a distinguished lawyer, then a member of the House, in no mild or measured terms, as a man seeking to subvert the whole order of society; as an innovator, to whom nothing was sacred, not even laws and principles dating back to the days of Edward the Confessor. The attack failed in its object; the proposed change became the law of the land; was every where received, so far as I have heard, with approbation, and remained in force until a commission, appointed in 1841, reported, a year or two afterwards, our present Revised Code.

How stands the law now? As regards real estate, you will find the answer on page four hundred and thirty-seven of that Revised Code. Nothing but an actual inspection of the law itself could have persuaded me, that in this nineteenth century, and in this republican land, such could ever have been permitted to disgrace our Statute Book. I am very sure that there are gentlemen on this floor to whom, even now, some of its provisions will appear incredible.

The widow of an intestate, in case there be no children, and in case there be father, or mother, or brother, or sister, of the husband, alive, is heir to no part whatever of her deceased husband's real estate. She is entitled to dower only; that is, to the rents and profits, during her life, of one-third of his estate.



If there be no father, no mother, no brother, no sister, you imagine, perhaps, that the law suffers her then to enjoy, unmolested, the property her husband has left behind him. Vain expectation! The law goes in search of a grandfather or a grandmother; or, failing these, of an uncle or an aunt; or, failing these again, of some cousin or cousin's child; and if it find any such, it grants two-thirds of the husband's property to these relatives; living, perhaps, in some distant region; unknown, it may have been, even to the deceased, from whom they inherit.

But yet again. Say there be no father, no mother, no brother, no sister, no grandfather, no grandmother, no uncle, no aunt; not even a cousin or a cousin's child; then, you feel assured, the law will be satisfied, instead of wandering over the world in search of kinsfolk more distant still, to let the widow take the property left by the husband she has lost. Again you are at fault! The law has no such intention! It institutes the inquiry, whether, under the title of "nearest of kin," some far off relative, little dreaming of such a windfall, cannot be ferreted out, upon whom it may bestow, as the statute has it, "one equal half of the inheritance, as an heir of the intestate," the widow receiving the other half only.

And it is at last, after the law has exhausted its ingenuity in discovering some relative, no matter how remote in feeling or in blood, in whose favor it may divert the dead husband's property from her who was once the wife of his bosom, it is then only, as a last, reluctant alternative, that the law permits the childless widow to inherit the farm, where, perchance, her youth and womanhood have been spent!

I marvel, since we are all somewhat related through our common ancestor, Adam, that it has never been proposed to carry out the iniquitous principle a little further, and enact that where no relatives, how remote soever, can be found, half the widow's portion shall be equally divided among the citizens of the county, or of the State.

The gross injustice in its practical workings, of such a rule of descent does not fully appear, until we call to mind, as in approaching all questions of legal reform it behoves us to do, the actual condition in life, of the mass of our population in this State. We have few among us, who are, in the proper acceptation of the term, poor; we have few who may be called rich. Most of our citizens are in moderate circumstances. But look a little farther. We are an agricultural population. Farming is our chief occupation. A large majority of our people are small proprietors of land; the best, and happiest, and most independent class in the world. They live on their own farms, purchased or inherited, usually in early youth; worth, on an average, if the owner have survived to enlarge and improve them, perhaps from a thousand to two thousand dollars, and

affording an annual rental, say of from one hundred to two hundred dollars. Suppose the rental to average a hundred and fifty dollars. That is a living; a very humble one, indeed, but still a living. If the law permitted the widow to inherit it, were it in life rental only, she would be raised above pecuniary dependence. And is it not right and just that she should be? In the heavy labors incident to the settlement of a new country, who takes lot and part? Is it the man alone? Is there no task but that he performs? no home duties, no domestic labors, sometimes weighing down his weaker partner even to the grave? I appeal to the successful settler, who has raised his cabin first in the wild woods, has gradually opened a flourishing farm, and, at last, has seen flow in upon him comfort and plenty, whether he, alone and unaided, built up his fortune and made comfortable his home! I ask him whether there was not one who saved, while he accumulated; whether, when his arm was busy without, her hand was idle within? I ask him whether his heart does not revolt at the idea, that when he is carried to his long home his widow shall see snatched from her, by an inhuman law, the very property her watchful care had mainly contributed to increase and keep together?

Yet this idea, unnatural, revolting as it is, is carried out, in all its unmitigated rigor, by the statute to which I have just referred. Out of a yearly rental of a hundred and fifty dollars, it is seldom that the widow of an intestate becomes entitled to more than fifty; a sum wholly inadequate to her support. The other hundred dollars go—whither? To the husband's father or mother? Yes, if they survive; and in that case, there is a chance that they may aid, and care for, their daughter-in-law. But if they are dead, what then? A brother-in-law or a sister-in-law takes it. Why are their rights preferred to the wife's? But let that pass, and suppose that there are no brothers and sisters. Then comes in the claim of the husband's uncle or his aunt, or his cousin. Do husbands toil through a lifetime, in order to support their uncles, and aunts, and cousins? What would be thought of a law that should compel a man to maintain them, in preference to his own wife? Yet they inherit two-thirds of the farm. They take two-thirds of the income. Ay! if but a single cousin's child, be it only six months old, survive, to that infant go a hundred dollars of the rental, and to the widow there remains but the pittance of fifty. Can injustice go beyond this? Yes! for if aunts, and uncles, and cousins all fail, some undefined relative, making out a claim as nearest of kin, still carries off from the widow one-half her deceased husband's estate.

What think you of a law like that, on the statute book of a civilized and a Christian land? While the husband survives—while his sustaining arm is still busily providing for her whom, when she stood beside him, a bride in her youth—

ful prime, he had sworn through life to comfort and support—so long their entire property is there, to aid his exertions. When that sustaining arm is laid in the grave, and the widow is left without husband to cherish, without son to offer her a home, then comes the law, more cruel than death, and decrees, that poverty shall be added to desolation!

I have a better opinion of those with whom I now serve, a better opinion of my sex, a better opinion of the people of my adopted State, than to believe for an instant, that, if this law were held up distinctly before us, in all its revolting deformity, for our acceptance or rejection, we would hesitate a single moment in condemning and rejecting it.

But there are sins of omission as well as sins of commission. What avails it that we think justly and feel rightly, if that just thinking and right feeling bear no fruit? Say, delegates of the people of Indiana, answer and say whether you, whether those who sent you here, are guiltless in this thing? Have you done justice? Have you loved mercy? Have you visited the widow in her affliction? Have you not rather, by tolerating on your statute book such a law as that, trodden down the crushed heart, added new weight to the heavy burdens, fresh stings to the grievous sorrow of her whom the bereaving hand of death has already cut off, alike from affection and from support?

The instance here selected in proof that our law makers have neglected to guard the interests of that sex who never enter our legislative councils to speak for themselves, is far from being an isolated one. Take another item from the same statute of descents: the every-day case of a husband dying intestate and leaving a widow and children. In that case, as every one knows, the widow, as to her husband's real estate, has dower only; she is entitled, during life, to one-third of its rents and profits. The law considers it impolitic to trust her with more than a third of the rental. Ask any member of the legal profession the reason for such distrust, and he will remind you that the interests of the children must be cared for, must be guarded against neglect or injustice. Neglect! injustice! from whom, I pray you? From their own mother? But reverse the case, and suppose it is the wife who dies, and leaves a widow and the children she has borne him. What portion of the rents and profits of his wife's real estate does the law assign to him? The whole. As tenant by the courtesy, he takes the whole. But there are the children; are their interests not to be cared for? Are they not to be protected against neglect or injustice? No; not in the case of the father. No mistrust of him! No fears that he may marry again, and that a step-mother may rule his household. The father is trusted; the mother is not. Does not nature, does not experience, does not Holy Writ itself cry out against the invidious prefer-

ence! "Can a mother forget her child?" If there be in this world one holy sentiment, one feeling, strong, faithful, trustworthy, universal in its prevalence, that sentiment, that feeling, is a mother's love for the child she has borne and nursed.

I ask you, Mr. President, I ask my fellow-delegates, whether it need further argument to prove, that we ought to mistrust ourselves when we act in any matter touching the rights and interests of women? The absent *have* been forgotten; they who have no vote or voice here *have* been neglected; it avails nothing to conceal or to deny it.

But let us turn to the question more immediately before us. Let us pass from the case of the widow and look to that of the wife; and let us inquire, whether the interests of the one are better cared for by law than those of the other.

The old doctrine of the common law, that the legal existence of the woman is suspended during marriage—the same doctrine that has existed for centuries in England—still substantially regulates, in a majority of the States, the relations of husband and wife as to property. In a general way, the legal effect of marriage is,—

*First.* The husband becomes entitled, from the instant of marriage, to all the goods and chattels of the wife. His right is absolute, unconditional. He may sell every part of his wife's personal property, whether owned by her before marriage or coming to her after marriage, except only her "necessary apparel."

A married woman cannot, therefore, legally sell the smallest article of personal property; she cannot, legally, give away the most trifling trinket, no matter whether it was inherited, or the produce even of her own labor. A farmer's wife cannot, in her own right, sell the poultry she has raised or the butter she has made. Under ordinary circumstances, a sale by her of poultry or butter in the market is, indeed, good; but that is only because the law regards her as her husband's agent; just as it would regard his hired laborer, sent to town to sell the same articles.

Even if a husband neglect to provide for his children, and the wife by her labor support them, the produce of her labor is his. Say that he has been absent for weeks or months, squandering what money he has in dissipation; say that, in the mean time, his wife, faithful to her home duties, has contrived, by constant labor as a seamstress, perhaps, or a washerwoman, to supply his place; suppose that she has laid by in her trunk—the same trunk, perhaps, in which her mother had packed, with careful hand, on her daughter's marriage day, the little property she had to give her—suppose that the wife had laid by in that trunk a few dollars, hardly and bitterly earned, saved with difficulty as a scanty fund to purchase clothing for her children



against the inclemency of winter; and suppose—alas! how often is the case a real one!—suppose, that the drunken husband comes home some evening, breaks open the trunk and carries off the money; is that larceny? has he stolen? By no means; he broke open his own trunk; he took—so the law declares—his own money!

*Secondly.* The husband acquires, in virtue of the marriage, the rents and profits, (in all cases, during her life,) of his wife's real estate.

The wife loses them, as absolutely as she does her personal property. The husband's prospective right to them throughout his life may be sold, at common law, for the benefit of his creditors.

Thus, if we suppose a married woman bringing, in marriage, real estate, say of the yearly rental of some two or three hundred dollars; enough, if it were assured to her, to maintain herself and her children; then, if the husband, by extravagance or otherwise, become involved in debt, his right during life, to this rental of his wife's estate may be taken and sold on execution. The fee of the real estate remains, indeed, in the wife; but its rents and profits—all that it shall yield during the husband's life—goes to another. If, under these circumstances, the husband desert his wife and children, she remains without remedy or resource. Death alone, by removing her unworthy partner, can restore to the deserted one, the means of supporting and educating, from the produce of her own land, her own children.

The flagrant injustice of this provision of the Common law, led, about four years ago, to the passage of a Statute by our Legislature, that the rents and profits of a married woman's lands, "shall be deemed and taken to be her separate property," and may not be sold for her husband's debts. These words of the Statute bar, I believe, the marital right. All this is well, as far as it goes.

In all cases, then, in which a farmer or other person, is sufficiently rich to be able to give to his daughter, on her marriage, or to bequeath to her, at his death, property in land, she is already, under our Statute, protected in its rents and profits. But this protection does not extend to personal property. If a father, or a mother, be too poor to spare to the daughter a farm; if all they can give be but certain household furnishings, turned off from the old loom, perhaps, that stands in the cabin corner; the produce of long hours of maternal labor, spent, that a favorite daughter may not go empty-handed to her future home;—if this be all the young wife's property, the law refuses her any protection whatever, whether against the husband or the husband's creditor. The mother's last gift may be sold off in the public street by a careless constable or a reckless husband. I have seen it done. Some years ago, there came to New Harmony, the village in which I reside, two

young men, from Kentucky, where but a few weeks before they had married sisters. While awaiting a boat, they persuaded their wives, on the plea of economy, to occupy a cabin about a mile in the country, leaving behind them some five or six large boxes, containing various articles of home manufacture of the most substantial character, sheetings, towelings, coverlets, blankets, and a large stock of home-made clothing. The next day the scoundrels opened these boxes, sold off at public auction, every article contained therein, and, the day after, left for parts unknown, with the money which they had legally, but most iniquitously, obtained. The poor girls, thus robbed and deserted, were indebted to the private charity of our citizens for the means to return, desolate and penniless, to their father's house.

Is all this as it should be? Do we mete out fair and equal justice to rich and poor, when we enact laws to protect the land-owner in her rents, and neglect to afford similar protection, to the less fortunate and wealthy? to her who owns, perhaps, but a single hundred dollars worth of property? or, (a graver injustice yet!) to her who has inherited nothing but willing hands and a stout heart, and who but asks, in case a vagabond husband leave her to toil on, unaided, in fulfilment of the duties he violates and neglects, that the law will secure to her, that, to which every human being has an inherent right, the ownership of the produce of her own labor.

But there are reasons urged in favor of refusal. The peace of the family may be invaded, the harmony of the conjugal relations marred, by this division of interest. I reply, in the first place, that we have already risked these consequences by the law we have passed as to real estate. Nearly four years have elapsed since its passage. Do husband and wife live together less harmoniously now, in our State than they did before? I have heard no such complaint. And if we have thus trusted, and safely trusted, in the greater, shall we fear to trust in the less?

But I meet this objection on broader ground. Let us look at it in the face. Let us dissect and carefully examine it; for therein is contained after all, the substantial argument urged by the opponents of this reform.

The argument plainly stated is, that, to ensure conjugal harmony, the wife must be divested of all rights of property whatever, and remain, at every moment, wholly dependent upon the sense of justice of the husband for every thing beyond that bare support which the law, if it be appealed to, will allow her.

Is, then, the secret of domestic felicity to be found in pecuniary dependence? A strange anomaly it would be in human affairs, if that were so! Has pecuniary dependence a tendency to elevate, to purify, to civilize the character? Is that a doctrine a man would choose to teach his son—ay! or his daughter? Depend-

ent, to some extent the relation of a wife to her husband, is and always must be. Men have monopolized all the most profitable occupations of life; custom sanctions this; and even if it did not, women would be, in a measure, shut out from these, by the engrossing character of their maternal cares and duties. There is great danger, that this dependence, natural and necessary as it is, should give birth, on the one hand, in coarse and overbearing natures, to tyranny, and on the other, in timid and yielding natures, to abject fear. Shall the law increase this danger, aggravate these evil results? Shall it make the pecuniary dependence of a married woman absolute, hopeless; reaching to an utter denial of the right to call her own even the smallest article of household property?

And to this abject dependence, are we to trace, as to their birth-place, the virtues, the endearments, that make HOME the cherished word it is? From source so base and low can any thing good or noble spring? Do men gather grapes of thorns, or figs of thistles? Is woman's domestic virtue the creature of a Statute that places her as to property, in the same category with the African bondsman, the infant, the idiot, the insane? Out upon it! Woman is the good, the unselfish being we find her—far better she always was, in every moral attribute, than man—woman is, what she is,—not in virtue of a heartless law—in spite of it!

Look, I pray you, a little more narrowly yet, at the doctrine that the harmony of the family connection rests upon the pecuniary dependence of the wife. The very argument presumes in the husband kindness, indulgence, generosity. It presupposes in him a spirit which virtually abrogates the law. I know, I rejoice to know, that there are many cases of married couples in whose relations to each other an alteration of the law which should make the wife an independent owner of property, would work no practical change; cases in which the husband, uncompelled by law and following a delicate instinct of justice, either legally or virtually places his wife in a position of pecuniary independence. But it is not for such men, or such cases, that laws are made, or are necessary. It is the province of law to restrict, not the generous and the just, but the violent, the unjust, the encroaching. It is for the bad, not the good, that legislation is required. Yet even in the case of a husband good, and just, and kind, can we assert with truth that the law is free from injurious effect? The power of granting pecuniary favors ought not to be all on one side. It must grate, sometimes, on a sensitive and generous nature, to repeat, even to an indulgent husband, the request, before every little purchase, for money; made at a moment, perhaps, when it can ill be spared; just and proper, it may be, yet to which, beyond a bare support, the petitioner has not as much legal right as the hired servant-girl has, to demand her wages.

The confidence of familiar affection takes, it is true, from this, as from every other false position, its sting; but the position is not the less false, the law not the less inequitable, on that account.

We trust to the husband's generosity to supply the wife with all she may properly demand. And can we not trust to the wife's generosity, if she be the independent owner of property, to grant to the husband, in his time of need, all he can reasonably require? Do we find, in the other sex, less liberality than in ours? Are their affections less warm, their sympathies less active? In the dark hour of adversity, do they cling less faithfully, do they sacrifice less freely, than we do? That is not my experience of women. Ruth, in her self-devotion, when, in the expressive words of Scripture, she slave unto Naomi, is but the type of her sex. The language of woman, not to a faithful friend alone, often to one most unworthy, to be called her cherisher and protector, is the same to-day, as it was three thousand years ago. "Whither thou goest, thither will I go. Where thou lodgest, there will I lodge. Where thou diest will I die, and there will I be buried. The Lord do so to me and more also, if aught save death part me and thee."

Women, even with their whole property in their own hands and at their sole disposal, are much more likely to bestow it imprudently than to withhold it selfishly. Ought we to deny to them the gratification, dear to every generous mind, yet within the reach only of the independent owner of property, of aiding, by pecuniary sacrifice, the object of their affections?

Under the happiest marriages, the provisions of the Common Law are but nugatory. They are never better than useless. But what shall we say of them when the dependence of the wife for everything is, not upon a generous friend, but upon a harsh, selfish, exacting master? or—a less aggravated case,—upon a reckless, improvident spendthrift? These are the cases where a change of law is wanted. These are the cases where the wife should have power to secure, from tyranny or extravagance, some pecuniary protection for herself and her children, against dependence and want.

It is an argument both weak and worthless, that if we do, by law, withhold a fair share of independent power from women, they will still contrive, by management, to get that and more than their share. Say that women in the mass did, much more frequently than they do, usurp, by artful manœuvring, the rights which the law denies them, is the denying law, therefore, just in its principle, moral in its influence? An Eastern despot's fawning favorite, though his life be, at any moment, at his master's disposal, may acquire unbounded sway, and become the virtual ruler of the land. But favoritism is an improper, because immoral, source of power.



A noble nature will not stoop to the intrigues through which such power is commonly reached.

We ought not so to place women, that any of their rights must be won by arts of blandishment. That is a demoralizing situation. Where true affection exists, it will show itself without any reference to property. Where it does not exist, it degrades the character to wear its counterfeit, from mercenary motive.

There is a species of very silly sentimentalism which it is the fashion to put forth in after dinner toasts and other equally veracious forms, about woman being the only tyrant in a free Republic; about the chains she imposes on her willing slaves, the despotism of her resistless arts, the sovereign power of her conquering beauty. It would be much to our credit, if we would administer a little less flattery and a little more justice.

A VOICE. Consent to that sentiment! [Cries of "consent, consent."]

Mr. OWEN. It needed not such expression from the Convention to assure me, that the sentiment finds an echo in their hearts. I know well that it does.

Mr. President, I have thus briefly and slightly sketched the doctrine of the Common Law as it regards the property of married women, and have adverted in general terms to the consequences of that doctrine. So harsh has that law been found in all modern nations, where it prevails; so unjust in its working under frequent contingencies; so widely at variance with that mild spirit of civilization which is gradually replacing the law of the stronger; that the mitigating aid of equity has been universally invoked, to modify the oppressive severity of its provisions.

The chief relief thus afforded, rests in a species of evasion. The wife may not own property, may not receive gifts, may not accept legacies; but others may own, accept, receive, for her. A married woman may acquire and control both real and personal property by the intervention of trustees.

Upon this principle, marriage settlements, so common in Great Britain, are executed. The extent of relief there obtained by this evasion of the common law, may be judged from the opinion expressed by an English lawyer of great experience, and referred to by Chancellor Kent, that so extensive have become the trusts growing out of marriage settlements, in England, that half the property of the Kingdom is now vested in nominal owners.

Among us, in this Western country, this cumbersome and expensive, and somewhat dangerous machinery of trusteeship, is, comparatively, but seldom resorted to. It is too elaborate for our common use. And why should it be required at all? If it be right and proper, that married women should own and acquire and control property, why this tortuous and doubtful manner of permitting it?

The change embodied in the sections now under discussion is radical, but it is gradual also. It affects marriages hereafter contracted, and applies to existing marriages only in case the parties record their desire to come under its provisions. Thus, it will not too rudely jar on present usages and existing interests. If a woman, about to be married, desire to convey her property to her future husband, so as to subject herself to the same disabilities under which she now labors, she will have the opportunity to do so. If she do not avail herself of that opportunity, it may be taken as presumptive evidence, that she prefers to the present law the amendatory provision which I am advocating.

It may be said, that by parity of reasoning, if a woman about to marry now, neglect to protect her property by marriage settlement, that should be regarded as presumptive evidence that she prefers and elects to be governed by the existing law. But this would be a false inference. At no moment of life, under ordinary circumstances, is the confidence of a woman brought so actively into play, and all prudential considerations so lulled to sleep, as when she gives her hand to the man of her choice. We take improper advantage of this trustful state of mind, if we so frame the law that we compel the bride, as the only means of obtaining reasonable security in the future, to show, or seem to show, suspicion of him to whom she is entrusting the happiness of her life. It is quite enough that the question, legally suggesting itself, should be: "what will you give him?" And, even in that case, she is likely to grant too much. But to give to that question the odious form, "what will you withhold from him?" and expect her, in reply, shutting her ears and her heart against the all-confiding impulses of youth and love, to follow out, with cold deliberation, the severe dictates of an experience which we owe to years of wrong and suffering alone—this is to evince either ignorance of human nature or disregard of human welfare.

The lawgiver is, or should be, dispassionate and experienced; the young betrothed is usually neither the one nor the other. The law, therefore, interposing its protecting shield, should, by general enactment, create those checks and guards which she is not likely, even though she has the right while yet single, to provide in her individual case for herself. If she see fit to dispense with the guards and checks thus provided, so be it; but let us not expect her to create them. The forethought of parent or guardian may, indeed, and often does, supply the deficiency; but in this there is no certainty, nor can the chance of such interposition at all justify neglect on the part of that General Guardian, the Law.

But in securing to married women rights of property, we must bear in mind that those rights bring with them duties. The laws of

New York, Wisconsin, and other States, seem to have been framed in forgetfulness of this; but, the Civil Law admits and provides for it; requiring that the wife shall bear a portion of the marriage expenses. This proportion varies according to the necessity of the case and the means of the wife.

To meet this, the Constitutional provision should declare that the property of married women shall be declared to them, *under equitable conditions*. It is for the law afterwards to determine, in detail, what these conditions shall be.

Again: as a legislative provision we would do well to adopt another principle from the civil law. Under that system the wife has not, strictly speaking, equal rights with the husband; for to every partnership there must be a manager, and the husband, from the character of his avocations as compared with the wife and mother, naturally becomes such. If the wife leave her property in her husband's hands, failing personally to administer it, it is considered to be under his management.

It is only in case of formal opposition on her part, that he becomes responsible for its rents and profits. In ordinary cases under any law, the wife will usually leave the property in her husband's hands. In a general way she will resume her control over it only if he evince a reckless or spendthrift disposition; as it is just and prudent she should do.

One other provision we should copy into our Statute from the civil law, namely: that in the case of debts contracted by the wife before marriage, the husband shall not be holden, but the wife and her estate shall be liable.

It is unnecessary that I should enter into further detail. General provisions are all we can properly adopt in an organic law.

And now, Mr. President, in conclusion, let me advert to one objection, always a strong one, always carrying with it much weight when there is question of novel reform.

It is commonly dangerous, we are told, to enter a new and untrodden path. So it may be. Yet if we of pioneer America—if we, the tenants of these Western wilds, where roamed and ruled but half a century ago, the Indian and the beast of the forest—if we had never entered any *but* the beaten track, where, I pray you, would have been the power, where the prosperity of the West, to-day? In the distant future; yet unwon, untried for!

True it is, that we should not enter an unfrequented path without seeking to learn, from experienced guides, what is its character, and and whither it leads. Nor, in the case before us, have I done so. Thirteen years ago, when this matter first especially engaged my attention, I addressed private letters on the subject to two of the most distinguished names among the then living jurists of America—now numbered with the dead!—to Chancellor Kent and

to Judge Story. From both I received replies: and from these, with the permission of the Convention, I will here read a few extracts.

Chancellor Kent begins by admitting that he is "not insensible to the many harsh features contained in the English Common Law code relative to the relation of husband and wife." He is not in favor of an entire substitution of the civil law for the common law; nor is any such proposition embodied in these sections. He says: "I am not for changing the Common Law system as a whole and introducing as a substitute, that of Louisiana. I prefer our own, but with an inclination to have parts of it ameliorated."

In Judge Story's letter to me he expresses, in more decided terms than did the author of the celebrated commentaries, his opinion in regard to the propriety of radical reform in this matter. His words are:

"The present state of the Common Law, with regard to the rights of property between husband and wife, is inequitable, unjust, and ill-adapted to the purposes of a refined and civilized society." (Can language be stronger than that?). "There are," he continues, "in the Civil Law system, a great many admirable provisions; and I am not sure, as a whole, whether it does not work better than that of the Common Law on this subject."

Farther on he adds, that, in his opinion, our law, as it stands, "requires great alterations and amendments for the protection of the property of married women, coming to them after, as well as before, marriage."

I consider myself fortunate in thus being able to produce, in support of the position I am now defending, the opinion of one of the most eminent jurists our country has ever produced.

Can we find more experienced guides than these, from whom to obtain information touching the new road we are proposing to enter? But this is not all. The road has been travelled by thousands, by millions before us. In Europe, the nations of France, Germany, Spain, Holland, and others, give independent rights of property to the wife. And let me cite to you what Kent says of the result. "Whatever doubts,"—this is his language—"whatever doubts may arise in the mind of a person educated in the school of the common law, as to the wisdom or policy of the powers, which, by the Civil Law, and the law of those modern nations that have adopted it, are conceded to the wife in matters of property; yet it cannot be denied, that the pre-eminence of the Christian nations of Europe and of their descendants and colonists in every other quarter of the globe, is most strikingly displayed in the equality and dignity which their institutions confer upon the female character."

But we need not cross the Atlantic to find examples of the adoption of this principle; no, nor yet need we descend the Mississippi, to New



Orleans. Nearly half the States of the Union have already led the way before us. Women are already recognised as independent owners of property in New York, in Pennsylvania, in Maine, in Ohio, in Wisconsin, in Arkansas, in Florida, in Alabama, in Texas, and in other States; among them the youngest sister of the Confederacy, but recently welcomed into the Union. I read from the Constitution of California:

"All property, both real and personal, of the wife, owned or claimed before marriage, and that acquired afterwards by gift, devise or descent, shall be her separate property; and laws shall be passed more clearly defining the rights of the wife, in relation, as well to her separate property as to that held in common with her husband. Laws shall also be passed providing for the registration of the wife's separate property."

This section goes farther than ours. It recognises that feature of the Civil Law, which is usually called the "community of gains," or the "conjugal partnership," according to which the produce of the joint industry of husband and wife, during marriage, becomes and remains their joint property. Our sections, as reported, leave the introduction, or the omission, of that principle optional with the Legislature.

The path before us, then, is no wild, untrodden one, surrounded with hazardous adventure; beset with untried dangers. That same path has been trodden already, safely, happily, by other States, by other nations; and which of them all has ever yet sought to retrace its steps!

Do you scruple, do you still doubt, whether our people at home will second and approve so righteous a change? Think better of your State, more worthily of your fellow-citizens! Has no generous chord been touched within yourselves, even by the appeal, feeble though it be, compared to the justice of the cause, which I have this day made to you? And think you no responsive chord beats in the hearts of those who sent us here? I tell you, there does! Again and again, to crowds assembled in the country school house, or under the shelter of the forest tree, I have myself appealed to it—and never appealed in vain! I predict, that if you now record, on the pages of our new Constitution, the declaration, that never again shall the right to acquire, to possess, to protect property, be denied by our laws, to one half the human race,—I predict that the declaration, when it goes forth from this Hall, will be met with one cordial, heart-felt "well done!" from every nook and corner of the land.

Mr. HADDON. Mr. PRESIDENT: I have a few words to offer upon the subject before the Convention—and I shall detain the Convention but a very few minutes. Although I am a member of the committee that reported this section, and was present when the committee passed upon it, I am opposed to the adoption of

it into the Constitution. I did not urge my objections to it before the committee, because I knew it to be a favorite measure with the Chairman (Mr. Owen) and I was willing it should be reported, so that that gentlemen could have an opportunity of giving his views on the subject at length. I have now heard the gentleman's views, and although I have great confidence in his judgment, I am still of the opinion that to adopt this proposition will not have a tendency to ameliorate the condition of married women.

And I feel sure that mature reflection will induce a majority of the delegates of this Convention to arrive at the same conclusion. I regard this proposition as more important than any that has been acted upon by this Convention. If we establish the principle that the pecuniary interest of women is separate and distinct from that of men, we should establish also their right of representation, and their right of suffrage: it would be but just, that their separate interest should be represented. Let us look but for a moment at this position. When it concerns the election of a Legislative Assembly, we give the right of voting only to those who have the confidence of the people for exercising it.

The choice made by persons who have not the confidence of the people would weaken their confidence in the Legislative Assembly.

The necessary degree of political knowledge cannot be presumed to exist in women, who, by their domestic duties, are led away from the consideration of the affairs of the State and the affairs of the nation.

The natural employment of women in all ages and in all stages of civilization, is of that peaceful, affectionate, and domestic character—that necessarily limits their knowledge in matters of civil government. I, therefore, cannot see the propriety of establishing for women a distinct and separate interest—the consideration of which would of necessity withdraw their attention from that sacred duty which nature has, in its wisdom, assigned to their peculiar cares.

I think the law which unites in one common bond the pecuniary interests of husband and wife should remain. The sacred ordinance of marriage and the relations arising out of it ought not to be touched or disturbed.

The common law does seem to me to afford sufficient protection. It establishes the most entire and absolute union and identity of interests and of persons in the matrimonial state. The property of the husband, the property of the wife, being one united and identical interest. No rich husband and a poor wife; no rich wife and a poor husband; the wealth of the husband is the wealth of the wife, and his prosperity her pride, her great source of power and distinction.

Woman as wife, or as mother, has known no change of the law which fixes her domestic

character and guides her devoted love. The firm union of interests in married life as established by the common law, occasionally in special cases, produces deplorable evils, but its general influence upon the manners of society is most benign; and is conspicuous in the existing condition of our people.

I do not wish to see the law changed. If it is changed, and man and wife converted as it were into mere partners, I believe a most essential injury would result to the endearing relations of married life.

A wife with a separate estate secured to her independent disposal and management, might rival her husband in trade, or become the partner of his rival—adverse and opposing interests would be likely to grow out of such relations, controversies would arise, husbands and wives would become armed against each other, to the utter destruction of the sentiments which they should entertain towards each other, and to the utter destruction of true felicity in married life.

I might illustrate by exhibiting the thousand shapes and forms in which these conflicting interests would operate mischievously. And though each might seem trifling in itself, yet in the aggregate they would form a mighty force in their oft recurring presentment, they would form a fatal means of irritation and dissension.

It may be said that the utterance of this thought is an unmerited reproach upon Indiana wives and husbands—nothing, Mr. President, is further from my purpose. It is the perpetuation and purity of those relations as now actually existing, that commands my admiration. My object is to defend those relations against the imputation that they would be improved or reformed. Married life as it is, I wish to protect.

The gentleman from Posey (Mr. Owen) I have no doubt is of a high sensibility and has had his observation directed to special cases such as he has just mentioned to us, where great injustice has been done by unfeeling and profligate husbands, and it has excited his sympathies in behalf of such unfortunate wives, and induced him to seek a remedy for them. I admire the goodness of his heart, and the kind feeling he has shown in behalf of such unfortunate wives, but I feel sure the adoption of the proposition which is before the Convention will not afford the remedy he seeks. To adopt it would be to throw a whole population morally and politically into confusion. It would be to create a tempest in order to get a drop of water in the hollow of the hand. To establish this principle in the Constitution would be the radical change of family and of property. In order to repair and ameliorate the condition of married women, is it necessary to begin by exploding a volcano under the foundation of the family union?

Self-interest, Mr. President, rules the human family to a very great extent. The affections are apt to follow that interest, and we should keep united the pecuniary interests of husband and wife, and not separate them. We should not create the slightest cause for a separation of affections between them. We should, if possible, strengthen those bonds, rather than weaken them. Union and identity of interest with husband and wife is the strong bond of union in the family and in the community. It is the heart, the seat of vital warmth in the family, and in the community—there is no need to urge on its beatings, but only to restrain and control them.

Mr. HOLMAN moved to strike out the second and third sections and insert the following:

SEC. —. Every married woman shall have the right to the exclusive use and benefit of all real estate and every interest therein of which she may be seized or possessed at the time of the marriage, or of which she may become seized or possessed at any time during the coverture by devise or descent, or in any manner other than by gift from her husband in fraud of third persons; and laws shall be passed, effectually securing to the wife, on equitable principles, the use, issues, and profits of her separate property, and a just interest in her husband's estate, in the event of the dissolution of the marriage contract by the death of the husband or otherwise."

Mr. RARIDEN. I desire to discuss the main question involved in the proposition of the gentleman from Posey (Mr. Owen). I wish to give my opinion, also, upon that very delicate and important question. But I would like to turn the matter in my mind, at least, until two o'clock. For this, I move that the Convention take the usual recess.

The motion was not agreed to.

Mr. WOLFE. Is it in order now further to amend?

The PRESIDENT. It is in order to amend the proposition of the gentleman from Dearborn.

Mr. WOLFE. If I were to move a substitute for that proposition, would it be in order?

The PRESIDENT. It would be in order if the gentleman were to accept the substitute, but not otherwise.

Mr. WOLFE then proceeded to read his substitute for information. It is as follows:

"Women shall all have the right to hold and enjoy, for their own benefit and use, in common with their husbands and families, any real or personal estate that may descend to them by devise or otherwise, which shall not be subject to execution for the debts of their husbands."

The PRESIDENT. Does the gentleman from Dearborn accept the substitute?

Mr. HOLMAN intimated that he could not accept it.

Mr. CLARK of Tippecanoe said: Mr. President, I have but a few words to say upon this



subject; and I think, perhaps, I can get through before the time for the recess. I know, Mr. President, that it is an unfavorable time to speak upon this question—following, as I do, the eloquent gentleman from Posey, (Mr. Owen,) and in opposition to him. I know very well that I labor under both these disadvantages; but, to avoid wasting the time of the Convention, I will proceed to offer the few thoughts which I desire to express on this subject.

Now, sir, I object to the gentleman's proposition, because it is in contravention of one of the great fundamental principles of the Christian religion—that great elementary truth, religious and social, which was announced to the world by the Divine Author of our holy religion himself: The husband and wife are one; they twain are one—one flesh! This fundamental idea of Christianity the proposition before us assails, and seeks, by a constitutional enactment, to eradicate from our legislation. This principle has been recognized—has influenced more or less all Christian nations, and has contributed to elevate and improve the domestic and social condition of man wherever it has prevailed.

Now, sir, all the social relations of our community are based on this principle of our religion. The common law only embodied this divine law, and invested it with the ordinary sanctions of a human law. It sought to execute and carry out that principle which our Savior declared to be the true relation which existed between husband and wife: that they are one. And likewise in almost all Christian nations the marriage contract is invested with a degree of religious sanctity. This same principle was recognized—was a holy, an elementary law among our German ancestors, long anterior to the origin of the common law, and before the introduction of Christianity among them—before the advent of Christianity itself. So we are informed by Tacitus. He tells us that among the ancient Germans, in their domestic relations, their manners were most pure, chaste, and virtuous. In the language of their customs or unwritten laws (I suppose they had no literature): The husband and wife were one. One body, one mind, one life. And it was a law among some of the tribes, that a woman, once married, was married forever. One husband, one life! Beyond this, she never thought to look. That holy relation could be formed but once; it could not be severed, even by death itself.

Such was the high and pure law of our German ancestors. And it is remarkable how some of the elementary characteristics of the races of men descend through long periods of time to their remotest posterity. Barbarous and uncivilized as they were, still the marriage relation was recognized as something sacred; and we are told they regarded women as having something divine in their nature. History informs us with what unshrinking courage—with what

heroic fortitude—they encountered the perils and disasters of war. They suffered themselves to be hewed to pieces, refusing to retreat before an enemy.

Inspired with a reverence for females as objects almost divine—fighting for such wives, mothers, or sisters—no German hesitated to defend them at the expense of his own life. No German fled from the enemies of his country, or turned away from the battle in its defense. Filled with such high and ennobling sentiments, how could he be otherwise than generous and brave. Now, sir, this primeval and elementary trait of the Saxons, the proposition of the gentleman from Posey seeks to remove (so far as we can accomplish it) from the jurisprudence of the Anglo-Saxon race. A principle descended to us from our remotest ancestry, coincident, also, with the law of the great Christian Lawgiver—a principle which I believe is hereditary in the Anglo-Saxons, and to this day manifests itself in their domestic manners and their governmental institutions—a recognition of the sacred nature of the marriage tie—an acknowledgment that there is something divine in woman. Wherever the Christian religion prevails, there is woman most honored and respected; there civilization is most advanced, and the condition of man most elevated. Arc we admonished by this to forsake our religion and laws?

But what does the gentleman from Posey seek to do? He seeks to make husband and wife twain. He seeks, by law, to establish a division of interests between them. He would repeal the common law and the sanction of the Christian institution, in this respect. He would allow the husband to sue the wife, and the wife to sue the husband; and so make division in families; for nowhere could the separate interests of the wife be maintained, unless she were capable, in law, of suing the husband. She must be vested with this authority; and will the gentleman say, that is to encourage and protect the purity of the married relation?

How is it at present? The husband and wife are the mutual hostages of each other. The welfare of one is the welfare of the other, but by the ordinance of nature, the position and station, the wealth, if not inherited, is derived chiefly from the husband. The welfare of the wife, therefore, depends on his good conduct. Her character depends on his, and she has all the motives which can arise from self-love and love for her family, to interest herself in the affections of her husband, and employ all the influence in her power to restrain him from wrong doing; because his dishonor is her dishonor, and his adversity is her adversity. Such is the result of this identity of interest which the common law contemplates. But, destroy this identity—give to the wife a separate interest in law, and all those high motives to restrain the husband from wrong doing, will be, in a great de-

gree, removed. Having no longer an identity of interest with her husband, the motive to use all her influence in restraining him from doing evil, will be very much weakened.

But, whether or not we make any change in the law upon this subject, the great mass of men and women are placed precisely in the condition which the common law recognizes, by the very nature of things. The great mass of fathers and mothers are compelled to unite their utmost exertions to feed, and educate, and protect their families; and these have no occasion for a separate interest. Circumstances force them to unite their interests. Such is the condition of all the middle and poorer classes of society. As it is, then, this change in the law would be necessary or convenient only for the rich. I believe that, in England, this law does virtually obtain amongst the nobility, but it is not necessary amongst the common people; because it is requisite that the interest of both branches of the family should be made common stock for the support and education of the children.

But in England, the nobility forms an essential feature of government. The nobles must maintain the integrity of their great estates, by some hereditary restraints on property. A nobility without some degree of wealth to maintain the expense incident to the position they occupy in their government, would soon fall into contempt. If what we read and hear in relation to marriages in the higher classes of English society, be true, we ought not to be anxious to transplant their customs into our republican families. Separations of husband and wife are represented as far more frequent than in our country. I mean actual, not legal separations.

Marriages thus founded on political considerations, or with reference to estates, and the law recognizing separate interests, separations, it might be foreseen, would be frequent, and we are told, that, amongst the English nobility, the husband and wife have separate houses, separate revenue, and, in fact, they are separate people.

Mr. President, I will now proceed to answer some of the arguments of the gentleman from Posey.

He read an extract of a letter from Chancellor Kent, in which that great jurist points to the superior dignity to which females have attained in those nations in which the Christian religion prevails. This is because of the recognition of that principle in the Christian religion, which the gentleman's proposition would subvert. For, even in those Christian nations where the civil law exists, the religious principle has, to a great extent, counteracted the bad influence of the law on the manners of the people.

He says that, under our present law, the wife has the right to receive the rents and profits of real estate; and asks whether any evil has resulted from it. I answer, none: because, when

the wife receives her rent money, that moment it legally becomes the property of her husband; consequently the law is not much changed by this statute. It may be true that the creditor of the husband might not be able to reach the rental till after it comes into the possession of the husband, but the wife cannot sue the husband for such rent; she is not legally authorized so to do.

The gentleman asks whether our law of inheritance is wrong? I answer, it is not: it is not in contravention of the Christian law. The Christian commandment is, "A man shall forsake his father and his mother, and cleave unto his wife." I have no objection to such a change in the law of inheritance, as that the property of the husband shall descend to the wife, instead of other relatives. But it is not the gentleman's purpose to correct the law in this respect; but his object is, that the husband shall not have community of property with the wife.

But, sir, the gentleman says that the drunken husband will come home, and break open the wife's trunk and take away her hard earnings, and the law does not authorize the wife to prosecute the husband for larceny. This, also, is one of the gentleman's arguments. Now let me ask you, Mr. President, taking this one which the gentleman has supposed, if the wife of a drunken husband should go into court and prosecute him for larceny, do you think that they could afterwards live together as man and wife? I ask again, would it not be better for such a wife to seek a divorce then to live with such a husband after that, for, if she were a woman of true feeling, would she not disdain to live with a man after charging him with larceny, or after he was condemned and branded as a felon? Would she not disdain to become the associate of such a man.

The gentleman says woman is what she is, not in virtue of the statute law, but in spite of it. But now, sir, I say woman is what she is by a law of nature, and no statute law can make her any thing but woman. You may devise as many statute and constitutional laws as you choose, and woman is still by the law of nature, woman. She has not the physical strength, nor those strong and rough qualities which a man has, and I think it will not be assuming too much for me to say, that the duties of my profession have led me to know something of the character of woman, and that they would not surrender those qualities which enable them to exercise the authority which they do exercise over the minds of men, for all the harsh and rough means of influence which men are wont to employ. She would not exchange her power for money; nor could money invest her with her peculiar power and capacity to govern and control the sterner sex. Besides, you could not give to her the power which a man has, and which he exercises in the affairs of State and



of trade, for if you could, she would then cease to be woman.

The gentleman says, again, that he wishes we would administer more justice and less flattery to the gentler sex. He would not have us flatter woman with reference to those qualities of beauty and tenderness by which she exercises dominion over us; but he would have us do justice by enabling her to enter in the political arena as a competitor for the honors of State, or engage in the scramble of trade, in pursuit of wealth. But, sir, I will venture to say that there is not a true woman in the State of Indiana, who would surrender the dominion which she now exercises for any dominion, authority, or independence, which money could impart to her. I will go further and say, that there is nothing that would induce her to take money at such a sacrifice.

The gentleman says, also, that if we give this right to woman, we must attach to it corresponding duties and responsibilities. That, sir, is very true; and the gentleman says, further, if the wife refuses to contribute her share in the support of the household, the law must authorize the husband to sue the wife. Now we should be truly a gallant tribe of Anglo-Saxons, Mr. President, to set about authorizing the husband to sue the wife, in order to compel her to help to support the children. Such a state of political and moral degradation of our race, I do most devoutly hope we shall never descend to. I hope we shall never descend so low in the scale of humanity as to allow either a husband to sue his wife, or a wife to sue her husband in order to compel each other to contribute their proportionate amount of means toward the support of their common children.

The gentleman says the same objection applies to this section which is always brought against every novelty; that because the thing is new we shrink and turn away from it, hold up our hands against it and will not look at it. And by this argument, I take it, he would have us refrain from opposing or scrutinizing the subject very closely, and looking into the true nature of it, because he brings it forward as a reformation—an important principle of jurisprudence which he desires to institute and apply, in this progressive age, to the advancement of the cause of humanity. But now I say this proposition is not a new idea, and that gentleman himself has told you that it was one of the institutes of the civil law, and that in most of the nations of continental Europe, in France, Spain, Germany, Italy, and in every other nation where the civil law obtains a separation of between the interests of husband and wife existed. But I would ask, in all seriousness, if there is anything superior in the condition of the females of those countries which ought to induce the wish the gentleman proposes here? Is there anything in the condition of the females there, which, upon a full understanding

of the case, would induce the females of our country to ask for a change of circumstances?

But, I have said that this is not a new proposition. I will say now, that the idea is by no means confined to modern times. This same law existed long ago in the city of Rome, the place where the civil law originated, as will appear from the following slip of history:

In the year of Rome 579, and 173 years before the Christian era, there existed a Roman statute to the effect that females might take inheritances to an indefinite amount. And it was proposed to repeal or modify that law, as I will read:

"It was proposed to prohibit women from taking inheritances exceeding about forty thousand dollars. It was thought that, to the weaker sex, wealth might hold out dangerous temptations to luxurious indulgence, and that, fond, by nature, of dissipation, dress, and show, they might be induced to depart from the sanctity of manner and purity of conduct, which, of old, were deemed the brightest ornaments of the female character.

"The debate was violent. Cato put an end to it by advocating this law, which was carried."

This Cato, was Cato the Censor, crowned, I may say, with this appellation by the common people of Rome, who, overlooking his great military achievements and other great actions, gave him, by way of pre-eminence, the title of Censor, which office he had held, and during which he labored to restore the simple and virtuous customs of the earlier ages of the republic, and resisted to the utmost of his power the insidious advances of luxury and extravagance. He opposed with all his might those vices which, veiled under specious names of refinements and improvements of society, were silently sapping the institutions of the Roman people.

"Cato (it is said) declaimed with great vehemence against the extravagance and ostentation of the richer matrons, who, he said, retain to themselves large sums of money, which they do not entrust to the power of their husbands, but only lend to them; and when, upon any quarrel arising between them, they send their own slaves, who importunately demand repayment, and treat their husbands as if they were entire strangers happening to be their debtors."

Now, sir, this law existed and was proposed to be repealed 173 years before the Christian era. I have read this extract, Mr. President, merely to show the Convention that this is not a new proposition; but, that it existed in these early times amongst the ancient Romans, and the corruption of manners thus arising, even at that early period, foreshadowed the approaching decline and downfall of that people. They themselves saw, and endeavored to avert the evil influences which hurried them along to-

ward destruction, by poisoning society at its very source. But they sought in vain: the strong current of luxuriousness and corruption swept away the power and the virtue of the city, and overthrew the empire itself.

Mr. President, this same Cato, on another occasion, made a speech against the matrons; and, with all that was good and great about him, we are compelled to admit that he was a harsh, austere, rough old man, but renowned for his wisdom, courage, and patriotism. And lest his remarks already quoted should weigh anything too much with the Convention, I will ask the Secretary to read the following extract from his speech upon the other question, in which the ladies were concerned:

The Oppian was passed during the Punic war, and in the year 195 before the Christian era, it was proposed to repeal it. The law was to this effect: "No woman should possess more than half an ounce of gold, or wear a garment of various colors, or ride in a carriage drawn by horses, in a city or in any town, or any place nearer thereto than one mile, except on occasions of some public religious solemnity."

Cato opposed the repeal of this law most strenuously. He said:

"If, Romans, every individual among us had made it a rule to maintain the prerogative and authority of a husband, we should have less trouble with the whole sex. He said, our ancestors thought it not proper that women should perform any, even private business, without a director; but that they should even be under the charge of parents, brothers, or husbands. We, it seems, now suffer them to interfere in the management of State affairs, and to thrust themselves into the Forum, into General Assemblies, and into Assemblies of Election. For, what are they doing at this moment in your streets? What but arguing, some in support of the motion of the Tribunes; others contending for the repeal of the law. Will you give the reins to their intractable nature, and then expect that themselves should set bounds to their licentiousness, and without your interference? This is the smallest of the injunctions laid on them by usages or the laws, all which women hear with impatience. They long for entire liberty; nay, to speak the truth, not for liberty, but for unbounded freedom in every particular. Recollect all the institutions respecting the sex, by which our forefathers restrained their profligacy, and subjected them to their husbands. And yet, even with the help of all these restrictions, they can scarcely be kept within bounds.

"If, then, you suffer them to throw off these one by one, to tear them all asunder, and at last to be set on an equal footing with yourselves, can you imagine that they will be any longer tolerable? Suffer them once to arrive at an equality with you, and from that moment they

will become your superiors." [A general shout of merriment.]

Mr. C., resuming the floor, said: Mr. President, I have only to add, that these extracts will be found in Livy, in the State Library. I have read the former extract to show that this subject is by no means new; and I have caused the latter to be read in order that, by this exhibition of the austerity of the old Roman, his opinion upon this subject might not weigh too much with the Convention.

Mr. President, having now filled up the time which I proposed to myself, I will move that the Convention take a recess till two o'clock.

This motion prevailing, the Convention took a recess until two o'clock, P. M.

#### AFTERNOON SESSION.

The PRESIDENT remarked that the pending question was upon the adoption of the second section of the report number four, of the committee on the rights and privileges of the inhabitants of this State.

Mr. RARIDEN. Will the Secretary read the proposition?

The section is as follows:

"Women hereafter married in this State, shall have the right to acquire and possess property to their sole use and disposal; and laws shall be passed securing to them, under equitable conditions, all property, real and personal, whether owned by them before marriage or acquired afterwards by purchase, gift, devise, descent, or in any other way, and also providing for the registration of the wife's separate property."

Mr. RARIDEN. Mr. PRESIDENT, I am glad of this early opportunity to express the views which I hold upon this subject, and feel obliged to gentlemen of the Convention for affording me the present occasion to discuss, in a brief manner, the question before us. I am glad of the opportunity, because urgent circumstances make it necessary for me to leave on the morning of to-morrow, and the debate upon this proposition might be concluded before my return.

It is not my purpose, Mr. President, to enter into a formal review of the able speech of the gentleman from Posey, (Mr. Owen,) delivered this morning upon the proposition which has been read and which was introduced by himself, nor even to criticise it in any way, for so far as the sentiments expressed by him, so far as his betrayal of the wrongs which have been, and, to some extent, still are, inflicted upon woman, are concerned, I cordially agree with him. The whole speech, its sentiments and manner, commended the speaker to my regard and esteem. But his argument did not have the effect to convince my understanding of the propriety of adopting the Constitutional provision he proposes. I wish to say, however, that so far as the law of descent and the statute



of distribution is concerned, I agree with him most heartily. The law of descent is not what it ought to be, and that it may be seen that I have long held this opinion, and earnestly urged a change of the law, I may be allowed to mention, that at an early period of my life, when I was the youngest member of the Legislature of this State, I made an effort so to change the law as to give to the widow the fee simple in her dower, and a greater proportion of the personal estate than she is allowed by the law. This, sir, was twenty-six years ago. For this early effort in the Legislature to change the law of distribution, I was ridiculed all over the State; but neither that ridicule, nor my failure to get the law changed, had the effect to convince me that I was wrong, though for the time being I abandoned the further prosecution of the matter as hopeless at that time. But I rejoice to believe that the time has now come when justice will be done in this matter, and the statute of descents will be made to recognize the rights of widows as embracing the rights of the husband at his death, at least in the homestead and personal property.

Whatever objection there may be to these statutes, however unjust I may be willing to admit them towards the widow, it is no argument that we should introduce into the fundamental law of the State the provision proposed by the gentleman from Posey, which has been read. And for this reason: I look upon the provision as one, the effect of which will be a direct attack upon the sacredness of the marriage contract. I believe it would rob the holy relation of husband and wife of that which alike constitutes its charm and its strength, that the twain are one. On the other hand, to give the widow her rights, to change the statute of descents, would not be an attack upon the peculiar sacredness of the conjugal relation; it would be a conventional arrangement of society in regard to a succession between husband and wife. That I may be clearly understood, I will explain my position. If you make it a part of the fundamental law that there may be a separate property between the husband and the wife, that the wife may acquire property which shall rest solely in her and beyond the control of her husband, the effect will be to take away from the marriage relation that identity and unity of interest which does and should characterize it. You destroy that which is sacred in it, and introduce a harsh feature that is sure, sooner or later, to be a cause of discord and alienation.

In my opinion, the gentleman from Posey, (Mr. Owen,) in the discussion of this question, has entirely mistaken the basis and source of the power and influence of the female over the male. He has mistaken the source as well as the administration of that power. He assumes the ground that equality of position and equality of property would increase the influence of the female, and place her in the situation which

he so much desires, of perfect social equality with the male. This, sir, is the radical and fundamental error in his argument. I know that it is his sympathy for woman and his kind feelings that have led him into this error. I frankly say, that I believe that his action springs from the purest and the best feelings, and that he is candid in maintaining his theory, and conscientiously believes that it would result in good to the human race.

His error is in his misconception of the true source of the influence of the female over the male.

There was a very forcible and pertinent remark made this morning, by the gentleman from Tippecanoe, (Mr. Clark,) apparently addressed to the ladies in the gallery, or perhaps to the females generally. He asked, "Would you part with the power you now exercise, no matter what its source, for the power with which it is proposed to invest you, by giving you equal rights of property with the husband? Would you exchange the possession of the fascinations by which you conquer and hold under your influence, for the rod given you over your husband in the proposition now before the Convention?" I believe that if the females of the country could be heard in response to these questions, they would answer, "We would not."

It is a mistake to suppose that the addition of the right of separate property would add to the influence of the female over the male, or that the happiness of both or either would be enhanced. I firmly believe that it would diminish, if it did not totally annihilate, the influence she now possesses and uses for her happiness. I tell you that the possession of property or of power of any kind is not the secret, the source of woman's influence over man—it is not even enhanced by the possession of these; what the source is I cannot attempt to describe—it is what Burke beautifully designates as "the unbought grace of life." But it is not to be explained or delineated. You may see its manifestations, you may feel conscious of its power everywhere. It is ten times more potent than princely revenues or the rod of legal authority. Its effects are as different from that of the influence which the possession of separate property gives, as the spirit with which a man labors when he is munificently rewarded for his efforts, and the spirit with which the convict sentenced to hard labor in the most ignominious condition, and without compensation, goes to his work. I repeat, sir, that the gentleman is mistaken in the source of the power which we see constantly exerted by females. It is the power of persuasion through blandness of manner, through a devotional and self sacrificing spirit, ready to offer up all her hopes upon the shrine of a husband's wishes, that you see characterizing the sex in all conditions of life.

The gentleman asks us if it can be possible that any gentleman considers it necessary to domestic happiness that the woman should be subject to the man, or more nearly to use his own words, "that a state of dependence on her part promotes connubial bliss?" Now, sir, I am willing to take direct issue with the gentleman on this point, and state it as my deliberate judgment that it is, in a great measure, that very dependence which promotes and cultivates in the female those endearing qualities which attaches her so strongly to the male, and gives her such unbounded influence over his sterner nature. It is the knowledge of that dependence on them for support and protection that enhances the desire of the man to yield it. Consider for a moment, the feelings and thoughts of the woman when she decides to separate herself from the protection and endearments of her home, to leave those that thus far in life have cherished and protected her, and who have been devoted purely and self-sacrificingly to her good—father, mother, brothers, and sisters—and going out from the paternal roof, throw herself trustingly upon the honor, the sense of justice, and the generosity of one who is a comparative stranger. Are not considerations like these the most powerful appeal that can be made in her behalf? Is not that implicit trust, that wonderful confidence, a secret of her power an influence over the youth to whom she trusts her present and her future? What is there in life that is humble, and weak, or friendless and suffering that does not enlist female sympathy and effort, and who can see them as they unconsciously develop these attributes of their being, without that kind of devotional veneration for the female character which characterizes all that are worthy to wear the name of man? This approximates to my idea of the parent or source of female influence, its philosophy I will not attempt to explain; it is the fact of its existence only that I know.

I am not discussing the abstract question of right and wrong between husband and wife, but am endeavoring to call attention to those mysterious influences that control human conduct, and especially in the endeared relation of husband and wife. Woman was given to man to make up for his deficiencies, to constitute the complement of his existence, to teach him to love everything around him, and to give to everything around him a comely aspect that he may love it. Has she not always fulfilled this mission, has she not modified the natural ferocity and roughness of man, has she not taught him to love herself, her children, his neighbor, and then the acquisition of property, not for himself, but that he may lay it at her and her children's feet. This again is another source of her power. Well, sir, we have got along for eighteen hundred years, for I will not go further back, with the endurance of conjugal felicity, based upon the power and exercise of these influences

and shall we change now! If I was addressing a female audience I would put this question to them "would you exchange the power of this influence, so long exercised, so long enjoyed, demonstrated to be so potent, for the doubtful power of the control of the finances of your husbands?"

It is this very physical weakness and social dependence that strengthens the cords of affection, and enhances the delight in bestowing and receiving protection. See, and especially in this Western country, an unprotected female, who, in the presence of gentlemen, is treated in any wise ill, or even neglected, and you will see how instantly and instinctively every man will feel called upon to resent the injury, and offer protection. She need not be a relative, or even an acquaintance; it is enough for a man to know that she is a woman and stands in need of protection and assistance.

There is another consideration relative to the influence and power wielded by females. The absorbing passion of man for their applause, their plaudits, and approving smiles, are more with us than stars and garters; they call forth all man's energies, and these frowns and rebukes blast every hope and energy. We all know that you had as well take the musket and bayonet from soldiers as to take from them the incitement of female applause—take that away and they are dispirited and powerless; you will then hear no more of mighty deeds of daring and high achievement; and, without the applause of the ladies of the Union, you had never realized the pride and elation of heart, as an American, which you felt when the booming cannon announced an American victory achieved by our soldiers against double and treble their number of Mexicans. The approving smiles of beauty, of woman—for in that term is comprehended all of beauty and goodness, and superior excellence in creation—is our meed in the great tournament of life [applause]. Is this all that gives them power? Wherever there is suffering, wherever there is human woe, there is woman, in her natural and favorite sphere, to alleviate suffering, lift up the down-trodden, and to mingle her tears with the afflicted everywhere. Such are the sources, and the true sources, of female power, and such will they ever continue to be.

Gentlemen have instanced cases where females, by their needlework, or the products of the loom, may have earned money, of which they were deprived, by the husband, or to satisfy his debts. These cases, though I consider them as only exceptions to a general rule, are cases of hardship and mal-treatment, that are painful to contemplate, but to prove instances of brutality in men, not the inherent defects of a system.

The best institutions with which mankind were ever blessed, have been and always will be perverted by bad men. But would it be



proper to meet such individual and rare cases of abuse and suffering, to adopt a proposition like the one in debate. Would it be proper to have the double luxury of love and litigation in the same household? Our fathers have, for many generations, maintained the principle of the common law in this regard, and, as I am bound to believe, for some good and weighty reasons.

But let us advert to some of the considerations urged in favor of a change as to the rights of property of married women. The idea of thereby bettering the social condition of woman-kind is one. It is thought that it will throw a stronger shield around the wife, to give her the separate and sole control of her property. Has she not now, from the very fact of her weakness and dependence, a stronger hold upon the sympathies, and a stronger claim for the protection of man, than the control of property would give her? Where is there a lady in anywise badly treated, that has not the sympathy of the surrounding community? A woman conscious of this, if she still loves her husband, has the greater power over him, and, if she can reclaim him from his debased condition, it will be an exhibition of real strength—a service inestimable to herself and her children—an act of the greatest value to society. She will acquire an influence over him, more potent than the withholding of money, over which the law might give her an exclusive control. From such exertions of influence would arise no actions at law, and there would result no scene of a family in court arrayed against itself. A public vindication of her rights is unpleasant, is unnatural, and repugnant to the feelings of women. You will always discover on their part, a desire to conceal any ill treatment they may be so unfortunate as to receive, and they will struggle to reclaim their husbands while there is a spark of manhood left in his breast. I tell you that all the property she could get the control of, would never be so effective, never worth so much as this influence.

The gentleman from Posey (Mr. Owen) will not go further than I will in efforts to change the statute of distribution. I believe it wrong, founded upon a wrong principle, and productive of injustice and evil. If the wife of a man having a competency dies, he has sufficient to support and rear his children, the property all remains in his hands subject to his disposal, as it should; but if the husband dies the property is divided among the children, the widow receiving one-third. This is clearly wrong. With a life of labor before her, with all the responsibility of raising, supporting, and educating a family, and with disposition and affections to sacrifice every hope of earth for her children, she should be put in the same position that the husband is, in case of the wife's death. I believe that the majority of women will support a family reputably, upon one-half of the amount

that a man would require in the event of his being left a widower. My object in having the property all hers, in the event of the husband's death, would be to devote the children to her, to place them in the natural position, of dependence, to make them sue to her, not she to them.

So far, then, as the gentleman's opposition extends to the statute of distribution, I shall heartily co-operate with him. Another thought: I object to this proposition being made a provision in the fundamental law of the land, because its effect will be to make the marriage contract a conventional arrangement among friends, that arrangement to be binding so long as the parties think proper to continue it. Such marriages cannot be felicitous; it does not comport with the spirit of American gallantry. I desire the covenant to be between two young hearts, the mysterious sympathy that binds them and brings them together, proceeding from the Godhead itself. I want mutual attraction, not the desire for property on either side. I desire to see the union effected by such influences, and then to see the incipient affections fanned into a steady flame by the mutual performance of duty and of generous acts and kind offices pertaining to that close and holy relation. But if you surround them with, and fasten upon them, external circumstances, the tendency of which are to divert the mind from affection and the fulfilment of kind offices, to interest; if you make a covenant between the parties, looking as much to the amount of property secured as to the prospects of bliss, you attack and destroy all that is sacred in the conjugal relation. You then have nothing that could not be bought off as it was bought on. But where two young hearts come together, influenced by that mysterious feeling which I cannot describe, but of the strange power and fascination of which most men are aware, then you may see the basis of a union as enduring as that mysterious principle upon which it is founded. In the beautiful language of Burke, "Man yields a proud loyalty to her behests, and she a generous submission." I cannot consent to lay rude hands upon this natural marriage contract; I cannot enter its sacred sphere with a Constitutional provision to make the one twain by separating her pecuniary interests from his. Not that I am wedded to old affections, and love the thought that the twain are one. I love the ancient usages, not so much because they are old and ancient, but because I have witnessed the effects of this dependence on the part of the female. It is where love weaves the garland; and I have witnessed the effectiveness of the influence resulting from that dependence.

I cannot, with these views, support the proposition of the gentleman from Posey, because I cannot consent to make of marriage a mercenary affair. For that part of the section which abolishes the statute of distribution, I have al-

ready promised my support, not here, but in a statute or descents and distributions. But I cannot support any proposition which, in effect, will make of two young married people partners in trade, and rival partners too, it may be! For, carry out your principle, and the wife must have as broad a liberty in the use of her property as her lord. She must have the right to use it in traffic and trade, and it might, and more than likely, be to her interest to set up a rival business to that of her husband. Is it not obvious that by such means we destroy the identity of interest, the sacred relation that should exist between husband and wife?

The control of all the property in the world will not compensate for the loss of the influence that woman, in her dependent position, exercises in the spheres that properly belong to her. Man has his spheres of action and woman has hers, and they are supreme in their spheres. See how potent it is. Let a young man deport himself unbecomingly his manhood; let him offer an indignity or an insult to any of the sex, and let them decide to exclude him from their society, and see how speedily and how deeply he is degraded. There is nothing more fatal to the prospects of a young man; nothing more withering to his reputation, than thus to fall under the condemnation of female society. Could the influence arising from the control of property exercise such a potent sway?

It is in the nature of man to be generous to that which throws itself implicitly upon his generosity. He is proud to yield support and protection to woman, and derive a consolation from the fact that he is not compelled to by a law. I feel ennobled by the reflection that I have done it voluntarily, or, at least, only through the promptings of affection.

Gentlemen tell us that the ladies have been too much flattered and cajoled, to their tastes. I say they are not. In my opinion no flattery ever yet came up to the top of their deserts. [Applause.] And suppose they had been, is it not a graceful payment for their thousand kind offices? and do they not always receive it more graciously than any other kind of coin? Of course I am not alluding to that fulsome adulation coming from an unintelligent mind or a dishonest heart, to which no sensible woman will listen. I speak of eulogies prompted by the appreciation of her purity and grace, coming warm from the heart as a tribute to beauty and worth. The mental features and the moral attributes of woman were never yet overpraised or overestimated, nor are they half so greedy of praise or as liable to be misled by it as the male. I believe that if you were to offer to the women of Indiana the exercise of these legal rights, a majority of them would not accept it. To those who do, it will prove the most fatal present ever lodged in their hands; the fair fruit wherewith their sex will be, not for the first time, tempted, will prove to be apples of Sodom

turning to ashes in the taste. They can vanquish men now by the fascination of their influence, but give them the rod and the control of the domestic exchequer and you kill all that delicate sentiment and refined feeling that forms the indissoluble cement of the marriage relation. You rouse up the animal in man, which regards neither age nor sex. Give her the power to separate her interests and herself from him at pleasure, and you divest her of all the real power she ever possessed, and she falls a victim to animal prowess.

There are but three classes of ladies who would wish to change the present relation of husband and wife to that of male and female partners in business, as is contemplated by the proposition of the gentleman from Posey. The first are such as feel a conscious superiority over their husbands and feel that these husbands are great drawbacks to them in the race for wealth or fame. Such desire the identity severed. Another class are such as feel the iron rod of rule in domestic economy, and therefore desire emancipation. The third class are—rare it is very certain—but are such as underrate their own charms, and apprehend a defective power resulting from them to maintain that dominion to which they feel themselves entitled, and therefore desire this provision made for them if they should not like the relation upon trial. All such, and perhaps others, you will find in favor of this proposition.

These, sir, are my views and feelings; while I sincerely respect the motives and the action of the gentleman from Posey, (Mr. Owen,) I must oppose his proposition as a whole. I believe that he has entirely mistaken the basis of female influence and power, and that wherein he hopes to increase it, he will sap its foundations. If I have portrayed the spring and source of that influence correctly, and unless he can show that another power with a different source is more potent to exercise a beneficent influence in the conjugal relation, he must surrender the argument. Perhaps he will tell us that he would secure both influences, that which I have portrayed and admired, and that which he estimates will spring from the control of her property, but I tell him they cannot co-exist—they will not live together—the presence of the one is not consistent with the life of the other. This Anglo-Saxon man allows no equal, *claiming* and *asserting* to be an equal in that relation. He is proud of his wardship. He is proud that such a being as woman throws herself upon his magnanimity and trusts her happiness in the present, and all the wealth of her future hopes to his generosity. Believe me, he will redeem the tacit pledge. They have been living together for eighteen hundred years, and all the while female influence and power has been growing and strengthening, and so will it ever continue to grow and strengthen until it will become ab-



solute in all things wherein God has graciously appointed her to walk and administer.

Mr. GIBSON said: Mr. PRESIDENT, One of the instructive lessons taught us by the history of the past, and which is written upon almost every page of its records, is that no great and radical reform of either social or political evil, was ever yet effected without a struggle. Abuses which have been sanctioned by time and rendered familiar by custom, are never abolished by the common and unanimous consent of the people among whom they exist, no matter how monstrous the shape they may have assumed.

Where now throughout all the States which compose this Confederacy, could be found a man who would condemn the act, by which the Continental Congress seceded from the British Crown? Not one; there is no difference of opinion among us now upon that question. Yet when the Declaration of Independence was first read from the window of the old State House at Philadelphia, thousands of honest men regarded the act as morally wrong, and a still greater number looked upon the issue as hopeless, and the struggle as inexpedient and impolitic. Had we, sir, have continued to live under the Colonial Government of Great Britain to the present hour, and were the question now, whether we should declare our independence, no one who judges of mankind by the light of experience would expect unanimity of opinion, as to the justice or expediency of the measure, either in this body, or among the people whom they represent.

If the Declaration of Independence were now proposed for the first time, it would meet here the same opposition that it encountered in 1776. To doubt this we must disregard all the teachings of experience, all the history of the past, or believe that human nature in the nineteenth century differs from human nature in any other age of the world.

But for this law of human action which seems to have been universal, I should have been led to hope, that the principles embodied in the section under consideration would have needed only to be presented to this Convention, to have received their unanimous assent. But, sir, I anticipated no such reception of the proposition, and I have not been disappointed. I knew, sir, that we should have to meet the old and stereotyped arguments, with which the Jews sought to confound the Messiah and his disciples—which met Luther and Melancthon, in the outset of their career—which, in short, have been urged against every reformer and every reform which the world has ever witnessed:—that we are seeking to overturn the foundations of society: that the old system under which our fathers and mothers lived and died, is good enough for their children; that vice and immorality and licentiousness will surely follow any further extension or recognition of human rights, especially if that recog-

nition extends to woman. These, sir, are the arguments that meet us here; and they are the very same by which tyrants have in all ages sought to justify and defend their usurpations. The same that have always been urged whenever an equality of human rights has been sought to be established.

There are, sir, in the science of mathematics certain propositions called axioms, that are so plainly and manifestly true, that no demonstration can add anything to the conviction which the mind intuitively has of their truth. Such, for example, as that a strait line is the nearest distance between two points, or that the whole is greater than a part. So, sir, there are axioms in political and moral science, and when I lay down the proposition, that our existing laws governing the legal rights of married women in relation to property, are in themselves grossly unjust, and that they necessarily and inevitably are the cause of the grossest fraud, I only say that which is so plainly and indisputably true, that no argument however elaborate, no reasoning however lucid, can make it any plainer, or strengthen the conviction which the bare enunciation of the proposition carries with it.

When the law under which we live is once fairly stated, everything is said on that question, which needs to be said. Any argument to prove its injustice towards women, would be as useless as would a torch to light our path at noonday. The laws of Draco that were written upon tablets and hung so high that none could read them, required no argument to prove their injustice.

The gentleman from Wayne, (Mr. Rariden,) who I regret to find arrayed against us upon this question, freely admits that the laws of descent so far as they affect widows are obviously unjust, and thinks that a repeal or change of them is all the reform needed. But, sir, the evil is wider and deeper than he is willing to concede; far too wide and deep for such a remedy to be of any avail. No change in the laws of descent can ever operate with even-handed justice, so long as the feudal dogma, that the legal existence of the wife is merged in the husband and her rights transferred to him, continues to govern like an organic law, all our enactments on the subject. That is the great and overshadowing evil that requires to be eradicated, and the balance may be safely left to legislation.

I have been told by gentlemen here that they would be willing to go almost any length to secure to the wife her real estate, but the personality they could not think of interfering with. Now, Sir, it is precisely in relation to her personal property that the law treats woman with the greatest injustice. Few among us, except those whose business it is to study the laws, are aware of the every day operation of our present system, and the enormous injustice that constantly and certainly results from it.

And here let me remark, to the honor of human nature, that I never yet pointed out the injustice resulting from these laws to any man, who did not denounce them as infamous.

As I before remarked, the whole structure of our jurisprudence governing the relations of marriage and property, rests upon a feudal maxim, that the very existence of the wife is merged in that of the husband; her person becomes his slave, that he may beat with rods, or bind with fetters, and her property becomes his. The practical operation of the system may perhaps be best illustrated by examples of supposed cases:

A man without a dollar in the world marries a woman, who has a hundred thousand dollars on deposit in some neighboring bank. He goes the next day and has the money transferred to his own name on the books of the bank, or in law language reduces it into possession. A week afterward he dies. What think you, sir, the law will do with that money. "Restore it to the widow, of course," is the natural response of every man who labors under the delusion that law and justice are necessarily connected. Not so, sir, not so. The law sets about to find an *owner* for that fortune. To the widow, who a short week before was undisputed master of it, and has forfeited it by no crime, unless to love be a crime, to her it gives one-third of the sum and the balance to relations of her deceased husband whom perhaps neither she, nor he, ever saw or heard of.

If he had children, they take it; if none, then the law traces back to the furthest and remotest of kin, but the wife gets it not. The law will first trace back in the line of his genealogy, to Adam, and then down to some descendant of our first progenitor. [Laughter.] Out of her princely fortune, which was all her own a brief month before, she is now allowed but the fraction, some thirty-three thousand dollars.

But again, suppose the woman was a widow, and the man a widower, both having children before their intermarriage. We will suppose the woman to be possessed of one hundred thousand dollars in personal property. In course of time the wife dies, without children by the second marriage, and perhaps a month later the husband sleeps beside her in the grave. What then becomes of the property? It goes to her children, of course, is the natural response. Not at all; *they get not one cent.* They may be left beggars, while *his* children are suddenly made wealthy with their father's wife's property! Does it need an argument to prove that such laws are unjust? Sir, I might multiply instances of the operation of our laws in this regard, each one grosser in its injustice than the last, but it is not necessary.

The laws regulating real estate are not quite so bad as those of personal property. When a man marries a woman possessing real estate he

has a right to the possession and all the benefits and profits arising from its use during his lifetime; the fee is secured to her heirs after his death. It is not in the event of death alone, that the evils growing out of our laws relating to women, force themselves upon our consideration. If all the acts of villainy, all the outrages committed upon the rights of women under these laws, and the suffering and woe resulting from them, were written in a volume, the universal execration of mankind would blot those enactments from the Statute book.

I know of one instance, it did not come under my personal knowledge, but was related to me by a gentleman of standing, conversant with the facts, which I will briefly relate:

A woman lived in the city of Cincinnati, whose misfortune it was to have a drunken husband; she had lived with him until she could endure his abuse, and the suffering consequent upon his neglect, no longer; she had borne with poverty and ill treatment until to forbear ceased to be a virtue, and she took her three children and left him. To support herself and them, she took in sewing, and it so occurred that the work she first obtained was from the very scoundrel who supplied her husband with the liquor that had ruined him and his family. When she had finished the work, and the time came to receive her pay, she told her employer the amount of work, and the pittance of compensation to which she was entitled, and, sir, she was presented, by that employer, with her husband's grog bill! The law—the law which gentlemen eulogize here, came in to the aid of the liquor seller, and that suffering woman was compelled to receive that grog bill in payment for her toil! The law, the glorious common law, sanctified the deed, and said it was right!

We have been told here, of the power and influence of females. The gentleman (Mr. Rariden) portrayed to us their powers of persuasion, and the influence they exercised over man, and which he tells us is more potent to effect her happiness than the control of her property. That influence, however it may affect the heart of a generous man, cannot change the law; it will not save to her children the property of their mother; it will not secure her in the possession of her earning.

Sir, can the voice of persuasion, even from the lips of woman, reach the dull, cold ear of death? Can it affect the heart of the husband who has gone down to the tomb? Can it pierce the sealed coffin? Can it wrest from the clutch of the law, that of which it has robbed her? No, sir, no, sir: it is powerless then, and I am sorry to add too often powerless in life.

Mr. President, if we had lived up to this time under equitable laws, under a different system from that which has come down to us, if it were now for the first time proposed to establish such laws as are now in force with regard to



women, where is the man who would dare stand up and advocate it? No man would be hardy enough, would be indifferent enough to every other man's sense of right and justice, to brave universal public sentiment by the advocacy of such a proposition. I ask attention to this view: think how impossible it would be to find an advocate for laws so revolting to every genuine sentiment of manhood. No man, where the civil law prevails, so much superior, more enlightened, and just than our own in this respect, has ever yet proposed to ingraft upon it the principle of the common law regulating the rights of women. On the other hand, in many of the States of this Union, the common law principle has been abolished, and the civil law established. None of these States have re-adopted the common law principle, and they never will, for no evils, no inconveniences, have resulted from the change, while the contrast is strongly in favor of the justice and right of the civil law. Is not this a strong argument in favor of the proposition before the Convention? It is only time and established usage that reconcile us to the operation of our laws in this particular.

But, sir, we are told that this proposition, though it may be right in itself, should be left to legislation. Mr. President, it has been left there for the past thirty-four years, and they have done nothing. Shall we trust them longer with the righting of this monstrous wrong? Shall we still commit such interests to hands so unfaithful? Merely amending the system, making partial changes here and there, will not effect the desired object. The system must be abolished. You might as well attempt to prune and trim into shape and comeliness the deadly Upas Tree—lay the axe at the root and cut it down, let it no longer cumber the ground and poison the atmosphere. Let us abolish the whole system of laws relative to the rights of property of married women, and free the Republic from the stain of their existence. Let us adopt laws based upon the eternal principles of equity.

The proposition before the Convention is not to fix a system in detail, but to declare a great fundamental principle, and leave the details of its application to the Legislature. The United States is the only country where the common law in this respect is in practical use. In England, from whence we borrowed it, the common law is not in use, for there all marriages are the subject of a marriage contract, and the rights of the female as to property are all provided for, and secured beyond the future control of the husband, so that nothing is left for the operation of the common law, which, in the land of its origin, is thus condemned. Thus we see, sir, that there is no other nation on God's footstool that so degrades woman, and deprives her of her just rights as this of whose progress in enlightened legislation we boast so much. The

very Turk, who regards woman as the slave of his caprices and passions, is not mean enough to rob her. [Applause.] The Southern planter when he has purchased a slave, scorns to rob him of the pittance he may have brought with him. It is for us alone, to treat woman in a manner that should mantle every cheek with a blush. Shame, shame, on the manhood of the nation that tolerates so foul an outrage.

We heard read at the Secretary's desk, this morning, the speech of Cato, during a debate in the Roman Senate on the same question we are now debating, dug up from the buried and forgotten pages of Livy, in defense of the position of those who oppose the proposition under consideration. In regard to it, I have just this to say: it is a speech every way worthy of a Roman—every way befitting one of that people who had to steal their first wives, because they had not the manly traits to win them by gentler means. It is right that the historian, who records the rape of the Sabines, should embalm such a speech. [Applause.] Let those who can endorse his sentiments, adopt his conclusions. I will neither endorse the one nor the other.

We are told by the opponents of this proposition, that its effect will be to demoralize woman,—that the granting to her of these rights, will lower her in the scale of being, and bring her down from the proud position she now occupies. Will the possession of her property demoralize her? Why does it not produce that effect now?—they frequently possess large estates. It has been remarked that it is giving her the possession of "a rod." Do we seek to bestow upon females other or more rights than Eternal Justice requires for them? I cannot understand this objection, as to putting into woman's hands "a rod." We propose to give them no power, the exercise of which does not rightfully and naturally belong to them—and not to their husbands. We are told that the pecuniary interests of husband and wife should not be separated. Sir, it is not proposed to separate those interests. Now, woman is the virtual slave of her husband, and has no pecuniary interests whatever. We seek to give her back those interests of which she has been deprived—we seek to unite their interests, and bind them together by a tie stronger far than the power of money. She will feel that she has her rights, and that the property is hers as well as his—not all his, and she his slave, so far as legal rights are concerned. Let us look at this question in another light. Suppose the reform for which we are struggling to be adopted; where could the man be found who would go to his intended wife, the day, perhaps, before they were to be married, and say to her, to-morrow we are to be bound in the holy bans of matrimony; I have a little favor to ask before hand: I wish you to give me a check for the money you have in bank, to hand over to me your watch and jewels, and here

is a deed for your real estate, which I wish you to execute. Think ye a man could be found in the whole land, with a soul small enough to do it? Or, if he did, what, think ye, would be the answer of the lady? I can see, in fancy, the heartless, soulless craven, skulking from her presence, with her parting words of scorn burned into his very soul.

And yet, what the meanest scoundrel of your land would blush to do, your law does for every man. No man can ask a woman to bestow upon him her heart and hand, without, in effect, asking at the same time, a donation of all her property.

Sir, why this distrust of woman, manifested by gentlemen on the other side—when, or where in all the past, has she proved herself unequal to the station to which fate may have assigned her? Was it in Elizabeth of England, when she swayed the sceptre of the mightiest nation of the earth? Was it in the hero girl of France, whose single arm struck down Murat, when a nation trembled at his nod? Was it in Madam Roland, the heart and soul and life of the noblest political party, whose life was ever trampled out under the iron heel of despotism? Was it in the women of our own Revolution, whose fair hands wrought the banners that waved over every field from Lexington to Yorktown, and who told their sons and husbands and brothers to go forth to the conflict, and return victorious or return no more? No, sir; no, sir. She has ever been equal to her destiny. In everything but brute strength, she is your equal—in all the higher and holier feelings of the heart, she is your superior—immeasurably your superior.

The reform contemplated by the section under consideration, is one that not merely addresses itself to our sense of justice, but appeals, with irresistible force, to the best and purest feelings of our nature. And, sir, it is one that is certain, sooner or later, to triumph. We may fail in the attempt now. Years may pass away, and the grass be growing green above our breasts; but the end is not the less certain.

Sir, there is a redeeming spirit in human nature; that, once aroused, will pause not, rest not, until this foul blot is forever wiped from our laws, and woman restored to that equality of rights to which every feeling of our hearts, every dictate of our judgment, tells us she is entitled.

Sir, the eyes of our countrywomen are upon us. They are watching, with silent solicitude, the result of our deliberations. From the stateliest mansion to the lowest cabin; everywhere, throughout the whole length and breadth of our State, they know that their rights are to be here the subject of discussion. They may seldom speak upon the subject, for it has ever been the nature of woman, rather to suffer injustice than to complain. But, he who, because her gentle nature rises not in rebellion against the law that

wrongs her, would argue from her silence that she is a willing slave, has read to but little purpose that mystic volume, a woman's heart.

I would, sir, that my voice could reach the ears of my countrywomen everywhere, throughout the land. I would say to them, rouse up! awake from your lethargy; for once lay aside your woman's nature, and throw the weight of your influence in the scale where your rights hang trembling in the balance.

Let that voice be heard to which no one, in whose bosom beats the heart of a man, ever listened unmoved, and, my word for it, you will not speak in vain. [Applause.] Whatever may be the result of the struggle in this Hall; though old and time worn prejudices, though cold calculating heads and colder hearts, may repress the movement for the present; yet despair not; the cloud is breaking: not here alone in our own glorious West, but everywhere throughout our whole country—throughout the whole world.

Wherever civil and religious freedom has triumphed, man is beginning to blush for the heartless system of vassalage to which he has condemned you for ages. I say again, whatever may be the fate of the struggle here, despair not, for, as certain as that the wheels of time roll on, as certain as that God is just, man cannot always be unjust to woman.

It is for us, Mr. President, to determine whether it shall be recorded of this Convention, that they had the moral courage, despite the sneers of cynics; despite the croakings of political ravens, and in the face of all the prejudices which time, and custom, and interest have arrayed against this reform, that, rising above and disregarding all these obstacles, seeing clearly the right, they dared to be just.

Shall we, sir, do this, or shall we leave the task and the glory to others? For, be assured, sir, that, whatever may be our action, the cause itself cannot fail. It may be delayed—it cannot be crushed. Such a cause, the cause of justice; arrayed against maxims of interest, and of at best, doubtful expediency, has never yet ultimately failed in any free government—and, sir, this cannot, will not, fail.

I know not, sir, what may be the feelings of others, but for myself, I would ask no prouder epitaph to be written above my tomb, than that I was one of those who assisted in elevating woman to a position of legal equality with man.

I would rather that my name should sweep down the tide of time, as the author of such a reform, than that it should be graven on an hundred monuments, as the victor of an hundred fields.

If the book of destiny were opened before me now, and I given to choose, I would rather that my name and memory should live in the grateful remembrance of woman, than that it should be consecrated in history, as the deliverer of a nation. [Applause.]



**Mr. NAVE.** It has been well remarked that declamation proves nothing; nothing but reason, that which is the science of logic, convinces the mind. We have heard much said in reference to the question now before the Convention, about the injustice done to, and the disregard of the rights of, married women in this country. We have heard from the lips of gentlemen on this floor denunciations against the male portion of the community as being "heartless," and as being nothing more nor less than so many savages. We have had all this, and more, from gentlemen here; and had a stranger made his appearance in our midst and heard all this declamation, he would necessarily come to the conclusion that the male portion of this community were but little removed in moral character or refinement of feeling above the red man of the forest.

But, sir, let us examine this question calmly, let us consider it as its merits will justify us in considering this subject, and I think we will find that gentlemen are mistaken, that they have pursued a false issue, that they have been endeavoring to force conclusions upon us drawn from false premises, which will have a tendency to place this entire community in a ridiculous attitude. It is said by the mover of this project—the gentleman from Posey (Mr. Owen)—that the two sections now under consideration, are not inferior in importance to any subject which has hitherto been presented to this Convention, or indeed to any which may hereafter be submitted to our consideration. I admit that in some respects this is true; I admit that the subject now under discussion is one of great importance, that it is of *vital* importance, if you please, to the interests of this country in the future. For that reason it requires calmness and deliberation, and we should act upon it with coolness and gravity, not under feelings of excitement.

The gentleman from Posey speaks of having been the author of the law which was presented to the Legislature many years ago, and which, by great efforts, he secured in having passed, by which the rights of married women in this country were in some degree secured, and the interests of widows and orphans. I admired his efforts on that occasion; and I may perhaps be permitted to say here, that I admire the efforts of any gentleman who takes an interest in the rights of married women and widows and orphan children; but true enough, as he remarks, in the revision of the Statutes of Indiana in 1843 they laid a ruthless hand upon this provision, and it is now no more to be found on the pages of the Statutes of the State. I admit the conclusion to which he comes, of the great injustice that is frequently done, especially to widows. But in answer to the argument of the gentleman from Posey in reference to that point, I would observe that he is attempting to enforce a provision here, favorable to married woman and widows when it is already completely in the power of the Legislature, the im-

mediate representatives of the people, to do all this; to make such provisions upon the subject whenever they may be deemed necessary, and whenever they are instructed so to do by those whose interests they represent. I am opposed to inserting any such provision in the Constitution of the State. And why? Because I hold that we should not take upon ourselves to legislate unless we possess that power. That is a duty which we ought to leave to the representatives of the people, and I think it more especially devolves upon them to make provision for the rights of widows and married women.

The gentleman from Posey said in his speech, that the law-maker should be a man of experience in reference to these all-important subjects. Now, sir, I perfectly agree with him in this assertion. And, let me ask, does the gentleman from Posey understand these high and noble feelings which animate the female heart. Has he ever been in adversity and received from the partner of his bosom, that cheering smile which would seem to say "oh mind it not, better days will come?" Has he ever been on a bed of sickness where that partner has watched the motion of every muscle, listened for every breath, and felt the beating of every pulse, standing by his side like a ministering angel to anticipate his every want? If I am rightly informed he knows and has felt all this, and therefore he is a proper individual from "experience" to suggest an organic law to remedy the evil complained of.

I will now, Mr. President, pass from this view of the subject to give a brief summary of the law which governs and controls the rights of females in this State, as I believe the law, as it is now in force in Indiana, has not been given by any gentleman who has thus far spoken on the subject; and when I have given that summary, I feel confident that no gentleman will controvert the position which I assume. I will in the first instance consider what is "marriage," because this necessarily enters into the discussion of the question. It is one of the component parts of the question before the Convention, and therefore it may be observed, generally, that the law considers marriage in the light of a contract.

The husband and wife become, by their marriage, one person in law. It is said in the Book of books, that "He which made them at the beginning made them male and female;" and said "for this cause shall a man leave father and mother, and shall cleave to his wife, and they twain shall be one flesh, wherefore they are no more twain but one flesh." That is the law. [Several voices—"Aye; that's it, that's it."] It therefore follows, as an abstract proposition, that a man and wife are one person, and upon the fact that they are one person, they, in law, are not permitted, in trials in court, to be witnesses for or against each other, with but one exception, and that is in the case of a criminal

prosecution against the husband for violence done to the person of the wife.

The custody of the person of the wife belongs to the husband.

And as to the property of the wife, it is laid down in the law that all freehold estates of which the wife is seized at the time of the marriage, or afterwards, are vested in the husband and wife during the coverture, in right of the wife; and during their joint lives the husband is entitled to the profits, and has the sole control and management thereof, but cannot convey or charge the lands of the wife, for any longer time than his own interest continues.

The personal property of the wife, belonging to her at the time of the marriage, or accruing to her during coverture, becomes, in general, the absolute property of the husband, with one exception, that is her *paraphernalia*, and even that he may, under certain circumstances, dispose of. After the marriage the husband is liable to pay all the debts of the wife, contracted before as well as after the intermarriage.

Although the husband and wife cannot, at common law, contract with each other, or grant to each other directly, yet even direct gifts between husband and wife are often considered effectual in the courts of equity; and courts of equity will also take cognizance of any trust created in favor of the wife, whether made by the husband or a stranger, and in administering that jurisdiction will take views of the rights of a *feme covert*, different in some respects from those of the common law. And where a donation or grant is made to her, for her sole and separate use, she will be held in equity to take a separate estate, although the donor should have omitted to name any trustee.

And the wife may acquire property by what is called a marriage settlement, and if made prior to the marriage, it is in law deemed a valuable consideration; and if made after marriage, the same is voluntary, and therefore without any valuable consideration.

The gentleman from Posey, by his proposition now before this Convention, proposes to insert in the Bill of Rights a proposition, that, if adopted, will make an innovation upon the common law, by placing it in the power of *femes covert*, in the future, to acquire, hold, and own property separate and distinct from their husbands; or, in other words, he proposes to incorporate into the organic law of Indiana the Roman or civil law. This the Convention clearly have the right to do; but is it expedient for them to do so, with all the experience of ages before their eyes, pointing them to the many evils which have, in past ages, blighted the prosperity of nations, and caused infidelity, debauchery, and misery to fall upon them and destroy their peace and happiness, and has caused France, with the teachings of Voltaire and other infidels, to shut out the light of the benign influences of the gospel from her borders?

The proposition of the gentleman from Posey, (Mr. Owen,) in my opinion, is clearly uncalled for. By a reference to the history of the past, we may learn what will be the probable effect upon the future under a like law to that which is proposed to be inserted into the organic law of this State. Therefore, it may not be considered out of place for me to consider, summarily, some of the many evils which the Roman civil law entailed upon the Romans themselves, and the effects produced thereby upon the marriage state. It has been well said by many able jurists and statesmen, that the civil law was attended with many inconveniences; that it increased debauchery; besides, it was no uncommon thing for women, when they become richer than their husbands, to become insulting to them, and to behave themselves in their families with great haughtiness. The immortal Jefferson, writing in reference to the then state of society in France, and the debauched condition thereof, attributes the whole to the effects of the civil law then in force in France, permitting the wife to hold, acquire, and own property separate and distinct from the husband; and if he, with all his experience and sagacity as a statesman, living in the city of Paris, and beholding daily the withering effects of such a law upon the happiness and prosperity of that nation, has given us his disapprobation of such an unholy law, and whose opinion is worth one hundred Kents and Storys, who could know nothing of the practical effects of such a law upon the people of France. Surely it becomes us to act with the utmost caution on a question involving such serious results. I would not, by any means, if in my power, attempt to detract from either of those distinguished jurists their well earned reputations as lawyers and jurists; but they were mere book men, while, on the other hand, Mr. Jefferson was a statesman of the first order of intellect, with great and extensive experience.

Such, Mr. President, is a brief summary of the law as it now exists, and is in force in the State of Indiana; and this is the law about which gentlemen have made so much complaint. The gentleman from Posey, (Mr. Owen,) I believe, is not a lawyer, and I think he has not fully understood the rights of the married women as they exist under the law.

MR. OWEN. Oh yes; I have understood every word of it.

MR. NAVE. The gentleman informs me that he has understood every word of the law in its force and effect. Well, sir, this is the law which the gentleman proposes to change; and he says that the change which he proposes, is a radical change in reference to the law of descent, and the rights of the female to acquire property separately and distinctly from her husband.

Now, let us examine this question for a moment; and, in doing so, let us bear in mind that



man and wife are *one*—identically one—one in interest, one in feeling, one in hope, one in present enjoyment, one in future expectation, one in everything that pertains to happiness. They are created one by the contract entered into, and it is the interest and the desire of the one to make the other happy.

Mr. President, I would not wish to insinuate for a moment, that the gentleman from Posey had any improper design in introducing a proposition of the kind which he has introduced into this body. Far from it. But if he wishes to see feuds and discord and dissatisfaction reign where all should be calmness and harmony and peace, I cannot conceive any proposition more admirably suited to effect such an end, as that which he has presented here. If he wishes to illustrate that portion of Scripture which says, "a house divided against itself cannot stand," then let his proposition prevail.

He proposes to bring the wife into direct competition with the husband, and thus to overturn all that is sacred and holy in that best and brightest and happiest and holiest relation with which the Almighty has deigned to bless mankind. What does the gentleman propose? He proposes that the wife shall hold property separately and distinctly from her husband, over which he has no manner of control, and which is to be entirely at her own disposal, so that she could follow it to New Orleans, or England, or any other portion of the globe. Why, sir, such a proposition is directly in conflict with that unity of feeling and interest which should ever exist when man and wife are united together. As the gentleman from Wayne (Mr. Rariden) said, it is not the property which elevates the wife; it is not the property which she may acquire that will make her happy. The love of wealth or the possession of property is a passion of which, as a wife, she knows nothing. It is the feeling that there is one on whom she can rely, one to whom she can look up, one to whom she can give her heart, her all, that alone controls the female portion of the community, and that attaches them to the harder sex.

Mr. President, I have briefly alluded to the effects of the Roman civil law upon that people, and also upon the people of France, where the same principle prevails. Sir, we have an illustration of the workings of the principle, in some measure, in our own country, in the State of Louisiana. It must be known to many gentlemen here, that it not unfrequently happens that persons taking property—say the surplus produce of their plantations—down the Mississippi river to New Orleans, come home without a single cent, having been swindled by the operations of just such a law. And how is this? The process is exceedingly simple. The planter, with his surplus produce, goes to market, and finding a buyer who offers a fair price, and who, to all appearance, is sufficiently responsible, he suffers his property to go upon a short

credit. The time of payment comes, and he applies for his money; but, instead of receiving it, he is very coolly told that the sheriff has taken everything under a judgment, and that there is nothing left to pay with. And in whose favor, think you, was the judgment given? Why, in favor of his wife, given by confession. Execution is issued, the wife purchases in the property to satisfy her judgment, and the unfortunate man who has thus been swindled out of his property, returns to his family without a penny. This, sir, is the effect of the law in Louisiana—an effect the sad consequences of which have been experienced in many a melancholy instance by those who have been trading there from year to year.

Mr. President, I think, from this very illustration, it follows, as a matter of course, that the object of the gentleman, whatever it may be, can be much better accomplished by legislation than by the incorporation of any principle into the organic law of this State. The evils he complains of can be better remedied by legislative enactment—by the men who are sent directly from the people to make the laws under which all are to live.

Sir, in conclusion, I would remark that I am in favor of securing to married women all that should be secured to them. I would go this far: that when a woman who has property marries a man, that property, or any other that may accrue to her, shall not be liable for the debts or contracts of the husband; and I think all the hardships complained of, would be remedied by a proposition which I shall offer as an amendment to the amendment of the gentleman from Dearborn. It is to add in the proper place the following:

"No law shall be passed whereby the property owned by a *feme covert* at the time of her intermarriage, or by her acquired subsequent thereto, either by inheritance, gift, grant, devise, or otherwise, shall ever be taken for the debts of the husband contracted before or after said marriage."

If this provision is incorporated into the organic law of the State of Indiana, I think it is all that any gentleman can wish for—all that the females could desire. It secures in the woman's hands all her own property, leaving it within the control of the husband, but perfectly secured from attachments in consequence of his debts or contracts either before or after marriage.

Mr. BASCOM. I have but a very few words to say upon this question, and the Convention need not, therefore, be under any apprehension that I am going to inflict upon them a long speech. The opinions of gentlemen seem to have run into extremes on this subject. One gentleman would make out that the ladies are the guardian angels of this world, and another would seem to insinuate that they are little better than fiends, who are always fighting and

quarreling with their husbands. That speaks not well for the comforts of matrimonial life—at least so far as the argument of the gentleman from Hendricks goes. These arguments would go to make you believe that when a woman is possessed of property, because she holds it in her own name, it must necessarily create war between her and her husband. Now, I cannot go to the extreme to which the gentleman from Hendricks (Mr. Nave) would go; neither can I agree entirely with the gentleman from Clark (Mr. Gibson). However willing I may be that you should elevate the women and place them in their proper position, I cannot concede that they should take the position in which some gentlemen would place them. I look upon woman as being fitted for another sphere; I look upon her, not as being designed to mingle with us in the busy scenes of life, to participate in its toils, its struggles, and its cares, but to be placed within our homes, to be by our firesides after our daily toil is finished, to welcome us with her smiles, and receive us with that affectionate greeting which alone can make a happy home. This is the position—this the place for which she is adapted.

I am much mistaken in my notions of the ladies of this State, if they wish to enter into the great political arena, and distinguish themselves by their acts in the political world. I cannot believe that the women of the State of Indiana, have any such aspirations. I cannot but think that they know better the position for which they were designed, and that they value the influence which they possess in their own peculiar sphere much too highly to seek any distinction beyond it.

But, sir, this is said to be a question of right. Now, I am willing they should have all the rights to which they are justly entitled, and, this is not a question whether you are going to take away the rights of women, but whether you will give them the rights to which they are justly entitled. Sir, I believe that women should hold to themselves the property of which they were possessed before marriage—that it should be held sacred to their use; but I cannot conceive that it would be right, or that it would be placing man and woman in the right position after marriage, if they are still to keep up separate establishments, or carry on separate businesses. I agree with the gentleman from Hendricks, when he says that man and wife are *one*—one in feeling and in interest (and in all cases of happy marriage this is so). And in that case when their interests are the same, what necessity for making this distinction? Then I would say, let woman have her own property which she possessed prior to marriage in her own right after marriage, and whatever is acquired after that, let it be possessed in common; let it stand as the property of the family, and let each have an equal right in it.

Then, sir, I am willing to amend the law so far as this, that where there is no heir at hand, the law should not go over the country to find an owner to the property—in other words, that the widow should be entitled to the property of the husband, for I believe that she is the proper person to whom it should revert. But if you are going to the extent to which some gentlemen seem inclined to go, if you are going to give them the right to go into business independently of their husbands, to purchase goods, and to trade and traffic; if you are going to place them in competition with their husbands in worldly affairs; if you are going to place them side by side with their husbands, in a neck-and-neck race of competition in the affairs of the world, then I think you will place them out of, and beyond, their sphere; you will place them in a position which is not legitimately theirs; and I hold that they should remain in their own legitimate sphere. I would not rob them of what they have. None but a fiend would take from the wife the property which she brought with her. No person with proper feelings would desire to rob a woman of her just rights; but, at the same time, I think it is highly desirable that she should be allowed to remain in the position for which she was designed, and which it is her bounden duty to fulfil—the position in which every right thinking man would desire to see her placed. Then, sir, I think that with a very slight modification of the section as reported by the gentleman from Posey, (Mr. Owen,) this matter might be accomplished. I hope that before the final action is taken on the section that it will be to some extent amended.

Pending the question on the amendment offered by Mr. Nave;

On motion of Mr. STEEL, the Convention adjourned.

**SPEECH OF MR. TERRY OF DAVIESS,**  
*On Mr. Pettit's resolution proposing to abolish the Grand Jury system, delivered Monday, November 4, 1850.*

MR. TERRY. I fear, sir, as, in consequence of my ill health, I have been unable to give the thought and preparation to this subject which it appears to demand, that I shall not be able this morning to discuss its merits in the manner in which they should be presented.

But, Mr. President, no question or subject has been or can be presented for the decision of this body, in my estimation, that demands more imperatively the calm consideration and impartial judgment of the Convention than the proposition of the gentleman from Tippecanoe (Mr. Pettit) to abolish the Grand Jury system. This is an institution dating its origin back to a period of time long anterior to all human tradition relating to it; and it has been cherished and fostered as a shield to the weak—a curb to the



strong—through ages of civilization and experience, and has been preserved by its innate force and intrinsic merit and excellence amid the shocks and convulsions of human ambition—the inventions and experiments of human caprice and fickleness—and the rise and fall of sects, systems, and dynasties; and now, sir, it is interwoven into the very texture of our social organization, and surrounds us in almost every relation of life with its potent and protecting influences.

But now a spurious and fictitious species of progress, stimulated by a morbid and ill-directed public opinion, demands, not its modification—not its reform—not the application of healing and sanative remedies for its defects, if any exist, (and that they exist no one will deny)—but its total extirpation from our judicial system. And why? Because, say gentlemen, this is emphatically an age of progress and reform; that institutions, commended by the wisdom and experience of the past as securities of human freedom, are now tottering with the imbecility and decay of hoary-headed senility; and these great and long cherished principles of Anglo-Saxon liberty, upon which the stately fabric of our Government is reared, have become obsolete; and they are to be supplanted, in public appreciation, by a sublimated species of political transcendentalism, crude, abstract, and impracticable. Reform and progress have become the watchword of political and social organizations, and both of the great political parties of the nation have entered upon a race of rivalry in governmental reforms, and, like the strong men of old, blind to the lights of the past, they would pull down the pillars of antiquity, and crush all beneath their ruins.

Mr. President, the attack upon the Grand Jury system, on this floor, has been a gallant and able one, such as may make its friends have fears for the strength and security of their positions and defenses. And while I express my admiration of the gallant bearing and well sustained assaults of our adversaries, I may be permitted to say, without intending the slightest disparagement, that they have enlisted the aid of auxiliaries not recognized as the legitimate weapons of debate. Gentlemen have sought, in the first onslaught, to obtain the vantage ground of attack, by assimilating this institution with institutions of another age and country, that have come down to us invested with all the odium that injustice and oppression of every species engenders in the human mind, backed by the powerful denunciatory declamation of the able gentleman from Tippecanoe (Mr. Pettit). But are we to treat and discuss questions of so important a character in this manner? I should hope not. Why, sir, a skillful surgeon, when called upon to examine a diseased system, finds out and carefully removes the diseased parts, leaving those that are sound remaining. But this is not the course proposed to be pursued

with reference to the Grand Jury system. Because it has defects—but defects not affecting its vitality and efficiency—it is proposed to extirpate the system entirely, instead of removing those defects.

As I remarked before, sir, this is an institution which has been as a shield to the weak and a curb to the strong, and was originally instituted, as we are justified in supposing, by the government from which we derived many of our most valuable laws and institutions for the protection of human liberty, as well as for the efficient execution of the laws against oppression of an aggravated character; and is one of those principles of human rights and personal freedom, incorporated in the Magna Charta, and extorted by the sturdy barons of England from King John on the field of Runnymede.

Now, let gentlemen review English history, and they cannot find a single instance where Grand Juries of their own volition have become the instruments of oppression. But wherever we find instances of an arbitrary exercise of power over the subject by Grand Juries, we find it is the result of a corruption of the system, and not traceable to any organic principle or defect.

Nearly all the instances of oppression that have come down to us, of the subject by the crown, are traceable to a disregard of law in the institution of irregular and unconstitutional tribunals, called into existence by the exercise of kingly prerogatives or parliamentary violence, contrary to the common usages and customs of the realm, such as the Courts of the Star Chamber and High Commission.

But, says the gentleman from Porter, (Mr. Anthony,) there is no analogy between the English government and ours. In this particular I think he is mistaken. The dearest principles that we cherish, those principles of civil government that we all reverence, and for the vindication of which our fathers, single handed, entered into conflict with the gigantic power of Great Britain, were derived originally from England. The first civilized country on earth that adopted, as a means of government, the representative system, was Great Britain, and that principle has been incorporated in the Constitution of every State of the Union. The State Constitutions in their principles, and the Federal or National Government, in its form, are close copies of the English government. The English government, though called into existence by no written Constitution, and Parliament, are as much controlled by rules as ours is, and regulated by organic principles as accurately defined and understood as are the principles that control ours.

The gentleman says he sees no analogy. From whence, I ask, do we get our ideas? Why, sir, nearly all the principles of human freedom, of civil liberty, of personal guaranties, were derived from that country—where the science of

human government was better understood, and the securities of personal liberty better observed and enforced than in any other country that ever existed. Our Revolution did nothing more than to sever our political connection with England, to abolish a hereditary executive and aristocracy, and establish a republican form of government—making no further changes than were necessary to substitute a republic for a monarchy—but retaining all else of the English system of government and laws consistent with our new condition and form of government.

The most prominent defects in our Grand Jury system are referable to the unskillful and injudicious attempts to reform it. In England it has none, or very few defects. What is its form, character, and operation there? The sheriff of the shire or county causes to be summoned twenty-three of the most respectable men in the shire, whose names for convenience may have been selected from the register that is always kept of the names of landholders in the shire, at least one of whom are selected from each hundred—a county sub-division similar to our township—after thus summoned they meet at the proper time and place—not as a prosecuting body, acting by their own volition, but merely as an inquiring body to investigate and to inquire into the probable truth of such accusations in the form of an indictment, as may be laid before them by the proper body—and the object of thus selecting the members of the body from all parts of the shire is to enable them to be more exactly informed of offenses that may be committed in their immediate neighborhood, if any. When the Grand Jury meets in court, the judge charges them specially and particularly in relation to their duties. After the charge is given, proclamation is made by the crier of the court for justices, coroners, and others, to deliver all recognizances and inquisitions taken by them. Proclamation is again made for recognizances of witnesses and others to prosecute and give evidence. These when produced are delivered to the crown officer or attorney prosecuting the pleas of the crown, that the bills may be drawn and prepared, these being always prepared before any examination by the Grand Jury is made. The indictment is then presented to the jury for their consideration. They then examine the witnesses and ascertain from the examination whether the charge preferred by the crown can be sustained or not—for by the express provision of the law and by the direction of the judge they are not to present any man unless they are convinced that the charge preferred against the supposed offender be true, and they are convinced of his guilt; and in England it is rarely necessary to send for witnesses during the session of the body, to appear to testify before them, they usually being under recognizance to appear. The Grand Jury does not sit in that country for the purpose of getting up

prosecutions, but solely for the purpose of acting on cases that are brought before them for consideration. In this State every member of the Grand Jury, by some unwarranted construction of the law and a perverted sense of duty, considers himself bound to ferret out all offenses whether great or small. He looks upon his own position as a Grand Juror as if it were that of a prosecuting attorney, and therefore supposes that it is his duty in an individual capacity to ferret out and report all grades of misdemeanor. Now, sir, this is not strictly the duty of a juror or of a Grand Jury—and this it is that occasions so much prejudice against our present Grand Jury system, that they seek out and present the most trivial offenses, when in reality they have nothing to do with those minor misdemeanors unless specially brought before them. Now if a judge would charge a Grand Jury properly, he is bound to tell them that when there are any offenses of a higher grade it is their duty to ascertain and indict the criminals. It is their duty to use every possible means for bringing them to punishment. But with regard to trivial offenses, they need not incur the time and expense necessary to find out the petty violations of the law. Those cases more properly come before the justices of the peace.

Again: another cause of complaint against the action of Grand Juries in this State, arises from a niggardly and ill-judged system of economy. Instead of giving the officers prosecuting the criminal pleas of the State an adequate and compensative remuneration, that would induce men of ability and professional character to seek such offices, and thus give character and efficiency to this branch of the public service; the present mode of compensation, consisting exclusively of fees in cases of conviction, throws the office into the hands of men, in a large majority of cases, wholly incompetent and needy, and whose direct interest it is to foster and encourage prosecutions and to make the Grand Juries the means of increasing their compensation. I can, myself, cite an instance of a Grand Jury in one of the Southern counties having, under a control of this character, presented at one term of the court, some forty indictments for the offense of retailing liquors without licence, alone.

But this does not arise from any defect inherent in the system, but from the character of our prosecuting system.

An objection is made to another feature of the Grand Jury, and this feature is peculiar to Grand Juries both in this vicinity and in this county; and that is, that its deliberations are secret. This, so far from being an objection, should be considered one of its chief merits; without this the system would have no vitality, no efficiency, and all its other excellences would be marred and neutralized. Deprive the system of this, and you emasculate it. Secrecy is en-



joined for wise purposes. One reason assigned for its observance is that it prevents the subordination of witnesses; by the party indicted being ignorant of the witnesses on whose testimony he is indicted. It also enables the timid to act boldly in bringing desperate wrong-doers to justice. It also induces the members of the Grand Jury to act independently, and to discharge their duties efficiently and without fear of consequences. Deprive it of this principle and you destroy the most deserving feature in its organization.

But to bring public odium to bear against this time-honored institution, it has been assimilated with those of the past, and of other countries, the history of which is associated with the reprobation that is always called forth by the perversion of power and human oppression and cruelty. In the strong and denunciatory language of gentlemen it has been denounced as approximating, in many of its features and characteristics, to the court of Star Chamber and the Spanish Inquisition, and to every other institution that the memory of gentlemen could present, that is odious in public estimation. Its only resemblance to the Star Chamber and Spanish Inquisition, is in its principle of secrecy. In no other feature is there the slightest analogy or parallel.

The Star Chamber was originally instituted for the suppression of maintenance; an offense which became very common after the civil war between the two Roses.

In the general license that then prevailed which the vigorous hand of the 7th Henry could barely repress, one mode of aggression of the strong upon the weak then prevalent, was to prefer unjust claims and urge them by the strong hand, or by corrupting courts and juries. Its jurisdiction was subsequently extended to all offenses, contempts, and disorders that lay out of the course and reach of the common law, for then it might fine, imprison, punish corporally by whipping, branding, slitting nostrils and ears. All prosecutions were instituted not by presentments or indictments through a Grand Jury, but were founded upon information filed by the attorney general and other officers of the crown, and determined, summarily, without the intervention of a petit jury. The members constituting the court were the sole judges of the law, the fact, and the penalty. This was a potent instrument in the hands of the crown for the extension of its prerogatives, for the perversion of justice; and so great was the oppression resulting from its arbitrary exercise of power, that, in compliance with the clamors of the nation, it was abolished in the reign of first Charles.

But, says the gentleman from Tippecanoe, (Mr. Pettit,) the system originated in a monarchical government, and was instituted as a "prop" of the crown, and to protect its prerogative. The gentleman has truly stated its

origin, and if he means by the expression "a prop to the crown," that it may have been instituted by the crown, he may be correct, as in the infancy of the English government, especially under the Saxon dynasty, all laws are supposed to have originated in the monarch, aided by his nobles or thanes, and it is highly probable that the Grand Jury may have had such an origin, as a part of the system of criminal courts. But this rests wholly upon conjecture.

But that there is any thing in the organization of the Grand Jury system that makes it naturally an ally of the crown, for the oppression of the subject, I cannot believe; for its whole theory and use, as far back as tradition extends, is inconsistent with such an assumption. In its very nature it could not be a prop of the crown. The members of the body were, and are usually, selected from the great mass of the people, who were to sit in judgment on the conduct of their neighbors and fellow subjects, and as such, would not, naturally, be made instruments in the hands of power to oppress those with whom they held a community of interests and identity of feelings and sympathies. The "bloody assizes" have been alluded to by the gentleman from Tippecanoe, as one of the results of the operation of the system, of which the system is, to some extent, at least, responsible. By the "bloody assizes" are meant the severe and sanguinary executions that were inflicted under the color of legal proceedings in the reign of James II., under the bloody auspices of the ferocious Jeffries, upon the followers of the unfortunate Earl of Monmouth, after his defeat at Leamoor. But even in their executions the forms of law were observed; each was indicted by a Grand Jury for treason, tried by a court, and found guilty by a verdict of a petit jury; and as well might the force of gentlemen's denunciations be hurled against courts and petit juries as the Grand Juries, for if wrong was done in these executions, all were equally inefficient for the protection of innocence.

But it will be recollected that the unfortunate victims of these assizes were prosecuted and convicted for high treason, an offense then and now recognized by the laws of all countries. Those deeds were not attributable to the Grand Jury. Those bodies did but carry out the law as it was formed for their guidance. They were not responsible for the character of the laws under which they made their presentments. Those laws were under the exclusive control of the rulers of the land, and as they were laid down to the Grand Juries they had to administer them. We might as well charge the evils of bloody assizes upon the petit juries of that land as upon the Grand Juries. And, indeed, there is as much reason for the abolition of the system of petit juries as for the abolition of the system of Grand Juries.

The Grand Jury a prop of the crown ! Why then did Henry VII, the most avaricious monarch that ever sat upon the English throne and who left behind him a treasure greater than did any monarch who ever preceded or followed him, cause to be enacted by a servile parliament the statute to which the gentleman from Hendricks (Mr. Nave) has referred, authorizing prosecution of all offenses, not capital, to be by informations, before the justices without an indictment or presentment by Grand Jury, and trial by petit juries. If a prop to the crown and an instrument in its hands, why did the crown by frequent stretch of its prerogative create other tribunals by which it oppressed and despoiled the subject ? Would this have been done if Grand Juries had then been pliant and submissive tools ? They were not such tools, and from their very nature and organization they could be prostituted to no such purpose. We find that the crown in all its struggles for the extension of its power, resorted not to the aid of Grand Juries, but to prosecutions and proceedings founded upon informations.

Informations are a common law proceeding. They are of two kinds ; one kind was in behalf of the king for such enormous misdemeanors as peculiarly tended to distract or endanger his government or molest or hinder him in the regular discharge of his royal functions. This mode of prosecution was instituted on the ground of avoiding fatal delays. These are filed by his attorney general ; the other was filed, in the name of the king upon the relation of a private person or informant, who usually had an interest in the penalty, if pecuniary, by the king's coroner, or attorney in King's Bench, called master of the crown officer. These last were for notorious misdemeanors, such as riots, batteries, libels, &c. ; but when the jurisdiction of the Star Chamber was extended, and when the statute of Henry VII, referred to by the gentleman from Hendricks, (Mr. Nave,) had permitted informations to be filed, upon the relation of any common informer, upon any penal statute not extending to life, or member, at the assizes or before the justices of the peace, who were to hear and determine the same, at their discretion, without juries, either Grand or petit—the Court of King's Bench fell nearly into disuse, and this mode of proceeding was found a potent instrument for gratifying the tyrannical impulses and proclivities of the House of Tudor.

It was under this system of things that Hampden and Dudley, the minions of Henry VII, the active panderers to royal avarice, by hunting obsolete penalties constantly harassed the subject by informations, and enriched the crown. So great did this abuse become that it was enacted in the reign of William and Mary that the clerk of the crown should file no informations, upon the relation of an informer, without the express direction of the Court of King's

Bench, the informer to execute bond to prosecute such information effectually, or to pay costs in case of failure.

But, says the gentleman from Tippecanoe, (Mr. Pettit,) the institution of the Grand Jury cannot be found in the ancient institutions of Greece, Rome, or Sparta, nor in any of the continental governments of Europe of the past or present age, but can be found nowhere but among the institutions of Great Britain. And I am glad the gentleman is correct in this. Where else should we look for the great principles and guaranties of human freedom and civil liberty, but in that land whence we trace our origin, and whence we derive all those institutions and laws which are the pride and boast of the Anglo-Saxon race. There it was that the rights of man were first recognized and accurately defined, and have been uniformly vindicated. At the time of our birth it was the most free and civilized nation on earth, and what more natural than that we should adopt her laws and institutions as a model for ours ?

If we would find whence we derived many of the dearest and most cherished dogmas of political faith, that are incorporated in our bill of rights, or if we would find the germ whence they sprung, we must look in the declaration of rights proclaimed by the British Parliament, and ratified and recognized by William and Mary in 1688. Would the gentleman from Tippecanoe (Mr. Pettit) have us to look to Rome, the plundering and aggressive mistress of the ancient world, that trod the nations of the earth under her iron heel, destroying every vestige of freedom ? Would he have us look to Sparta, which, though warlike, was a nation of petty thieves ! To France, where human liberty, in the great convulsions of 1792, that prostrated her government, was supposed to mean license, pillage, and slaughter, where passion and crime rioted in wild and hideous revelry ? We find nothing in them worthy of our imitation, and I hope it is no argument against our Grand Jury system that they had no such institution.

But what, sir, is the proposed substitute ? A public examination of the accused and the witnesses on both sides, before a species of court, to be organized in each county. This, I understand, is to be preliminary. If this tribunal determines that there is probable cause of guilt, the accused is to be recognized to a higher court for trial, upon the information to be filed by the prosecuting attorney.

The objections to this mode are obvious. The accused will have his case passed upon in this preliminary form by a tribunal, ignorant of the law, and subject to all the influences of inflamed public feeling. In the case of the Grand Jury, the court are its legal advisers, and by the secrecy of their proceedings, the members are beyond, and protected from, the influences of popular excitements. Let this plan be substituted and you put it in the power of every pros-



ecuting attorney to become a common informer. His interests directly prompt him to such a course. As a matter of course the more prosecutions that are set on foot the more he is likely to gain.

It is extraordinary that gentlemen, who make a chief and prominent charge against the Grand Jury, that it resembles the court of the Star Chamber in but one particular—that of its secrecy, should be willing to substitute the very mode of proceeding peculiar to that court, in lieu of indictments—that of prosecuting by information—a mode of prosecution that has been almost entirely condemned in England, or, at least, placed under great restrictions there. And these informations are to be filed and set on foot by a class of officers, whose very compensation depends upon the number that can be got up. If in England this species of prosecution came into disfavor, when filed by an officer who had no interest in the result, to what approbrium will it not be subject to here, where it can be instituted by an officer whose very bread and sustenance depend upon his vigilance and activity.

I find, Mr. President, that almost every State of the Union has, in its organic law, provided that no man shall be put to trial to answer crime but upon presentment or indictment; that the Convention that framed our national Constitution had omitted to incorporate it in that instrument; that this principle was regarded so important that it was inserted afterwards as an amendment, in common with other important provisions for the security of personal rights and immunities; and this of itself, with me, would be strong and ample argument, though all others were wanting, for its retention in our organic law.

Mr. President, I had intended saying much more on this subject, but my ill health compels me to bring my remarks to a close. I have not physical ability to proceed further; but I hope the action of the Convention on this subject will be deliberate, cautious, and conservative; that this important institution will not be totally discarded; that we will come to a conclusion favorable to its retention, and that something more will be required for its successful overthrow and condemnation than denunciation and disparagement. With these remarks, I leave the subject in the hands of the Convention, not doubting its decision will be proper and right.

THURSDAY, Nov. 14th, 1850.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. CRESSY.

The journal of yesterday was read and approved.

Mr. COOKERLY moved that there be a call of the Convention.

The motion was not agreed to.

ANNOUNCEMENT OF THE DECEASE OF THE HON.  
JAMES VANBENTHUYSEN.

Mr. RITCHEY. I rise, Mr. President, to perform a most melancholy duty; to announce to you, sir, and to this Convention, the death of the Hon. JAMES VANBENTHUYSEN of Shelby county, late a member of this Convention. Sir, in the absence of his colleague, I regret to say that I am not sufficiently informed of the life and character of the deceased to present that eulogy which I have no doubt his memory deserves. I have been slightly acquainted with the late Mr. Vanbenthuysen, however, for some three or four years; and, sir, from what I knew of him, and from what I have learned concerning him, I have reason to believe that he was a most honorable man, and one who was well worthy of the confidence reposed in him by the people of his county.

Sir, I shall not undertake, in consequence of my limited acquaintance with Mr. Vanbenthuysen, to pass any eulogy upon him. I hope that upon the arrival of the cars to-day, his colleague, Mr. Hendricks, from Shelby county, will be here; and as he has been familiarly acquainted with the deceased, he will be the proper person to make such remarks concerning his life and character as are appropriate to the occasion. I shall only at present, therefore, move that a committee be appointed to prepare resolutions on the subject of his death, and to make the necessary arrangements for the funeral; and then I would suggest that the Convention take a recess until such resolutions shall be prepared by the committee. I therefore move the adoption of the following:

*Resolved*, That a committee of five be appointed to prepare appropriate resolutions upon the subject of the death of the Hon. James Vanbenthuysen, and to make the necessary arrangements for the funeral ceremonies.

Mr. PETTIT suggested an amendment to the resolution by adding the following:

“And as a testimony of respect to the deceased, that the Convention do now adjourn.”

Mr. RITCHEY. I accept the amendment as a modification of the resolution that I have offered.

The PRESIDENT. To what time is it proposed the Convention shall adjourn.

Mr. PETTIT. As to that, I will consult the wishes of the mover of the resolution.

Mr. READ of Clark. I would suggest the propriety of letting the committee be appointed, so that they may prepare the necessary resolutions and report them, and that the Convention then adjourn over until to-morrow. That, I believe, is the usual course of proceeding in such cases.

Mr. PETTIT. It strikes me that the resolutions will come in more appropriately when we meet again; and the colleague of the late delegate from Shelby county will then be here, and

may formally announce the death. However, I shall acquiesce in any suggestion in reference to it, and in the meantime I will withdraw the motion to adjourn.

Mr. LOCKHART suggested that it would be better to adjourn until three o'clock; by that time, the delegate from Shelby would have arrived.

Mr. SPANN remarked that the uniform custom had been to appoint a committee, and then to take a recess until the committee had time to prepare a report, so that the proceedings might be conducted in proper form.

Mr. RITCHEY remarked that he believed no intelligence had been received from the family as to their wishes in regard to the arrangements for the removal of the body.

Mr. READ of Clark said, he could see no impropriety in the Convention remaining in session until the committee made their report, and then adjourning over until to-morrow. In the meantime, until the committee were prepared to report, they could go on with business.

Mr. LOCKHART. It seems to me that it would be proper to await the arrival of the delegate from Shelby, and give him opportunity to prepare what he desires to say to the Convention on this occasion, and that we had better adjourn until three o'clock for that purpose.

Mr. EDMONSTON. In matters of this kind it has always been usual, as far as my experience goes, after the announcement of the death of any member, to appoint a committee and then take a recess, in order to give the committee sufficient time to prepare their report, during which time no business was transacted. He hoped the practice would not be changed in this instance, for it might appear as though that was a want of respect for the deceased.

Mr. PRATHER. It seems to me, sir, that the better course would be—

The PRESIDENT. Does the gentleman from Vanderburg withdraw his motion to adjourn?

Mr. LOCKHART. If the gentleman wishes to speak I will withdraw it.

Mr. PEPPER of Ohio (Mr. PRATHER yielding the floor) said, he would merely add one word to what had already been said. It seems, said Mr. P., that, in some respects, this is a new case, and not like any that has preceded it. The gentleman from Johnson, who makes this motion to pay appropriate honors to the memory of our deceased friend, does not profess to be able to state, and will not be able for some little time to obtain intelligence as to the wishes of the friends of the deceased.

I understand him to say that he is desirous that the Convention shall await the arrival of the gentleman from Shelby before we take any action on the subject. It is not known to any one here, I believe, whether even the family and friends of the deceased have received notice of his demise, or whether they have arrived here.

I think, under the circumstances, that it would be well to adjourn until three o'clock before we take any further action.

Mr. KINDLEY. It is proper, perhaps, that I should take some part in this matter, inasmuch as I was acquainted with the deceased. He stated to me that he wished particularly to be taken home to be buried among his friends. I will add, that is desirable, as it is supposed that as the disease is contagious, that the corpse should be removed as soon as possible. And I would also state that all the arrangements can be made by twelve o'clock.

The PRESIDENT. The Chair will suggest that it is usual in such cases to take a recess for half an hour. This will give the committee an opportunity to make the necessary examination.

Mr. NAVE moved that the Convention take a recess until ten o'clock.

The motion was agreed to.

The Chair appointed Messrs. Ritchie, Kindley, Zenor, Pettit, and Owen, the select committee, and

The Convention then took a recess until ten o'clock.

#### AFTER THE RECESS.

At ten o'clock the Convention resumed its sitting.

Mr. RITCHEY, from the select committee appointed to draft resolutions, &c., made the following report:

Mr. PRESIDENT: The committee appointed to draft resolutions relative to the death of the Hon. JAMES VANBENTHUYSEN, late a member of the Convention, and also to make the necessary arrangements for his funeral, beg leave to report—

That they have learned that it was the express desire of the deceased that his body should be removed for sepulture, to his own residence in Shelby county, and therefore they consider it unnecessary to make any arrangements regarding his funeral, other than those reported in one of the resolutions hereto attached.

They report and recommend the adoption of the following resolutions, and that Messrs. Spann, Bowers, and Bracken be appointed a committee to accompany the remains of the deceased to the place of his late residence:

*Resolved*, That this Convention has heard with deep regret the announcement of the death of the Hon. JAMES VANBENTHUYSEN, late a member of this Convention from Shelby county, who died this morning at three o'clock, at his boarding house in this city; and that the members will testify their respect for the memory of the deceased by wearing the usual badge of mourning for thirty days.

*Resolved*, That the Secretary of this Convention be directed to communicate a copy of these proceedings to the family of the deceased, in token of the sympathy of the Convention



with them under this severe and sudden bereavement.

*Resolved*, That the President of this Convention certify the account of expenses attendant upon the removal of the corpse of the deceased to the residence of his family, and of his funeral.

*Resolved*, That as a further mark of respect, this Convention do now adjourn.

Mr. PEPPER of Ohio moved to amend the first resolution by inserting after the word "days" the words "and that this Convention will accompany the remains to the corporation limits."

Mr. RITCHEY. It may be proper for me to state, Mr. President, that the Convention contemplated embodying the proposition of the gentleman from Ohio in the resolutions, but on account of the contagious nature of the disease of which the gentleman from Shelby died, and the alarm which prevails in reference to the disease, they thought it best to say nothing upon the subject of attending his funeral, leaving it for the members to accompany the remains or not, as they thought proper.

Mr. PEPPER of Ohio. No general alarm on account of a contagious disease would influence me for one moment to refrain from paying the last tribute of respect to the remains of a deceased friend; and I cannot imagine that any such alarm should prevent the members of this Convention from paying that last tribute of respect due to the memory of one of its members.

I would remark here, Mr. President, that I am requested to state that our deceased friend was a member of the Masonic fraternity, and that that body in this case, will honor his memory by a procession to the corporation limits, whenever his body shall be removed from this place, though I am not advised at present when that will take place. I would also state to those members of this Convention who belong to the Masonic fraternity that their assistance and company at the funeral is requested.

Mr. MAGUIRE. I trust if the gentleman from Ohio (Mr. Pepper) perceives any indications of dissent to the passage of his resolution that he will withdraw it.

Mr. PEPPER of Ohio. I concur entirely with the suggestion of the gentleman from Marion, and if the amendment I have offered meets with any opposition I will withdraw it.

The question being taken on the amendment of the gentleman from Ohio, it was unanimously concurred in.

The resolutions reported by the select committee were then adopted unanimously; and in accordance with the last of the series.

The Convention adjourned.

FRIDAY, Nov. 15, 1850.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. COOPER.

The journal of yesterday was read and approved.

#### STATE PRISON.

The PRESIDENT laid before the Convention a communication from the Warden of the State Prison, setting forth the names and number of prisoners confined in the State Prison since the year 1822.

The Secretary was proceeding to read the communication, when

Mr. GRAHAM of Warrick moved that the reading be dispensed with, and that the communication be laid upon the table.

The PRESIDENT remarked, that it contained some statistical information which, perhaps, it would be desirable to have printed.

Mr. GRAHAM of Warrick. Who was it, sir, that moved the inquiry? I think it will be as well to lay it upon the table, for the present.

The question on the motion to lay the communication on the table being put, it was decided in the affirmative.

So the communication was laid upon the table.

Mr. TAYLOR said, it seemed to him that the communication ought to be printed. He could see no good reason why the Convention should call for a document containing important information, and after having received it, lay it upon the table without printing. He was of the opinion that the people of the State would be gratified by being put in possession of a document of this character. The expense of printing was a very small consideration, when the importance of the information was considered.

Mr. GRAHAM of Warrick said, he had made the motion to lay the communication on the table for the present, with the expectation that it would go to some committee. If it were deemed necessary that it should be printed he had no objection; but he thought that the purpose of attaining the information would be answered by referring it to some appropriate committee—either the committee on the pardoning power of the Governor, or some other committee.

Mr. LOCKHART. I suppose this report is made to us in consequence of a resolution introduced by me. The object of asking for the information was to aid the appropriate committee in preparing some plan by which we can have an intermediate prison, such as a house of refuge—some place to which juvenile offenders may be sent—a house of correction. I therefore second the motion to print.

The PRESIDENT. There is no motion pending.

**Mr. TAYLOR.** I move that the communication be laid on the table and printed.

The **PRESIDENT.** It is already laid on the table.

**Mr. TAYLOR.** Then I move that three hundred copies be printed.

The motion was agreed to.

The **PRESIDENT.** The Chair would remark, at the suggestion of the Secretary, that perhaps strictly according to the rules of the Convention, the document ought to be entered upon the journal. Inasmuch as it is to be printed, the Secretary asks the Convention to excuse him from copying it upon the journal.

By unanimous consent it was directed to be omitted.

Committees being called for reports,

**Mr. NEWMAN**, from the committee on special and local legislation, reported back a resolution which had been referred to that committee, with a recommendation that it be laid upon the table, and asked to be discharged from the further consideration of the subject.

The report was concurred in.

**Mr. HALL**, from the committee on the State debt and public works, reported a section to be inserted in the new Constitution.

The section was read a first time and passed to a second reading to-morrow; it is as follows:

**SEC. —.** All the revenue derived from the sale of any of the public works belonging to the State, and from the net annual income thereof, and any surplus that may, at any time, remain in the treasury derived from taxation for general State purposes, after the payment of the ordinary expenses of the government and the interest on the bonds of the State, (other than Bank bonds,) shall be annually applied, under the direction of the General Assembly, to the principal of the Public Debt.

**Mr. MAGUIRE** said, he supposed it would be in order to receive from the committee some estimates corroboratory of the report.

**Mr. HALL.** I have the data upon which the report is predicated, and I can now lay them before the Convention, if it be desired; or they may be resumed at the time when the report will come up in its regular order. I believe it is not in order to submit them now unless by unanimous consent of the Convention.

The **PRESIDENT** said it was not in order, except by unanimous consent.

**Mr. READ** of Clark. I should like to hear the estimates read if the Convention will consent to receive them.

The question being put,

The Convention refused to receive the document.

**Mr. KENT.** I now move, in pursuance of notice given yesterday, the adoption of the resolution to which that notice referred.

The resolution was read, as follows:

*Resolved, That the roll be called each morning, and the names of the absentees entered upon the journal.*

The question being upon the adoption of the resolution,

The yeas and nays were demanded; and they were ordered.

**Mr. DUNN** of Jefferson said, he had an amendment which he desired to offer, if it were in order to do so.

I suppose, said **Mr. Dunn**, it will frequently happen that, upon the call of the roll, some member may be accidentally absent, although not absent the entire day. In such case it would not be just or right that he should be recorded as an absentee. There will, consequently, be frequent applications from delegates for permission to record their names as being present. In order to avoid this inconvenience, I will move the following amendment:

*"Provided, That any delegate may, upon application to the Secretary, after the calling of the roll, have his name stricken from the list of absentees."*

**Mr. KENT.** I will accept the amendment, as a modification of my resolution.

**Mr. SMITH** of Ripley.—

I suppose, sir, that the object of the gentleman from Floyd, in offering this proposition, is, to expedite the business of the Convention; to save time; to have a full attendance; but I doubt whether the gentleman has fully considered what its effect will be. It will take a long time every morning to call the roll, and to note the absentees, and to hear excuses; and the early part of the day will be pretty nearly consumed in these preliminary arrangements. And, I will say further to the gentleman, that it strikes me as being an entirely novel rule, a thing heretofore unheard of in any deliberative body. If there ever has been a similar one, it has escaped my notice altogether. Sir, it would be an iron rule in its operation; and I suggest to the gentleman, whether there is really any necessity for the adoption of a rule of this kind by the Convention: whether it is a matter of importance that every delegate should be in his seat. Does the gentleman suppose that, if even one-third of the members were absent, it would preclude the transaction of business, or retard it in the smallest degree? It would, in my opinion, rather facilitate business, and I suggest to my friend from Floyd, and the Convention, whether, if we adopt this rule and have the roll called every morning, and hear excuses made for those who happen to be absent, we shall not consume a great deal of time unnecessarily; and whether there is any propriety in our innovating and adopting a rule of this kind. And, whether we are not, by its adoption, saying that there are more absentees from this body than from any other, and that there is less business transacted: that there is more dissipation of time than ever has occurred in any deliberative body



in the world. It is entirely a new thing. I do not know that it has ever been adopted anywhere; if it has, I should like to be informed of the instance.

Mr. KENT. In reply to the remarks of the gentleman from Ripley, I have only to say that the call of the roll will probably occupy from five to seven minutes. I trust the Convention will adopt the resolution. It certainly will save a great deal of time in the prosecution of our business here.

Mr. WATTS. If it is in order, I will propose an amendment, which will, perhaps, remove the difficulty anticipated by the gentleman from Ripley. It appears to me, sir, that men who are elected as delegates to this Convention, should have no objection to having their names appear on the journal when they are here, and that they should have no objection to let their constituents know when they are absent. In case of the absence of a delegate, I can see no impropriety in having the fact stated on the journal. If a man is necessarily absent, it is perfectly excusable, and his constituents will excuse him; and if he is unnecessarily absent, his constituents ought to know it. I therefore move the following amendment:

"And hereafter the Convention will meet at half-past eight o'clock, until the close of the session."

The question being upon the adoption of the amendment,

Mr. TAYLOR. I cannot see the propriety of, or the necessity for, passing this resolution. Sir, I regret that my honorable friend has offered it. It seems to be intended as a kind of whipper-up or spur to stimulate lagging delegates in their attendance. Now, I take it that the people have elected men to this Convention who are not in need of overseers to keep them attentive to their duties. I am inclined to think that members of this Convention have attended about as regularly, and been as assiduous in the discharge of their duties, as the members of any deliberative body that I have ever seen. It is presumed that when a delegate is in good health, he will be in his place in the Convention. If he be not in his place when a vote is taken, his name is of course omitted; and it will then be seen that he was absent. That, it appears to me, is quite sufficient. I have no idea that members will absent themselves when there are important questions to be considered and voted upon. Shall we proclaim to the world, by the adoption of such a rule as this, that we cannot get members of this Convention to give their attention to the public business which they have sworn to do?

I cannot perceive any necessity for the adoption of such a resolution, and I hope it will not pass. I will move that the resolution and pending amendment be laid upon the table.

The yeas and nays were demanded, and they were ordered.

Mr. HALL asked for a division of the question.

And the question being first on laying on the table the amendment of the gentleman from Dearborn, (Mr. Watts,) the yeas and nays were taken with the following result—yeas 47, nays 60:

Those voting in the affirmative were,

Messrs. Alexander, Anthony, Biddle, Blythe, Bourne, Chapman, Cookerly, Crumbacker, Dick, Dunn of Jefferson, Dunn of Perry, Edmonston, Foster, Frisbie, Gibson, Gootee, Graham of Miami, Graham of Warrick, Hall, Hawkins, Hovey, Howe, Jones, Kent, Kendall of Warren, Kilgore, Lockhart, McFarland, Miller of Clinton, Moore, Morrison of Marion, Newman, Niles, Owen, Pepper of Ohio, Pettit, Read of Clark, Read of Monroe, Shoup, Smith of Ripley, Smith of Scott, Taylor, Wheeler, Wiley, Wolfe, Wunderlich, and Mr. President—47.

Those voting in the negative were,

Messrs. Badger, Balingall, Barbour, Bascom, Beach, Beard, Carr, Carter, Clark of Tippecanoe, Coats, Colfax, Conduit, Crawford, Davis of Parke, Davis of Vermillion, Dobson, Farrow, Fisher, Foley, Garvin, Gordon, Haddon, Hardin, Helm, Helmer, Hitt, Hogin, Holman, Huff, Johnson, Kendall of Wabash, Kinley, Logan, Maguire, March, May, McClelland, McLean, Miller of Fulton, Milligan, Milroy, Mooney, Morgan, Nave, Nofsinger, Pepper of Crawford, Prather, Ritchey, Schoonover, Shannon, Sims, Smiley, Snook, Steele, Stevenson, Tague, Watts, and Zenor—60.

So the amendment was not laid on the table.

The question recurred upon laying the original resolution upon the table, and the yeas and nays being taken were—yeas 40, nays 62—as follows:

Those who voted in the affirmative were,

Messrs. Anthony, Barbour, Bascom, Beach, Beard, Biddle, Bourne, Carr, Chapman, Clark of Tippecanoe, Crumbacker, Davis of Parke, Davis of Vermillion, Dunn of Perry, Foley, Frisbie, Garvin, Gootee, Graham of Miami, Hardin, Jones, Kendall of Warren, Kilgore, Miller of Gibson, Newman, Niles, Pepper of Ohio, Prather, Read of Clark, Shoup, Smith of Ripley, Smith of Scott, Steele, Taylor, Wheeler, Wiley, Wunderlich, Zenor, and Mr. President—40.

Those who voted in the negative were,

Messrs. Alexander, Badger, Balingall, Blythe, Carter, Coats, Colfax, Conduit, Cookerly, Crawford, Dick, Dobson, Dunn of Jefferson, Edmonston, Farrow, Fisher, Gibson, Gordon, Graham of Warrick, Haddon, Hall, Helm, Helmer, Hitt, Hogin, Hovey, Howe, Huff, Johnson, Kent, Kendall of Wabash, Kinley, Lockhart, Logan, Maguire, March, May, McClelland, McFarland, McLean, Miller of Clinton, Miller of Fulton, Milroy, Mooney, Moore, Morgan, Morrison of

Washington, Nave, Nofsinger, Owen, Pepper of Crawford, Pettit, Ritchey, Schoonover, Shannon, Sherrod, Sims, Smiley, Snook, Stevenson, Tague, Watts, and Wolfe—62.

So the resolution was not laid on the table.

The PRESIDENT. The question is now upon the amendment of the gentleman from Dearborn (Mr. Watts) to meet at half-past eight o'clock until the close of the Convention.

Mr. PEPPER of Crawford moved to amend the amendment by adding the following:

"And it shall further be the duty of the Secretary upon each motion to adjourn, to enter upon the journal the mover's name, and the precise hour of the day."

The amendment of the gentleman from Crawford was concurred in.

The question then recurring upon the amendment offered by the gentleman from Dearborn (Mr. Watts)—

Mr. RITCHEY said: I hope, Mr. President, that the Convention will pause a little before they act upon this question. For one, I must say, that I can see no necessity for its adoption. There appears to be a feeling at present pervading this body, in favor of calling the yeas and nays merely for the consumption of time; and I regret deeply to see the exhibition of any such feeling. If this resolution is adopted, it will not deter any man from being absent from any cause which he may deem satisfactory. I expect to answer to my constituents for my presence in this Hall during the consideration of important questions that may come before us; and I apprehend that the action of other members will be similarly influenced.

The amendment of the gentleman from Crawford (Mr. Pepper) I consider a very good one, still I see no necessity for its adoption at this time.

With regard to the amendment of the gentleman from Dearborn, (Mr. Watts,) to meet here at half-past eight o'clock in the morning, I have only to say, that I believe if we are here at nine o'clock and attend to the transaction of our necessary business until twelve o'clock, that then it will be proper and necessary to adjourn for the morning. We will not expedite business by protracting the morning session. I do not think that we will be in the slightest degree restrained by this resolution if it is adopted. I suppose that in this matter of being absent from this Hall, every member feels that for it he is responsible to his constituents and to his constituents alone, as he is for all his actions here, and is prepared to abide their decision in regard to it.

What is the necessity for this resolution? We are calling the yeas and nays every day upon important questions, and those lists will show whether members are here or not and attending to their duty. And why not call the names of the members here in the afternoon

when we meet? There is just as much necessity for finding out absentees then as at the commencement of the morning session. I consider that the resolution will lead to an unnecessary consumption of time, and be productive of no good; I trust, therefore, it will not prevail.

The PRESIDENT. I would state to the Convention that the Chair is of the opinion that the motion of the gentleman from Dearborn (Mr. Watts) is out of order. The gentleman from Floyd (Mr. Kent) gave notice on yesterday that he would propose an amendment to a standing rule. The gentleman from Dearborn (Mr. Watts) proposes an amendment which does not properly appertain to the amendment of the gentleman from Floyd. The amendment of the gentleman from Dearborn is connected with an entirely different rule, for an amendment to which he must give one day's notice, as in the case of the gentleman from Dearborn.

Mr. WATTS. I stated, when I submitted my proposition, that I had doubts as to whether it was in order. The motion, however, was received. There has been several votes taken upon the proposition, and I would rather withdraw the motion, if it is not in order, than travel back and re-consider what has been done. My object in offering the amendment was to expedite the business of the Convention, not to delay it. I withdraw the motion.

The motion of the gentleman from Dearborn was accordingly withdrawn.

The question then being upon the adoption of the resolution of the gentleman from Floyd, (Mr. Kent,) as amended by the gentleman from Crawford, (Mr. Pepper,) the yeas and nays were demanded, and being ordered, were taken with the following result—yeas 70, nays 35:

AYES.—Messrs. Alexander, Badger, Balingall, Beard, Blythe, Carr, Carter, Chapman, Coats, Colfax, Conduit, Cookerly, Crawford, Davis of Parke, Dick, Dobson, Dunn of Jefferson, Edmonston, Farrow, Fisher, Gordon, Graham of Warrick, Haddon, Hall, Helm, Helmer, Hitt, Hogin, Holman, Hovey, Howe, Huff, Jones, Kent, Kendall of Wabash, Lockhart, Logan, March, May, McClelland, McFarland, McLean, Miller of Clinton, Miller of Fulton, Milligan, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Morrison of Washington, Nave, Nofsinger, Owen, Pepper of Crawford, Pettit, Schoonover, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Stevenson, Tague, Watts, Wolfe, Work, Wunderlich, and Mr. President—70.

NAYS.—Messrs. Anthony, Barbour, Bascom, Beach, Biddle, Bourne, Clark of Tippecanoe, Crumbacker, Davis of Vermillion, Dunn of Perry, &c., Foley, Frisbie, Garvin, Gootee, Graham of Miami, Hardin, Hawkins, Kendall of Warren, Kilgore, Kinley, Maguire, Miller of



Gibson, Newman, Niles, Pepper of Ohio, Prather, Read of Clark, Ritchey, Smith of Ripley, Smith of Scott, Steele, Taylor, Wheeler, Wiley and Zenor—35.

So the resolution, as amended, was adopted.

#### RIGHTS OF MARRIED WOMEN.

Mr. OWEN. I move that the sections in regard to the rights of married women be made the special order until otherwise disposed of by the Convention. I will state, that in making this motion, I have no intention whatever, as far as I am concerned, of pressing this matter to a vote at this time, desiring that it may be thoroughly discussed, as was the Grand Jury question, so that we may have public opinion coming back to us in regard to the question before our final action upon it.

The motion was adopted by consent.

The Convention then proceeded to the consideration of the sections relating to the rights of married women, the question pending at the time of adjournment being the amendment of the gentleman from Hendricks (Mr. Nave) to the amendment of the gentleman from Dearborn (Mr. Holman).

Mr. STEELE. I always experience a feeling of diffidence, sir, in addressing the Convention, and that feeling is greatly increased on the present occasion, in having to follow the eloquent addresses that have been made on the propositions now under consideration.

The highest encomium, sir, that can be passed upon women, is to portray in their true colors the extraordinary care and love that mothers have for children.

In this respect woman's labor never ceases; and I would here say to this Convention, that the highest tribute of gratitude I can offer to the matron that raised me, is to shield and protect her. I believe that on her teachings of virtue and wisdom my welfare and stability is mainly dependent. When a boy, from the lips of a mother I first heard the doctrines of righteousness and sobriety. She it was who instilled in my mind the necessity of seeking first that wisdom that is first pure, then peaceable and easy to be entreated of, that cometh down from above, from the Father of light in whom is no variableness or shadow of turning. It is not only in the particular labor of care and love for her offspring, but also in the domestic labors of life that she knows no day of rest. On the first day of the week, the day called the Sabbath, that is set apart for rest and on which we males can rest, still the watchful eye and the quick-moving hand of our companions find necessary and useful employment. How arduous are her duties in the care of her offspring and how much more fatiguing are her household labors! And yet, will gentlemen pretend that she is not to receive an equal protection in regard to her rights in property to that afforded to the male, her companion? I find there are

some here who are disposed to deny the female her rights of property. The fact of her industry and economy in the household, thereby augmenting the means of the husband, seems to be entirely overlooked by gentlemen, and in view of all the duties she so faithfully discharges in the capacity of wife and mother it is gravely proposed to allow her on the decease of her husband only one-third of the rents and profits of his real estate—this, too, of the very property she has so assiduously aided in accumulating. I have never yet learned, sir, how this principle or law came into existence. I know that it is argued by commentators that the divine law has much to do with common law, much to do with statutory law, but I am as equally satisfied that this one-third distribution of property to the female never, never had its origin in divine law—never. For when we examine this law, when we make reference to that which is divine, we find no distinction of this kind made therein. There can be no distinction, sir, in the great country to which we are going, and for which our friend from Shelby (Mr. Vanbenthuyssen) left yesterday. Our brother will find there the true equality—that male and female stand strictly on the same footing. He with all the blood-washed throng are even now tuning their golden harps, in praises to the One who has taught them the law of the equality of all men. That, sir, is the position every human creature occupies in that kingdom; and how this law apportioning to the hard-working and industrious wife but one-third portion of the rents and profits of her husband's estate originated and where it came into existence is more than I am able to say.

In regard to the section presented by the gentleman from Posey, (Mr. Owen,) I have heard sundry insinuations as to the motives which influenced the gentleman in presenting them; one of these motives which inferentially were ascribed to him was, that the effect of them would be to create discord and contention between the husband and wife. Now, sir, I am fully satisfied that no such motive actuated the gentleman from Posey in bringing forward these sections. On the contrary, I am satisfied that he presented them with a view mainly of bettering the condition of the wife after the death of her husband. I know that the conjugal bond should be one of principle; that each of the partners to the bond should enter into it from principle. I know also that affection and not property should be the incentive as well as the cement of that union; and that in a union thus formed from principle and based upon affection, what is the property of one will be the property of the other. And gentlemen I trust will remember that there is one class of married people that live in common upon all they possess—the gentleman's pocket-book being the lady's pocket-book, and the lady's pocket-book being the gentleman's pocket-book, and thousands of dollars are thus mutually exchanged and applied

for the benefit of both, and for the benefit of their offspring. To this class of the community the proposition of the gentleman is not intended to apply, if I understand it correctly. He knows that with them all is well. But allow me to remark, sir, that there is an old and a good maxim, that laws are not introduced for the good—they are competent to govern themselves and do so. They are introduced for the bad—for those that do wrong. And this is the case with the gentleman from Posey; he introduced these sections for the express purpose of protecting the weak against the strong.

There can be no doubt, sir, that there are thousands of instances where these wrongs upon women have been deliberately practiced. Instances, hundreds of them present themselves to my mind where overtures have been made to obtain a wife, when money alone was the object. And, sir, not only has the sole object of the overtures made been the money, but the person himself making the overtures was a profligate, a gambler, a spendthrift, or an intemperate man, whose sole object was to obtain wealth that he might give free scope to his passions. Now if I understand the proposition contained in these sections offered by the gentleman from Posey, it is to guard against this robber—this swindler. It is to protect the female in her rights and the rights of her children, from these wonton despoilers, who would trifle with, and blast, the affections of tender-hearted women, for the purpose of obtaining means for the gratification of their unholy and sensual propensities. This, sir, is the object of the proposition of the gentleman from Posey, and if he is to bear reproach in this matter, I, for one, sir, will willingly bear it with him within and without the camp.

Let us recollect, gentlemen, that females appreciate liberty of conscience and action as much as we do, and more particularly in regard to this point. Gentlemen will remember of reading how when the father of our country, the great and noble Washington, was traveling through a certain town, that the ladies residing there, came out and built an archway of flowers over a bridge that he had to pass over, and strewed flowers in the pathway before him. They, sir, evidenced by their conduct, that they appreciated the liberty which he had been mainly instrumental in procuring for this country, and that they desired to give him some public testimony of the esteem in which they held him. Recollect, too, the conduct of the ladies during the siege of New Orleans. And gentlemen go too far, also, when they pretend to think and say that in point of mental development and strength of mind the female is vastly inferior to man. To prove the injustice of this assertion allow me for a moment to refer to the history of the past. I need go no further than to exhibit to you the enterprise of Queen Isabella in assisting Columbus in his dangerous expedition to the New World. Where would this

country have been if it had not been for the enterprise of that lady? Would we have been sitting in deliberate bodies now—would we have been sitting in Congress and in Legislatures? This country would perhaps have been yet lying among the worlds unknown, and overrun with the wild men of the woods—the aborigines of America. While speaking of this lady allow me for a moment in her case, to consider the argument which is advanced that the proposition of the gentleman from Posey, will create discord between husband and wife. I think that upon referring to the history of their reign that, Ferdinand and Isabella held different estates. It bears upon my mind that at the time of Isabella's marriage to Ferdinand, that she owned the estate of Castile. They held different estates, yet they were used for the interest and advantage of both. Another item which presents itself in connection with the history of Queen Isabella, is the great influence the Queen exerted herself. At the siege of Grenada, at the time when King Ferdinand was at war with the Moors, and after he had been driven back with great loss to his army, the Queen joined him and when she was seen at the head of the army with her husband, the Capitol of the Moors fell without any difficulty.

My attention was drawn, sir, to some remarks in relation to ducking scolding women. In accordance with this recipe, I suppose we will have to take the ladies to the White River, or to the Walsh, to prevent them from expressing their sentiments in regard to other restrictions we have placed upon their rights [applause]. Well, sir, the ladies know their rights and I trust will stand up for them; and it is our duty to give them their rights, and for one I would go on extending their privileges. By the proposition now before us, we shall give them the right of holding their own personal property, which is, perhaps, more necessary to a woman on her second marriage than during her first. I believe this will be one of the results of this measure—that it will shield and protect the female from wrong at the time of her second marriage. I have noticed in those sections, that provision is made to the effect that the property accruing to the wife from the death of her first husband, upon her second marriage, goes directly to the first husband's offspring; thus the widow, upon entering into a second marriage, cannot hazard the estate procured by her labors, and those of her first husband. This is a very good provision indeed. The gentleman from Posey, by these sections, asks no more than the principle of equity and common sense proclaim to the world should be given to the woman. He asks no more for the woman than her natural rights. When we speak of married life, we speak of it as a partnership, and some gentleman remarked that a married couple were twain and one flesh. This is all very well in theory; but I would ask if they are one in the politics of the country?



Are they one here to-day in this Convention? Have we any ladies sitting in the seats here? Are they one at the ballot-box? Are they one in purse? No, sir, take gentlemen in the common run, and you will find that they have their purses in their pockets, and they distribute their money as their caprice may dictate to them, while at the same time the lady may be asking and even begging for a solitary dollar, wherewith to purchase some necessary article for the household. To-morrow, says the gentleman, I will accommodate you. I am short to-day. I have to buy some land or some goods, and the cry is repeated "to-morrow, to-morrow I will give you some"—and she never gets any [great laughter and applause].

Gentlemen, I would be truly glad did my lungs permit me further to address you on this occasion. What I say to you to-day has been impressed upon my mind by the experience of the past. It will be recollected that I have already offered a resolution asking for one right to be granted to the females of this country, that of petition equally with males to every department of our government. And then, if at any future time they desire to have the right of suffrage extended to them, they can, through the medium of petitions, bring out the action of the people's representatives on the subject. Too long, Mr. President, have the interests of women been neglected. Too long have their political and social rights been trampled under foot. The first in every good work—in the cause of temperance, patient, yet arduous laborers—in the work of moral reform, always engaged—why not give to woman those privileges that will prove in their exercise of as much benefit to the male as to the female. With these remarks, Mr. President, I yield the floor.

Mr. TAGUE. I had no intention, Mr. President, of speaking upon this subject until some few minutes since, when at the request of several of the members, I consented to present some views of the question which the experience of a somewhat lengthened life, has impressed upon my mind. I feel it a privilege, sir, to state that I am willing to go as far as the farthest in adopting measures for ameliorating and improving the condition of the female sex; and the experience of the past is a safe guide to us in adopting such measures. The gentleman from Wabash, who just addressed the Convention, is somewhat older than I am, and I have no doubt that he has learned much in consequence. I myself have lived long, and I trust have learned something in that life, and, though I may not express the views that experience and observation has impressed upon my mind in as clear and satisfactory manner as other members can, yet if I can have the attention of the Convention I will make some few remarks [cries of "consent," "consent"].

It is from woman that man in his infancy is taught the lessons of wisdom and virtue that

guide and influence the course of his whole future life. It is from woman that man in his prime receives the consolation, and sympathy, and love that nerves him to the faithful performance of the part he has to play in the great theater of life. It is from woman that man in declining life, when old age and its infirmities creep on apace, when he is tossed upon the couch of pain, receives the care and attention that assuages the hours of suffering, and smooths his pathway to the grave. How cheering to the husband or father when returning from his daily toil to meet the kind greetings of his beloved partner and prattling children. I have raised a family, sir, and from blissful experience can testify to the truth of what I have stated, for I have been a recipient of those smiles, a partaker of woman's joys. I have been too, sir, in families where the sweet smile and the kind word were not seen or heard; where the husband was met with cross looks and short words, and moved through his house with forbidding or melancholy mein, a stranger to the felicities of the happy conjugal relation.

I have to say, sir, with relation to this subject, that the views of my friend from Wabash, (Mr. Steele,) and my friend from Posey, (Mr. Owen,) do not run in the same channel with my own. I do not favor, sir, the proposition which, in an indirect way, they appear to countenance, of giving to women the right of suffrage, as one means of improving her condition. I have traveled a great deal, sir, in the various States of the Union, and I think the females of this State are about as happy and contented with their present position in relation to this right as it is necessary they should be. I have heard of no complaints from them in regard to it. This subject was a topic of considerable discussion in my own county during the canvass, and I took occasion while electioneering to converse with many old ladies in regard to it. I sometimes had the pleasure of meeting with some ten or a dozen of them, and the old ladies, without any exception, told me as far as they were concerned, to leave the right of suffrage just as it now was. It is true some of the young ladies, however, seemed a little anxious to go up to the court house and vote. [Great laughter and applause.] I tried to inform myself as to the opinions of my constituents on the subject because I supposed there was every probability of there being some action had upon it here, and from inquiry and observation I feel that to carry out the wishes of my constituents, both male and female, I must vote against engrafting any thing in the Constitution relative to the subject.

With regard to the propositions reported from the committee on rights and privileges relative to the rights of married women to property, I have only to say that an article has been engrafted into the Constitution of Louisiana similar in character to the present one, and from a practical acquaintance with the condition of the

females of that State—having traveled through the larger portion of it, and become familiar with its institutions, to a certain degree—I consider that the condition of the females of this State, living under the provisions of the old Constitution, is far superior to the condition of the ladies of Louisiana under the newly created provisions of the Constitution of that State, in regard to the rights and privileges of married women. In intelligence, in beauty, and in their lasting friendship, also, I consider our ladies are their superiors. [Great applause.] From the little observation I have made, sir, I think the people of Louisiana have run wild in error in adopting an article like the present one; though I would remark, it is a new thing, and time may prove the propriety and necessity of its adoption.

At present, sir, I cannot but think that should this article be inserted in the Constitution, you will find in less than five years there will be ten applications for bills of divorcement to where is one now. I have had the honor of a seat, sir, upon the bench as associate judge, and in that capacity have received numerous applications for bills of divorcement, and I have always been opposed to granting those bills except in particular cases, which I will not mention. [Great laughter.] Experience has taught me, sir, that the more we can unite the male and the female, the better it will be for both [great merriment], and the happier will be the female. [Boisterous laughter and applause.]

I trust gentlemen will hold themselves in a little. [The Hall here resounded with the laughter and applause of the members.]

**THE PRESIDENT.** The gentleman from Hancock cannot be heard if members do not desist from making so much noise. [Cries of "order," "order," and "consent," "consent."]

**MR. TAGUE.** As I was about remarking, sir, when somewhat unceremoniously interrupted by some of my fellow-members, I think that this Convention had better leave this subject as it is now under the present Constitution. It appears to me that the provisions of that instrument on the subject are as near right as they can well be made, and that the people are fully satisfied with them. As I before stated, I am opposed to granting bills of divorcement except in extreme cases. I think the tendency of our laws should be to unite the interests of the husband and wife in one common bond. It will be recollected that the Scriptures inform us that upon a certain occasion our Saviour was asked his opinion in regard to this matter of bills of divorcement, and that he appeared to be opposed to it, and expressed Himself to the effect that although Moses, under the old dispensation, had granted them, and God had suffered these things to take place in that age, yet, under the new dispensation, and at that more enlightened day, He could not countenance them.

It is my opinion, Mr. President, that, if we give to married women the right of a separate interest, as proposed in this article, many of them would refuse to avail themselves of it. There might be some few who would avail themselves of this right—who would assume the control of their property, but, I think there would not be many but that would be willing, for their own safety and happiness, to trust all their property, real and personal, in the hands of the husband: and I think, of course, that they would be safe in doing so: at least, I am prepared to say, that a woman should not consent to marry a man, with whom she would not be willing to trust her all. I am aware, Mr. President, that there may be isolated cases pointed out, where it would be occasionally necessary for the woman to have the control; but I think there are very few such cases. On the other hand, as the law now stands, females have right to property; that is, they have a joint right with their husbands.

I know that there are some men, who, when they get hold of a little property by marriage, convert it entirely to their own use, and take the sole control and management of it, without asking leave of the lady. This, in my judgment, is wrong; but I am of opinion that this matter can be regulated very well by the statute law, without placing any such provision, as we are now contemplating, in the organic law of the State.

I think, probably, it would be advisable and proper, where a man acquires property by marriage, always to take special care to call such property "our property," instead of saying "my property"—as though he would exclude the right of the woman entirely.—And here, Mr. President, comes in a little anecdote, which, although I am not in the habit of telling anecdotes, I will take the liberty to rehearse.

A gentleman was once married to a lady of considerable property, who was himself poor. Immediately after the marriage, he fixed his house up in fine order, selecting expensive furniture, and paying for it with the lady's money. Afterwards, upon a certain day, they had many visitors to call on them, and the husband was showing the furniture of the house, and everything that was splendid and valuable, in the equipage, with which he was furnished, and calling it all his own.—My fine side-board, my splendid carpet, &c.: and, no doubt, he did very wrong to talk in this way. Well, after the visitors had left, the lady took occasion to tell the husband that he should have said, "these are our things;" and not that "they are my things:" and there was certainly some justice and right in this appeal. But finally, they got into a quarrel, and then they got to fighting about the matter; and the lady happening to have more physical strength than the gentleman; she actually flogged him like all natur—[a laugh]—she got the advantage of him so far that she absolutely



kicked him out of doors, and shut the door in his face. The gentleman, finding himself badly whipped, gathered himself up and sat upon a stump near by—(that is the way they tell the story). There he studied about the matter, and finally determined to leave the lady who had taken it upon herself to treat him so harshly. But how was he to proceed? He was kicked out of doors, and his hat was still in the house. He could not leave without his hat; so he marched up, cautiously, and slipped open the door, just far enough to speak to his conqueror, and, looking in timidly upon his wife, he ventured to say to her, "My dear, will you please to hand me our hat?" [Merriment.] Well, the manner of this salutation of her husband, rather pleased the lady. She was pleased with the idea of his coming over to her views, so far as to say "our;" and it put a smile upon her face; and, seeing a smile upon the face of his wife, the gentleman at once gave over his resolution to leave. And, from that day to this, (as the story concludes,) when speaking of anything pertaining to the common house-hold interest, he has never forgotten to say "our." [Renewed merriment.]

This, Mr. President, is the course for a man to pursue. He should not assume too much importance to himself. The ladies have their rights, and will enjoy them without putting anything at all in the Constitution. Men should naturally, and, if they estimate woman as they ought to, they will, always grant them all their rights.

The other day a gentleman on my right—[A voice—"name him!" Another voice—"Gibson!"]—I believe I cannot call his name, but he made a very fine speech entirely in favor of the article as originally reported to the Convention; and in that speech he alluded to the case of a widow marrying a widower—both parties having children, and the woman being possessed of property; he affirmed that in such a case, the moment these parties were married, every dollar of the property of the woman, according to the law, as it now stands, belonged to the man and to his children. But I take leave to differ with the gentleman here, although I know he is a lawyer, and a good one. I think there is no man who hears me but will admit that if this woman possesses any real estate, in such a case, it must eventually go to her first husband's children, and if she brings in any more personal property than what belongs to her, under the law, that excess, also, must go to the children of her first husband.

Mr. President, I am not in the habit of detaining the Convention long upon any question, and I do not intend to do so now. I will merely add, that there seems to be a tendency in the minds of gentlemen to go to extremes upon this subject. Extremes should always be avoided, especially upon a question of such importance as this. This is a matter which ought to be very carefully considered; and for my

own part, if I can be satisfied, by the arguments of gentlemen, that the condition of the ladies can be bettered in any shape, by any action which can be taken here, I should be in favor of doing something in the case; otherwise I shall be compelled to vote against the section. I will now yield the floor.

Mr. HOLMAN next obtained the floor; but yielded immediately to

Mr. TAGUE, who desired to offer an amendment. He said: I also intended to propose an amendment. I offer the following as an amendment to the amendment.

The proposition was read by the Secretary, and it is as follows:

Strike out all after the word "State" in the first line of the second section, and insert, in lieu thereof, "thereby surrender themselves and all property, both real and personal, by them owned at the time of marriage, to those whom they wrong."

The PRESIDENT (Mr. Clark of Tippecanoe in the Chair). The Chair would inform the gentleman from Hancock that his amendment is out of order. There are already two amendments pending.

Mr. HOLMAN. At the instance of several gentlemen near me, I move that the Convention take a recess.

At the request of the gentleman from St. Joseph, (Mr. Colfax,) the motion was withdrawn.

Mr. COLFAX, rising to a privileged question, said, there is a member lately elected to the Convention, who is present. I would suggest the call of his county, and that he be now sworn in.

Mr. PETTIT. That is a privileged question, and it has precedence of all others.

By the direction of the Chair, the Secretary then called the county of Union.

BENJAMIN F. BROOKBANK, the delegate lately returned for said county, came forward to the Clerk's table, presented his credentials, received the oath at the hand of the delegate from Cass, (Judge Biddle,) and resumed his seat in the Convention, amidst cheering from the lobbies.

Mr. HOLMAN again moved that the Convention take a recess, which motion was agreed to.

The Convention took a recess till two o'clock P. M.

#### AFTERNOON SESSION.

The Convention met, pursuant to adjournment.

The consideration of the special order was resumed, being the sections reported by the committee on rights and privileges, in relation to the rights of married women.

Mr. HOLMAN being entitled to the floor, addressed the Convention as follows:

**MR. PRESIDENT:** The just object of all government is to secure the happiness of the governed. The compact of society necessarily implies that every true interest of the individual citizen shall be secured; and the same compact only imposes upon the individual citizen the relinquishment of those natural rights, the exercise of which would be inconsistent with the rights of others. By a fundamental principle of a government like ours, "life, liberty, and the pursuit of happiness" are declared to be the "inalienable and inherent" rights of the citizen; and the less those rights are limited and circumscribed by artificial rules of legislation, the more republican will be the form of government, as no principle is better established than that that government is the best which governs the least. The public relations of life, the acquisition of wealth, the struggle for place, reputation, and preferment, are not the relations, are not the pursuits, in which man's dearest interests are involved; and the right to pursue happiness in those relations, however valuable, is infinitely inferior to the just enjoyment of those rights that cluster around the cheerful fireside and sanctify the relations of home.

The public and rugged careers which are open to man may gratify his ambition or satiate his thirst for wealth, but they do not increase his capacity for happiness or impart to him the social virtues; it is only home and its sacred influences that soften down the asperities of his character, and render him at once a moral, social, and intellectual being. So far as relates to the public relations of man, all the varied features of government may be changed, the foundations of government may be overthrown and new elements of government substituted in their stead, and still the social system may remain unchanged; but once change these social relations, change those elements that enter into and compose the domestic relations of men, and sooner or later the whole fabric of society feels the effect. The changes may be gradual, yet sooner or later the whole fabric of society will feel the effects of those changes in elementary principles. The rock is not more certainly worn away by the constant dripping of the water, than that government itself, in all its relations, changes as you change the elementary principles of that government.

Sir, the social and domestic relations of life grow out of the nature and fitness of things; they are not so much the result of positive law as the natural blending together of the elements of the human character, and they change and mould themselves to the natural condition of man in his progress from one state of civilization to another. Human laws, as they operate on the general interests of mankind, may facilitate these changes as the necessary incidents, and yet the changes will be found to be more in form than in principle, and it may be doubted whether human legislation, by the adoption

of artificial rules for the government of the social relations, can ever advance the true interests of life; for the social system, to be adapted to its object, must be natural and not artificial.

Laws are imperfect unless they conform to the natural fitness of things. Government, to be just, must protect the weak against the strong; yet, if, by a paramount law of nature, that result is produced, the human law in aid thereof may weaken, but cannot give it strength.

The social system under which we live is, to some extent, peculiar to the Anglo-Saxon race, and has existed in all its main features for centuries; and while that race has passed through all the grades of human existence—from the dark ages to the light of Christian civilization—from the reign of the elective king to that of the military despot—from the limited monarchy to the full recognition of human rights in a republican government—the relations of social and domestic life have remained the same, or at least only modified by the advancing state of civilization. In that social system, and in fact in all society where the Christian religion has shed its beneficent influence, woman is and always has been its chief ornament. While on the one hand, society has resulted from the peculiar position nature designed her to occupy, on the other, she is not only the chief ornament, but all of its features and peculiar characteristics result from, and are in consonance with the elements of her own character.

Around the home created by common law influences, all the endearments of life are gathered; even the felon flees to it as a city of refuge, and with a price upon his head, he lays it in safety on the bosom of his wife.

It has been asserted by gentlemen who have argued both sides of this question, that by the common law woman occupies an inferior position in society. With all due deference to the superior wisdom and sagacity of those gentlemen, I must be allowed to call that position in question. She does not occupy an inferior position, nor has she ever occupied that position under the common law since society has been enlightened by the influences of Christianity. Sir, place her on man's theatre of action, where masculine force of mind and physical vigor are necessary to success, and I admit her gentle nature sinks inferior to the struggle; place man, with his restless mind and brawny arm, in her sphere of action, and he sinks into a sickly effeminacy, unadorned by a single grace that clusters around her brow. In her peculiar sphere—which, in all the purer and holier attributes of the human mind, rises infinitely above the rougher theatre of man's achievements—she is not only his equal, but by the influences and appliances of her nature, she rises infinitely his superior. The position of the sex in society must be considered with ref-



erence to their respective characteristic attributes—the rough asperity and restless energies of the one, is met by the mild benevolence and gentle graces of the other. In her true sphere she is not inferior. The gnarled oak that stands upon the hill-top and bids defiance to the tempest, is not more perfect and not half so sweet, as the gentle flower that nestles on the verdant hill-side, and diffuses its sweetness to every passing breeze.

I have already remarked, Mr. President, that laws, to be just, and to accomplish the objects for which they were intended, must conform to the natural fitness of things, and that the rules of society, at least, mould themselves into a natural consonance with those by whom that society is formed. Nature designed the sexes to spheres naturally adapted to their respective characters: to man she has assigned the task of battling with the rougher elements—to throng the marts of trade, to venture on the perils of the deep in search of wealth, to witness scenes of carnage and tread the field of battle, to struggle in the path of statesmanship, and by years of honest labor, to win for himself and partner of his life, the comforts of declining age. Nature has so formed him, and he follows the law of his organization. The refined and nicer feelings of the woman shrink from the open struggle; she seeks the retirement of the social hearth, and cultivates the arts of peace; the natural tenderness of her nature prompts to deeds of charity and the kindly offices of life; home is the heaven of her affections, and she gathers around it the love, and harmony, and repose which form her very existence, and by her affection and the meekness of her love imparts to man whatever is lovely in his character, smoothes down the asperities of his restless mind, and almost stirs the divinity that sleeps within him. Such has nature formed her. He strives to attain his ends by the force of mind and physical effort; she, by the gentleness of her nature; he, like the meridian sun, by the blaze of his genius may enlighten—but may blight and wither; she, by the kindly charities of life, harmonizing and purifying the moral world around her; like the dews of heaven, that, falling unseen and unfelt, clothe the earth with verdure, she gives to life its charms, and when pure, like religion, and as its hand-maid sanctifies every condition,

“ Restores once more fair Eden's faded bloom,

And flings hope's golden halo o'er the waste of life.”

Such, sir, are the characteristics of the sexes; such has nature formed them; such their natural harmony; and civilization and enlightened social life are the necessary results.

Is it wise, sir, in the statesman to destroy this fair proportion, or introduce a new element into the social system *which even by possibility* may destroy its perfect harmony?

For centuries, as I have already remarked, we and our ancestors have lived under the com-

mon law, modified and changed as the experience of time has suggested proper. In every State of this Union, in which the Anglo-Saxon race have laid the foundations of government, the rule of the common law, as it regards the relation of husband and wife, has been recognized, and has been from time immemorial, and still is, the law of that country from which, as a nation, we have sprung.

I call that a law by which the domestic relations of life have been governed. It is a law without the force of human legislation; for it adapts itself to the very fitness of things, and is necessarily adapted to the relation which the husband and wife hold to each other. Sir, what is that law? So far as it affects the subject under consideration, that law is, that marriage is a sacramental ordinance, and not a mere matter of contract. Its design is—and such are its effects—that every interest of the husband and wife, and even their legal existence, is blended together in one harmonious union; no discordant interest is left to disturb the concord of the domestic circle; the husband becomes the head of the family—the peculiar guardian of all its interests; the domestic circle, the household cares, and the varied offices of home, are presided over by the wife; he, in his department, rules by the law of nature that adapts him to the station; and she in hers, by the same law, *and by a law higher than all human laws—the law of human affection—she controls and directs the whole.* I would remark, that, for the purposes of the subject now under consideration, it matters not what are the effects of marriage as to the disposition of property. The real question is, not what interest the wife shall take in the property of the husband in the event of a dissolution of the marriage contract—that is a matter of mere legislation, and does not affect the principle—but the question is, shall the sanctity of the marriage relation remain as it is!—shall the domestic harmony continue!—or shall new elements be cast into the social system, which may by possibility produce strife and disunion in all the dearest and best relations of society? The elements which enter into and compose the harmony of the domestic circle are a unity of affection and a unity of interest. Not only is it necessary for the happiness of that relation that the natural affections of the two parties should be blended together, but it is also necessary that their interests should be one and the same. If you separate the interest in property, you at least sever one of the links in that union. Individual happiness and prosperity constitute the happiness and prosperity of a nation. The State is, to a certain degree, interested in every marriage that may occur within her borders; and she is equally interested that every marriage relation that may exist should remain permanent, if for no other reason than that the dissolution of the marriage contract, otherwise than by the decease of one or the

other of the parties, cannot tend to promote morality, foster patient industry, or in any way to advance the true interests of society.

It would be well for gentlemen who are advocating the proposition now before the Convention for the creation of separate interests in the husband and wife, to consider how far the weakening of the relation between husband and wife, by destroying that unity of interest, may tend to render divorces necessary for the protection of the separate interests in property. [Cries of "hear! hear!"] The gentleman from Clark, (Mr. Gibson,) on yesterday, in his very able and brilliant effort in defence of women's rights—and I take occasion to say here, that I do not believe there is a gentleman on this floor who would seek for a moment to diminish, even to the tithe of a hair, any of her just rights—I say the gentleman from Clark, in his very brilliant speech, spoke of the common law as an "infamous system," so far as regards the marriage relation. Let me ask that gentleman, does he propose to destroy the common law as it affects the relation of marriage? Does he propose to destroy the entire system of common law under which we and our forefathers have lived and prospered, or only to a limited extent to change the relations by which society is governed? I have already remarked that the laws which govern the private relations of life necessarily result from the character of those by whom that society is formed; and I think that if the common law is entirely adapted to the natural state of society, the change of that law may tend to destroy that perfect harmony and peace which should reign in the domestic circle. It is a principle of the common law, that not only are the interests of the husband and wife identical—not only is his wealth her wealth—his happiness her happiness—his property her property—but so sacred is that relation regarded, so intimately does the common law blend their interests together, that the husband cannot be a witness for the wife, nor the wife for the husband nor against him, except on a charge of personal violence committed by him upon herself. That same law, in carrying out the idea of the sanctity of the marriage contract, has provided that a man's home shall be his castle, and that no foot shall intrude within its walls without his consent. And, let me ask, does the gentleman from Clark propose to do away with that feature of the common law? Are these sacred principles to be abrogated—repealed—destroyed—for the mere purpose of making laws to regulate property? [Hear! hear!]

Sir, you cannot protect property without law, and without also adopting some rule of human evidence by which those rights of property can be protected and enforced. [Applause.] Does the gentleman propose to secure for the wife a separate property, and at the same time for the purpose of protecting that property does he pro-

pose to destroy that feature of the common law which provides that the one cannot testify for or against the other?

Sir, let us consider the object of all three of these principles I have mentioned. First, that the interests of the husband and the wife are identical; secondly, being identical, no element should exist which might by possibility destroy that identity; and thirdly, protecting the sacredness of home, that every man's house is sacred to himself and family against the whole world, without his consent.

Now to allow the wife to become a witness against the husband, might not only by possibility destroy that entire confidence which should exist in that relation, but in all human probability it would do so. At all events it would have a tendency to create distrust, and would undoubtedly produce coldness of feeling, the first step towards a final alienation of affection. [Cries of "hear," "hear," "hear" and "true."] So would it be if you permitted the husband to testify against the wife. The rule would work with equal fatal results in both cases. For the purpose therefore of retaining that perfect identity of interest and that entire harmony that should exist between the parties, the common law has provided, although those three rules may in some cases operate injuriously to every other interest of society, and although a citizen's rights may be seriously affected by not allowing the wife to testify against the husband—yet in spite of all the inconveniences which might result from it, the common law has provided, that never shall the sanctity of the domestic relation be disturbed or weakened, that the lesser good of the public convenience shall yield to the greater good of domestic harmony; and as I remarked a few moments ago, I presume that the creation of separate interests in property would, by a parity of reasoning, require that those other peculiar rules of the common law should be abandoned, and this might result in weakening every tie of social life.

The peculiar adaptedness of the common law to the domestic relations of society grows out of the peculiar position in which nature has placed the two sexes, and the peculiar relative duties and positions for which nature has designed them. It cannot be contended for a moment, that in the natural fitness of things the husband and the wife are adapted to the same pursuits, or that their relative positions in life could be changed without manifest disregard to the law of human organization. Sir, should the wife throw off those restraints which delicacy impose upon her? Should she enter into the open struggles of life independently of her husband? Should she enter into the marts of trade and the pursuits of wealth? Should she direct the intricate and selfish pursuits of commerce? Should she sit as an adviser in the cabinet, or stand unblanched upon the field of battle? Should she feel the malice, heart-



burning and jealousies of political aspirations? No, sir; every man's—every true woman's heart would revolt at the very idea of subjecting the purity of her character to such contaminating influences. Sir, if woman did enter into these pursuits, could it be hoped for a moment that, contrary to the influences which operate upon man, she would come out of the struggle as pure, as affectionate, as devoted to those domestic duties which are so essentially hers, as she would by continuing in the position which she now fills, and for which by nature she is designed? would the purity of her character continue to shine like the drifted snow, untinged by the debasements of her pursuits? Far, far from it. He is dead to manly feelings who would wish to see woman, with all her refined sensibilities, with the untold treasures that cluster around her virtuous pathway through life, subjected to the severe ordeal which, in spite of the allurements of her virtues, and the more unpliant elements of his character, even man escapes not without pollution. No, sir; if the wife leaves her home and the duties and social relations which cluster around it, let it still be as now, to feed the hungry, console the afflicted and pour the balm of consolation into the wounded spirit; let her still return to that home, as the dove to the ark, bearing with her the olive branch of hope; let her draw around that home the charmed circle within which the vicious and depraved passions of life cannot enter; let her illuminate it with her smiles and sanctify it by the purity of her affections.

It has been very justly remarked, both by the gentleman from Posey (Mr. Owen) and the gentleman from Clarke, (Mr. Gibson,) that woman is infinitely better—that she is infinitely purer than man—that in all the elements of purity and holiness and goodness, she is infinitely his superior. Now, will gentlemen stop for a moment to consider what it is that produces this result, and how it occurs in the fitness of things that she is not only purer in herself, but that she remains so? Can gentlemen imagine for a moment, that if you change her position, if you subject her to the temptation that surround the male sex, that the nicer feelings of her nature would be less easily subdued by the corrupting influences of life, than those of man? Sir, his nature is more unbending than hers, and if either the one or the other of them would be subject to those corrupting influences which are apt to encircle the pathway of human life, her gentle, unsuspecting nature would be much more likely to yield to them than his. There is not, I am sure, a man in the country, no man who has been reared under the beneficial influences of the Christian religion, who would be willing to see women subjected to those temptations which even man's stern nature cannot always resist. You would not wish to see her transformed into a Shylock, by the selfish pursuits of life, exacting the

pound of flesh, but rather you would delight to see her in her true character, like the gentle Portia, pleading for mercy and the alleviation of human suffering.

But it is said by the gentleman from Posey, that he does not purpose to go so far with this reform, but simply to change the law as it regards the relations of property. This, I contend, is only restricting the principle to certain limits, which, if extended to the limits I have named, must inevitably produce the most disastrous results.

The gentleman from Posey has remarked that the question under consideration is one of momentous import. Sir, every question which even remotely affects the well-being of society in its more general features, is a matter of importance; but how infinitely more important, sir, is every measure which, by human possibility, may disturb the very elements on which society itself and the happiness of mankind rests for existence? Sir, as I have already remarked, the happiness and prosperity of individuals constitute the happiness and prosperity of the State; and, sir, if you would wish to have a State happy and prosperous, and possessed of all those influences which elevate and ennoble the human character, you must first of all do whatever can be done to create prosperous and happy homes. [Applause.]

Mr. President, there are two systems of laws which have prevailed in the different portions of the civilized world, on which the light of Christianity has shed its benign influence. These two systems are the common and the civil law. It has been justly remarked that the common law prevails only in the United States and in England. The civil law originated in Rome in an early period of her history, and has prevailed in Italy, Spain, France, Portugal, and Holland for centuries past. It is at this time the law of Mexico and of the South American States. The civil law doctrine in reference to marriage also prevails in the States of Louisiana and Texas and California, as elementary principles of government, and features of this kind have been incorporated with their respective Constitutions. It may be remarked, however, that in California and in Texas this doctrine prevailed when these two States were still a portion of the territory of Mexico. In Louisiana, the civil law was introduced by the early French inhabitants from their native land.

I have stated, sir, the common law relation of marriage. Its principle is, to secure the happiness and prosperity of home, by blending together all of its interests, all of its hopes, all of its affection, all of its elements in one harmonious union; marriage itself a sacramental ordinance, and the public interests of society yielding to its sanctity. By the civil law, marriage is a matter of contract, a partnership, interests in property separate, and the public con-

venience yielding nothing to the harmony of the domestic union.

It is said, sir, on Divine authority, in judging of the characters of men, "by their fruits ye shall know them." The same Divine rule will equally apply to the judgment of principles. By their fruits, by their effects, by their results, ye shall know them.

Sir, what have been the fruits of these two systems of laws in the different countries in which they have prevailed? Will any man compare the condition of men in France, Spain, Italy, Portugal, Holland, or the South American States and Mexico, with the condition of society in England or the United States of America? Sir, will any man compare the elevated social condition of women in these countries, to their condition in those countries in which the common law system prevails, as the rule by which the marriage relations are to be governed? I presume not. And, sir, what is the reason that in the different countries of continental Europe, and those portions of the American continent where the civil law prevails, that there is not that degree of moral, intellectual, and social enjoyment which we find in the United States and in England? Why is there less enjoyment, less happiness, and less prosperity in these countries than in those where the common law prevails? By their fruits ye shall know principles; it is an intrinsic defect in the system. Sir, I have remarked that if you would have a happy and prosperous country, you must have happy and prosperous homes. There are no homes in Italy; none in France, or Spain, or Portugal. Such a divine relation is not known in any of the South American States. In Mexico it has never had an existence.

Sir, would you compare the purity and sanctity of a home in our beloved State, to the licentious and venal partnership created by the civil law in Mexico or France? It is only, sir, in the United States and the British Isle you find homes with their endearments and varied ties, which produce those happy fruits we witness in our own and our mother land. The gentleman from Clark (Mr. Gibson) has said, that in the higher, wealthier circles of England, the common law, as it affects the relations of marriage, scarcely has an existence, and that, in fact, it only prevails in all of its effects in the United States. I am willing to concede the correctness of the position, for the gentleman tells us that anti-nuptial contracts almost always precede marriage among the wealthier classes in England, superseding to a very great extent the simple rules of the common law governing the domestic relations. It will be remembered, that the wealthier classes in England compose but a handful, in comparison with the great body of her population; and I venture the assertion, that it is not in those wealthier classes of society where interests in

property are protected by artificial and complicated rules, by trust estates, marriage contracts, and all the intricate regulations of aristocratic society, that the greatest degree of social or moral happiness is enjoyed. No: it is in the unpretending homes, blessed with a unity of hearts and interests, that real happiness is found. Then, sir, meeting the question fairly, the civil law as it relates to marriage, and the artificial rules adopted in the more aristocratic society in England for the regulation of marriage relations, are the same. They spring from the same causes, and produce the same results; for the civil law is well adapted to the luxurious tastes, pampered appetites, and wealth-protecting interests of an aristocratic government. But how illy, sir, is it adapted to the simple republicanism of our own institutions.

The refined niceties of the civil law, as it affects the conjugal relations, only became perfect in Rome, as the general elements of that law ripened into that perfection that first produced the Imperial crown, and afterwards the utter dissolution of her Empire. While the plain republicanism of the Romans continued, a few simple rules, drawn from the laws of the twelve tables, were sufficient. The peculiar features of that law affecting marital rights, as it now exists, did not then exist. But when the refinements and luxuries of life crept in, and those influences which ultimately resulted in the overthrow of that nation were brought to bear upon their institutions, then the refinements of the civil law in reference to their domestic relations began to assume their form and character. That law may do well enough for the protection of wealth, but not for the promotion of happiness.

And, sir, it is well for the statesman to consider the ultimate tendency of principles, and more especially those that affect the immediate interests of society; the instability and final overthrow of nations may be traced oftener to the effects produced by apparently unimportant elementary principles, than to the force of external influences. Greece had fallen before Philip of Macedon invaded her territory; the liberties of Rome were gone before Cæsar crossed the Rubicon; the vital energies of Venice and Genoa were weakened by internal causes ere an external force produced their destruction. Sir, the history of the past teaches us to look wisely to the tendency of elementary principles; adopt one, others follow in natural succession.

Our country is different from any of the continental States of Europe. It is different from England. We are not so much interested in protecting the rich as we are in the advancement of the interests of the poor—because, in one sense of the word, in our country we are all poor, and our equality in wealth is the great source of our security as a nation. The rich, as was very properly observed by a gen-



tleman upon this floor when another subject was under discussion, are able to protect themselves so far as property is concerned, and they may do it, if they please, at the expense of their social and domestic happiness. The gentleman then tells us that the policy adopted in England, of creating marriage settlements, carries out in effect, the same policy that is laid down by the civil law. Then, sir, we understand the effects of the two systems. Where property is to be protected by marriage contracts—that is contracts entered into previous to marriage—and where property is secured to the wife as a separate interest under the civil law—the same object is sought for, and the same end is obtained; and I will venture to say that in England, following the natural current of things in the higher circles of society, there is the same disorganization, the same want of peace, and the same absence of domestic joys and virtues that is found in countries where the civil law prevails. I ask gentlemen, therefore, to stop and consider for one moment, whether it is the interest and the policy of a plain republican government like ours, that wealth should be secured in the hands of a few, that a system corresponding with the system to which the gentleman refers, should be adopted?

I hold in my hand Justinian's Institutes, the elements of the civil law, and I find in the volume a note upon this very subject.

The note claims for its author Cooper, who is the author of the translation. I will read it:

"I am well aware," says the translator, in speaking of marriage, "that different states of civilization require different principles of legislation on this, as well as on every other subject; that the considerations arising from the institutions of hereditary rank, the privileges of primogeniture, and the importance attached to accumulated property, may require the admission of marriage settlements, jointures, trust-estates, and most of the many other complicated regulations which crowd the law books of England; but I know of no state of society in which the laws ought to weaken the public sentiment of the indissolubility of the marriage contract, unless upon urgent necessity grounded on facts judicially established. But to sanction the foresight of adultery, cruelty, or desertion, upon the very face of the marriage contract, is to sanction the crimes themselves."

Now, sir, let me ask, is the system to prevail that the parties are to sit down and provide beforehand as if in distrust of the harmony of the union, how money or property shall be disposed of in the event of a dissatisfaction with the marriage relation? Are such to be the public tendencies? Why, sir, this is doing the very same thing which the civil law does in all instances where contracts of marriage are formed. Our author tells us that it is guarding against the effects of crime, cruelty, and desertion, by an early distrust of the harmony of the union,

and that guard is, in my humble opinion, a primary step if not to encourage it, at least to sanction it. There is an argument in favor of the present common law doctrine founded on the nature of our institutions. A republican government requires different laws from those required under the complicated machinery of a monarchy, or under a government under which property is accumulated in the hands of a few instead of being, as it ought to be, distributed in the hands of many. In Great Britain it is necessary that many laws should exist for the protection of the mere rights of primogeniture, which are not required in the United States, for the purpose simply of regulating the law of descent. It has been well said that that government, is the best which governs the least, and where every right is protected by plain, simple, and direct legislation. The institution of marriage by the common law is a plain simple matter, unattended by any of the complicated machinery that surrounds the civil law. Upon this subject I wish to read an extract from Kent's Commentaries:

"As evidence of the immense importance which, in every age, has been attached to this subject, we may refer to the Roman law where this title occupies two entire books in the Pandects, and the better part of the fifth book of the code. Among the modern civilians, Dr. Taylor devotes upwards of one-sixth part of his whole work on the *Elements of the Civil Law* to the article of marriage," and "Pothier, who has examined, in thirty-one volumes, the whole immense subject of the municipal law of France, which has its foundation principally laid upon the civil law, devotes six entire volumes to the law of the matrimonial state. Our law concerning marriage settlements appears, to us at least, to be quite simple when compared with the complicated regulations of the community or partnership system, between husband and wife, which prevails in many parts of Europe, as France, Spain, and Holland, and as also in the State of Louisiana."

Such is the opinion of Chancellor Kent as to the republican simplicity of the marriage relation by common law in comparison with the complicated and aristocratic refinements of the civil law.

Sir, it is proposed to destroy this simple system of the common law as it applies to marriage relations, and to substitute a principle which will have what effect? Why it will become necessary to pass innumerable laws to protect the wife's property. It will be requisite to make important innovations upon our present system; and instead of the plain and simple principles by which the marriage relation is governed, we shall have the complicated system which has prevailed in Rome, and in other countries of Europe.

I am, therefore, opposed to the proposition as it is embraced in the two sections which are

now under discussion, upon two grounds—mainly upon two grounds: First, because I think it must in the very nature of things tend to weaken the unity of the domestic relation of husband and wife; and secondly, that it will tend to build up, and foster, and cherish, a complicated and refined system of society amongst us. I hold in my hand the code of Napoleon, containing some four or five hundred pages. If the gentleman wishes to see how far that doctrine will lead, let him examine that code. It is said to be more complete than the civil law upon which it is founded, and yet, perhaps, one entire third of that volume is devoted to securing and protecting the various rights which are the necessary result of the position in which the proposition now before the Convention would place the husband and wife. A plain and simple form of government is best adapted to the genius of our people, and, as I believe, best calculated to produce the happiness of society. The more natural the rules by which society is regulated the more simple they are, and the more beneficial in their effects. The amendment which I have offered as a substitute for the two sections, proposes to secure to the wife the use and the profits of her real estate. I cannot see how, by possibility, the possession of that interest could disturb the harmony of the domestic circle to any extent. The effect of the proposition would be, not to give her the control of the property, but to secure it for her benefit. If the marriage contract should be dissolved, either by the death of the husband or by divorce, the wife will then have the patrimony which she received from her father, or any real estate she may have acquired from any other source. She has that at once as a home for herself and her children.

But the gentleman from Posey tells us that the object of the sections which he proposes, is to protect the wife against a bad husband. But let us consider for a moment whether the change may not produce more evil than good. No man can doubt that by possibility, this weakening of the domestic relations, by creating separate estates, may, in the course of time, produce very bad results. It may not produce them now. Society does not change at once. Fifty years or a century may roll on before the true bearings of this law could be fully ascertained under a government like ours—the stubborn influences of the common law may remain for years. But once change an elementary principle of society, and although it may be slow in its effects, those effects will most assuredly come. The gentleman tells us that the object of his proposition is to protect the wife against a bad husband; but he does not propose that the wife shall have the whole control of her property, and the right to manage it in every respect, but he proposes that the husband shall administer the affairs of the wife in the character of a trustee.

As a matter of course, the husband acquires

possession of the wife's property—for when two hearts are first blended together in the marriage relation, the wife would undoubtedly yield all into the husband's hands. Well, as I have said, the husband acquires possession of her property as trustee. She does not go to the bank to see whether her money is there; she has confidence in her husband. She does not go into the fields for the purpose of looking after the stock, nor does she take journeys from home for the purpose of examining into the products of her estates. They all come under the control of the husband; and if he is dishonest, where is the difficulty of appropriating that property to his own use, and as he may think proper? But look at the result of it. He is not really the owner of that property, but he has the control and management of it. The wife is conscious of the fact that that property is hers, and that although the husband is her trustee, he has no right to use her property for any purpose: he knowing this, and knowing that that feeling may exist in her breast, the feelings of love that once existed, are in a measure weakened by, perhaps, mutual distrust. If the wife, as matters now stand, feels that she surrenders all into the hands of her husband, and that in the event of the dissolution of the marriage contract by death, or otherwise, she has a little home which she has inherited from her father or her mother, she can be secure in her happiness, so far as being above the fear of want can make her so, and still each tie of affection remain unbroken. While, then, she surrenders all into the hands of her husband, she looks to him for support and consolation, she looks to his industry and perseverance and love of home, for all her happiness. His love of his fireside, his wife, and his children, are all his earthly enjoyment. Then the husband manages the domestic interests, justly influenced by no feeling save the feelings of a manly heart. The evils which the gentleman would seek to remedy, will, as now, seldom exist.

Now, I would ask any lawyer, or any thinking man in this body, to consider what would be the result of the adoption of this principle so far as the necessary incidental legislation is concerned? We are proposing to simplify legislation, we are proposing to abandon many of the old doctrines of the common law, and substitute therefor some other simpler rules for the administration of justice. Say that we accomplish it; here is a new field opened for legislation, and in less than fifty years, perhaps in less than twenty years, a hundred pages will not contain the elementary principles alone, which will have to be laid down for the purpose of protecting the interest involved in the propositions.

Then, I take it that if the husband is to be the administrator—and that he is to be, I think is very evident from the gentleman's position—he will have the control of the wife's personal estate, and may dispose of it to his own use.



If he is a dishonest man he will do so, and that, too, much sooner than if he regarded the property as his own. When once you place restraints upon men, they are very apt to break through them and do acts which they would never contemplate if those restraints did not exist. Find me the man who is inclined to disregard the moral promptings of honesty, and let him feel that he has the control and management of property which is not his own, and there is a strong temptation raised to appropriate it to his own purposes, which would not exist if he felt that it was his, and that it was to the best interests of his wife and children, that it should be appropriated to the best ends.

Sir, if there is a single kindly impulse in the husband's heart, it is brought into active force, when he remembers that the partner of his bosom has surrendered all into his hands; her hopes, her happiness, every interest of her life; that his joys are her joys; his griefs her griefs; his prosperity her prosperity: that she leans alone upon his bosom for comfort and consolation. Sir, if there is a spark of the divinity within him, it will kindle into the true impulses of manhood; yes, in the language of Indiana's gifted poetess, if

"Thoughts of her, the loved, who ever  
Made the sunlight of his home,"

stir not the better impulses of his heart, human laws will in vain strive for their object.

The gentleman from Clark (Mr. Gibson) undertakes to say, that, under the common law, women are the merest slaves of men. When the gentleman made this remark, I looked around, and, seeing the sparkling and gay countenances which surrounded him, I was surprised that the gentleman did not seem to understand that these ladies were laughing to think that the boastful lords of creation had not long since discovered that they themselves were the slaves to the fair beings who preside over our destiny—and that he had not discovered that those flashing eyes grew brighter at the ridiculous idea of the lords of creation talking of their superiority, when, even then, as ever, they were fiddling while their fair slaves danced.

Slaves, indeed! Why, sir, I have no doubt that every heart fluttered at the announcement of the strange idea, that society could progress without the controlling influence of the ladies. At all events, if they were really the suffering party, they looked as though they were not conscious of their own misery. [Laughter.] I thought, indeed, while I gazed on the fair forms, laughing eyes, and dimpling cheeks, around us, that they were not only unconscious of their misery, but were taking a private laugh at the figures we were cutting in still further fastening on ourselves the shackles of slavery.

I agree with the gentleman from Wayne, (Mr. Rariden,) that there is a law higher than any human law, which controls and directs, not only the original elements of society, but soci-

ety in its more varied and public relations; a law purer and holier than temporal power can even form—the law of human affection; and by that law alone woman can wield an influence, the wealth of earth could never give.

The gentleman from Clark told us of instances of individual suffering, resulting from the common law relation of husband and wife. I presume, sir, that there is no man, who can listen to a recital of female grief, without feeling a glow of indignation against the degraded wretch who would betray the sanctity of a wife's affections. But, sir, the gentleman should remember that isolated cases cannot establish general principles; and he should remember, also, that no general principle of law can be established, under which injustice may not be done. It is the general effects of the rule, and not the exceptions, that should be considered.

The gentleman from Clark (Mr. Gibson) speaks of the common law as it affects marriage, as an "infamous system." Sir, is there no benevolence in the law?—no mercy in this infamous system of common law, of which gentlemen speak? Is there nothing redeeming in that system of laws upon which is laid the broad foundation of our glorious Republic? If the wife incurs a debt, she is not liable to imprisonment; but the husband is alone liable. And if the wife commits a tort, slanders a neighbor, or incurs a debt, the husband alone must suffer for it. The husband is justly bound for the support of the wife. As the head of the family, he alone is liable to the results incident to his position, and, inasmuch as the law places him at the head of the family, and as the representative of its interests, it at the same time justly imposes on him all the burdens of that position.

This leads me to correct an impression with reference to one point of the law which was made the other day, by the gentleman from Clark (Mr. Gibson). If I understood him aright, he made the declaration, that a widow, upon the dissolution of the marriage, takes no interest, except a right of dower, even when there are no children. If I understood the gentleman correctly he is mistaken. For, by the law of this State, the widow, in such a case, is entitled to one-half of the real and personal estate, in fee simple; if there are children, their rights should surely be protected. How, then, can the gentleman denounce the law with reference to the rights of the widow? If a man dies in Indiana, without lineal descendants, the wife takes one-half; but if the wife dies, the husband does not take the title of a heir from her real estate.

A MEMBER. She ought to have all.

Mr. H., continuing. The father or mother may have rights. I only refer to this to show that the law is not unmerciful, and further to illustrate this fact, I will read one extract more from the rules of the common law:

"The husband is liable for the wife's debts, contracted before coverture." "The husband is liable for the torts and frauds of the wife, committed during coverture; where the remedy for the tort is only damages by suit or a fine, the husband is liable with the wife; but, if the remedy be sought by imprisonment or execution, the husband is alone liable to imprisonment. The wife, during coverture, cannot be taken on a *ca. sa.*, for her debt *dum sola*, or a tort *dum sola*, without her husband, and, if he escape or is not taken, the court will not let her lie in prison alone." And, by our law, if the husband dies insolvent, independent of the dower, she takes one hundred and fifty dollars, in one instance, and two hundred dollars in another; even though not a dime be left to pay the creditor; and this is right; but is it an evidence of the "infernal iniquity" of the common law?

It was remarked by the gentleman from Posey, that he feared women did not receive the same consideration which they would receive if they were allowed to exercise the right of suffrage; he feared that the same justice is not meted out to them, that would be if they exercised the rights of the politician. I have no doubt, sir, that in such an event, our whining politicians would be everlastingly weeping over the wrongs done to the rights of the fair voters, as they are now, upon every occasion, mourning over the wrongs which their fellow citizens are suffering, with very commendable patience however, but I doubt, sir, whether the sparkling eyes of our fair friends would grow any brighter, or that their rosy lips would wear any sweeter smiles if they were besieged by politicians asking humbly for their votes.

Again the gentleman from Posey, (Mr. Owen,) with whom this subject has for years been of absorbing interest, tells us that we should distrust our sense of justice in approaching this subject, and that it should be approached with a candor commensurate with its importance. Sir, I admit the power of prejudice, I admit that the statesman may be blinded by devotion to his partizan creed, the bigot by his religious faith, that, in fact, in all our public relations the selfishness of our natures and pursuits may control and direct our actions. But, sir, if there is a subject this side of eternity, which we will all approach in the spirit of honest candor, it is one involving the rights and happiness of women, for it involves every interest and affection, for the possession of which life is worth possessing; every step in our pathway through life is linked in fond remembrance of some gentle being, who still cheers us in our course, or whose memory is embalmed in the deepest recesses of the heart, the first recollections of childhood are blended with the smiles of a devoted mother, and the last object on which the fading vision will linger will be the tearful eye of a wife or daughter, bending in speechless agony over the couch of death.

Independent of the high character of the gentleman, (Mr. Owen,) whose cultivated mind dwells with so much interest on this subject, I am assured by the manner in which he has discussed these propositions, that he is actuated by none other than feelings of enlarged benevolence. I am satisfied that he deems this change demanded by the true interests of society. But, sir, because we differ as to the propriety of this innovation, it is no evidence that any of us will allow ourselves to be so misguided by prejudice as not to be able to approach the subject in the spirit of candor. But, sir, I am in earnest in my opposition to these sections. I believe that not a single link of our social relations should be broken. I believe that the sanctity of our homes should be preserved—the same sanctity of home which our fathers brought with them from their native land. I desire that the same social happiness which reigned in the rude cottages, built by the pilgrim fathers on the coast of the Atlantic, in which a race of heroes were reared—that the same social system which has produced our happy homes, should be handed down, undefaced by innovation, to all coming time.

Sir, if it is necessary to work this change, the necessity should be made apparent upon general principles, and not by reference to particular cases—not by selecting exceptions to the general rule, not by quoting particular instances in which, under the existing laws, injustice has been done.

The gentleman from Posey with all his experience, (and he is a gentleman of large experience,) may be able to show many instances in which injustice has been inflicted upon the wife under the sanction of law; but until he can show that the general workings of the common law, with reference to this domestic relation, is to produce injustice, he certainly cannot expect gentlemen to be prepared for any material change. He cannot but expect the law to remain as it is, unless it can be demonstrated that the general workings of the rule is unjust, and that the proposed innovation will produce better fruits.

Sir, individual cases cannot be taken to establish a general rule. But, let me ask, what has been the prosperity of those countries where the gentleman's civil law rule has prevailed? Have they happier homes than we here in Indiana? Have they more cheerful firesides or happier wives than ours, or are the women of our State, or any other State where the common law prevails, in any degree less amiable, or less beloved? Or are they in any degree less pure and holy in the influences which they dispense, than are the women in those counties where they have the right to control their own property independently of the husband? We should examine this question upon this general principle, and if it should appear, upon such an examination, that the general workings of the



common law produces not the most desirable results, we ought to abandon it. If it does, as we love our wives, our homes, our firesides, let us retain it.

I hope, then, that this question will be discussed calmly and fairly, and that the Convention will not make any change in the law regulating this most important relation, without due consideration. I do hope and trust that the change proposed by the gentleman from Posey will not be adopted unless gentlemen are confident of better results. I hope, however, that legislation may be authorized so that the real estate which the wife may inherit, shall be held sacred, so that, upon the dissolution of the marriage, she shall have it as her own, and so that her husband shall never be able to create any incumbrance upon it. I hope the spirit of benevolent, I may say just, reform upon this subject which has been growing up for the last thirteen years, and in which the gentleman from Posey has been an able abettor, may at least receive a new impulse from the deliberations of this body, and that laws justly calculated to secure to the wife a fair interest in the estate of the husband on the dissolution of the marriage relation may be enacted. I do not defend the present laws; in several instances they operate most unjustly against the widow, and, as a citizen, I will go as far as any man to reform them; but, sir, while I would rejoice to see a just, an enlightened policy adopted, securing to the wife her home, in the event of the dissolution of the conjugal relation, and every other just interest in the husband's estate or otherwise, *consistent with the indissoluble character of the domestic ties*, I should consider myself recreant to a sacred trust, if I hesitated for a moment in resisting the adoption of a principle which may even tend to weaken the ties of the domestic union.

MR. BADGER said—

MR. PRESIDENT: It is, perhaps, well, sir, for this Convention, and for the community, that we do not all see alike. I desire to say a few words on this novel proposition in justification of the course I shall pursue in voting on the original section, as reported by the committee on rights and privileges, as also on the pending amendments. I have been no less amused than interested at the course pursued by honorable gentlemen on this floor. At times during this discussion, they would be seen on fancy's wing, portraying the beauties, depicting the attraction, and dwelling with ecstasy on the loveliness of woman. I have seen them apparently lost in imagination, and forgetting that they were still on earth, they would, for a moment, seem to be "wrapped in the phantasmagoria of their own sublime perfectibility." Sir, I have yearned in gentlemen's be half for a banquet over the destruction of this "love-of-painting-spirit," especially when it came as a free-will offering in

support of measures which our constituents have neither expected nor desired at our hands.

We seem to have lost sight of our land-marks. As I observed one day last week, we have not been sent up here to legislate; and I now appeal to gentlemen, whether it is requisite and proper for us here to discuss the merits of any special law? For myself, having no legal attainments, I am constrained to take a mere external view of this question, and make my examinations in the light of common sense.

Now, sir, what are the facts upon this subject? Is it true that the widow and the orphan are not sufficiently protected by the statutes of the State? Is it a fact that married women are not sufficiently protected by the laws of the land? And is it possible, Mr. President, that our country has grown rich, happy, prosperous, and powerful, under the existing laws, and yet the condition of our women—our mothers, our wives, and our sisters—remains so degraded—so oppressed, as gentlemen will have it. Sir, I believe it is an admitted fact, that it is the duty of the law-making power, to approximate as nearly to divine law as possible in forming a civil code; that is so far as justice and equity are concerned. Now, sir, with all due deference, not only to the intelligence, but to the better judgment of the advocates of this radical change, I desire to say, that it is contrary to the genius and spirit of the Christian Scriptures. And if any delegate is disposed to assume the negative of this proposition, he will find me, if not "prepared," at least ready and willing, to defend it in the best manner I can.

Sir, I am opposed to this report, not merely for the causes hinted at already, but from other considerations. It is, to say the least of it, an experiment that might not, in this country, meet the expectations even of its friends; and consequently ought by no means to form a part of the organic law. Honorable gentlemen should reflect, that it is certainly unsafe to engraft matters purely legislative into the Constitution.

It would seem, Mr. President, from the almost unlimited amount of matter proposed to be put into the amended Constitution, that delegates have concluded that, with the adjournment of this body, all the legislative talent of the State was to be annihilated. Now, sir, while I am not only willing to admit, but ready to assume, that in this Convention is an embodiment of all the desired amendments to the Constitution, I cannot allow myself to think for a moment, that we have also an embodiment of all the political talent in the State, housed up in this Hall. I am ashamed of the thought. Why then, sir, will we undertake thus to legislate in the arrangement and establishment of the organic law, instead of contenting ourselves with the prompt discharge of our appropriate duties?

I confess, sir, that, when I see the attempts made here (and probably too from the best mo-

tives) to put every thing into the Constitution, whether it be tried or untried; and when I reflect that we have spent well nigh six weeks and done nothing; and when I see practical common sense members becoming afraid to speak in favor of husbanding time, because of the rebukes with which they are met on every side—I say, sir, when I see all this, I confess I have some misgivings as to the result of our labors here.

Sir, we are taking the wrong course, in my opinion, to gain for ourselves imperishable laurels. It has been said of Christians, that “they ought to look to the rock from whence they were hewn.” And would it not be well for us to look to the people from whom we come, and of whom we are? Would it not be well for us to look back to the events of last July and last August, and consider the questions which were propounded by our constituents when we were upon the stump? Would it not be well for us to remember the pledges we then made to our fellow-citizens, and which they expect us to perform? I envy not the laurels which gentlemen may expect to wear, if they are to be acquired by those means, to which it has seemed to be their pleasure generally to resort.

But, sir, to the point again. Admit that these proposed sections are not contrary to the divine law, governing the heads of families; admit that the principle may have been followed with the desired results in older and richer States; and admit the truth of those few extreme isolated cases, cited by the gentleman from Posey, as his closing argument that we needed such a law; admitting all this, does it follow, as a matter of course, that the people really want such a law? that they must have such a law? and have it, too, as a Constitutional provision?

From these remarks, Mr. President, the Convention will see where I stand upon this question. My position is now defined, although I am disposed at all times to advance my opinions with due deference to the riper intelligence and better judgment of others. I have only to add, that I am not here to do anything more than to perform my duty, with a strict reference to those matters which the people expect of this body, and with reference to which I stand pledged.

Mr. SHERROD. Mr. PRESIDENT: I have been an attentive listener for some days past to the discussion of the legal bearings of this subject. We have had the law in the case, and I think the gentleman from Putnam (Mr. Badger) has just given us its gospel bearings. I hope the Convention has been gratified by the lecture.

I shall not, at this time, attempt to enter into an elaborate discussion of the proposition in debate, the ground, for the most part, having been traveled over. I shall, therefore, in endeavoring to call attention to those points of the ques-

tion which have not been brought out in debate, seek to be as brief as possible.

I always receive the opinions and suggestions of my seniors with great deference, and the more especially when their locks are whitened with the frosts of many winters; when their opinions come to us ripe with age, shewn to us through the clear light of experience and divested of the coloring of interest or of passion. But, sir, on this question I feel compelled to dissent from the opinions of many of my fellow members. I had intended to give a silent vote upon the final question, and let the journal of the Convention alone indicate the sentiments I held; but, sir, when I see the deep interest that is manifested by the friends of the proposition, not only within this Hall but out of it, and as I have observed from day to day those for the benefit of whom this proposition was submitted, crowding the lobbies of this chamber, with their lit faces and bright eyes, attentively watching the progress of this debate, I felt it to be my duty to add my humble voice to the expression in favor of the section, as reported from the committee on the rights and privileges of the inhabitants of this State. But I beg leave to differ with the gentleman from Dearborn (Mr. Holman) in his estimate of the opinions of the women of this Hall upon the question before us. I almost imagined that I could hear them say, “We have no voice upon your floor; we have no vote in your body; but we believe there are magnanimous spirits there who will see that our rights are upheld and vindicated.” Sir, I should be unworthy the name I bear, I should be less than an American, if I could approach such a subject with indifference.

The proposition reported by the gentleman from Posey, (Mr. Owen,) upon which is the pending question, and which I shall cordially support, is that: Women hereafter married in this State, shall have the right to acquire and possess property to their sole use and disposal; and laws shall be passed securing to them, under equitable provisions, all property, real or personal, whether owned by them before marriage or acquired afterwards by purchase, gift, devise, descent, or in any other way, and also providing for the registration of the wife's separate property.

Subjects of controversy, or questions of State and National interest, like every thing else which occurs within the experience of man, are continually changing. Each successive age that the hand of time fashions and sends abroad to become, in its turn, the subject of history and remark, strides along upon the stage of action, teeming with some important thought, some useful theory, some practical principle which former ages had failed to discover. And no matter how trivial or insignificant, compared with others, the era may be, it bears upon it the impress of originality and equal rights. Not



that men's ideas change often with regard to the fundamental principles by which society or government is constituted and sustained. No; but improvement consists most generally in an application of these principles to new subjects. In a comparison with these principles to some of the practical workings of our government, we can ascertain whether they be harmonious and consistent.

Whatsoever, therefore, be the point of time at which an individual finds himself an inheritor of life, occupying the high and responsible position of a representative of a free and enlightened people, he may know that there is a weighty responsibility resting upon him for his portion of effort for the future progress of the race.

Though a man may be conversant with the world's history, and familiar with all the learning of former ages—though he may have climbed up the steep ascent of the hill of science, and drank deep from the spring of knowledge, and sounded the depths of classic lore, yet of what avail is all this unless he can successfully apply his knowledge of the past to the necessities of the present. Unless the light of experience enables us to tread the rugged paths of life with a surer step, to avoid the errors committed by those who have gone before us, unless it shows us the way to improvement and a higher civilization, it is useless for all practical purposes. The age we live in has been denounced by those who cling to the cobwebs of the past, as utilitarian in all its manifestations. Be this as it may, the age is certainly eminently practical in all its tendencies. Is a new discovery announced? The instant question put by the busy public is, "To what useful purpose can it be applied?" All learning and all invention is valued only as it contributes to the general prosperity and happiness of the people.

We occupy the last moment of time that is known. No one man has any more knowledge of the great future than another, and it is in each one's power, by the exercise of his energies, to give a direction to coming events.

Although, when compared with other ages whose light has kindled, shone, and faded, and are now visible only by the pale reflection of history, the present age may have less of the ideal and more of the practical, it will be found the most enlightened, most progressive, and most prolific in great enterprises of reform and amelioration of the social and moral condition of the race. Every portion of the civilized world is lighted by the beacon fires of thought and free discussion. Every assemblage of men, whether in mass or as representatives of the masses, every publication that a teeming press throws off, to find its way to every part of the civilized earth, is rife with debate upon the fundamental principles of government and the organization of society. The rights of the State, the rights of the governed, the rights of

man, and in this day, the neglected rights of women, are being freely discussed, and the period for a radical change of many features of government and of the laws has now arrived.

He who who would now keep pace with the progress of public events, and has the moral courage to lay his shoulder to the car wheel of reform, and act a part in the great movements of the day, has much to do—stern and prompt efforts to make—or the time that is allotted to him to live will have passed before reaching even the threshold of the busy theatre of life.

Among the many interesting questions of reform that are now being discussed by the press, in the pulpit, in popular conventions, and in legislative halls, we find this question of the legal rights of married women standing prominently forth. It has arrested the attention of the wisest and the best men in our country; it is now brought before the delegates of the people of Indiana in Constitutional Convention assembled for their discussion and decision. But, like all other reforms that were ever urged in the world, it has its determined opponents, as well as its warm advocates. And though I had expected opposition from those who regard that which is old—that which comes down to us from past generations—I must confess that I did not expect that this proposition would meet with the strenuous opposition which it has on this floor, backed by so little philosophy. I do not make any great pretensions to chivalrous feeling, nor I have never aspired to occupy the position of a philanthropist, nor yet do I profess to rise here as the champion of the gentler sex; I am here simply to ask that justice, and justice alone, may be granted to the women of Indiana; and I intend to speak and act my convictions under a sense of the importance of the subject and the responsibilities of the position. This is a subject that well might command the attention of every statesman, patriot, and philanthropist.

In supporting this proposition reported by the gentleman from Posey, (Mr. Owen,) I would not advance any very novel or strange opinions. Gentlemen who are ambitious to bedeck themselves in the trappings of a field officer, and parade the review ground in all the pride of military consequence, need have no fear that we propose to claim for woman the right to appear as his rival in that theatre. We do not propose to enlist and equip an army of female Amazons to vie with the sterner sex in feats of daring before an enemy's lines. We advocate no proposition that would draw woman from her appropriate sphere of the domestic relation. Neither need gentlemen fear that we shall claim for them the right to exercise the elective franchise, or that we shall send to congressional halls a bevy of eloquent young ladies to take their places in the arena of political strife, and instead of occupying their seats in the galleries, to convert the committee rooms into bou-

doirs and drawing rooms. Neither need the lawyers and the M. D.'s that are "turned out" at every session of a court and every commencement day of a college with such marvellous rapidity, fear that ladies will disturb the dust upon "Coke and Lyttleton," or become rival physicians and surgeons. We propose nothing looking to such objects; but we propose simply that woman should be secured in the possession of her obviously just rights; that she should have the possession and control of that property which she owned before marriage, or afterwards acquired by descent, gift, or in any other manner. Is there anything very novel or strange in this?

I have been very much amused to witness the nervousness of some gentlemen when this subject was broached. Some seem inclined to have slight convulsions when a proposition to secure the rights of married women is defended and urged. It was only last evening I was met by a gentleman, whose name I shall not mention here, who accosted me with—"Well, Sherrod, how are you going to vote upon this proposition of Owen to change the laws relative to the legal rights of married women?" When I replied that I should certainly support the proposition, he declared his astonishment that I could seriously entertain such ultra notions; he warned me, that, if we went on in this way, the women would soon get the reins of government in their own hands; he appeared to have a dread of the danger of their ascendancy. But let the advocates of the old system not be needlessly alarmed. We claim for women no such position as demanded by Madame DeStael, Mary Wolstencroft, or George Sand. No new theories as to her social position are advanced; we simply claim that she and her children shall be secure in the enjoyment of the property which was her own before marriage, or acquired by gift, descent, or otherwise, after marriage. We desire to see her protected and secured in the possession of her own home and fireside, around which her children may play and receive that protection and education which the competence she may possess in her own right may afford her the power of giving them, without the constant apprehension of being driven forth by a sheriff's sale, to satisfy the creditors of an improvident or unfortunate husband and father. We boast of our superior intelligence and civilization—of the beneficent institutions of our government, which secures to all equal rights and exact justice—and I admit that we are in the enjoyment of life in an almost fairy land—certainly in the El Dorado imagined by the discoverers of the New World. Intelligence and the refinements of life reach every grade, and pervade every circle of society.

But with all this improvement and progress, there are yet glaring defects in our laws. So far as it regards any law to protect a mother and her helpless offspring in the possession of

their own home, we are no further advanced in civilization than the early Romans before the light of Christianity dawned upon the world. Their historians say of the condition of woman at that time, that she acquired and inherited property for the sole use and benefit of her lord. Is not this her condition in America after the lapse of two thousand years? After the Romans became a more enlightened and polished people we see that they adopted laws relative to the sex which were less rigorous and more consonant with the principles of justice. At the termination of the Punic wars, a Roman matron claimed and received protection in the possession and control of property which was hers before marriage; and as the gentleman from Dearborn (Mr. Holman) remarked, the institutes of Justinian confirmed those rights. Gibbon tells us that by the Justinian code, the estates of the wife could neither be alienated or mortgaged for the debts of a prodigal or unfortunate husband; even the voluntary transfer of property, in many cases was prohibited by the jealousy of the laws.

Thirteen hundred years have elapsed and we of the nineteenth century, with all our vaunted superiority in civilization and equal rights have not yet attained an equality in this respect with the people of that early age. Our law makers, as yet, have refused to accord that just legislation to the sex, that protection of the means of living, which was conceded by the Pagan Romans and confirmed by a Byzantine Emperor in the sixth century.

The worshipers of Jupiter protected helpless woman and children, and secured them in the protection of that home without which life is oftentimes a curse instead of a blessing. And yet we sympathize with their semi-barbarous condition; we pity them as Pagans unblest by the teachings of that Christian religion which enjoins the especial protection of the widow and the fatherless; but, sir, we enlightened Christians can see the mother and her offspring turned from home and thrown dependent on the cold charities of a heartless world to satisfy it may be, a debt contracted at the gaming table or race course by a profligate and drunken husband. And like the self-righteous Pharisee, thank God that we are not as men of former ages.

The laws relative to married women are not only unjust and productive of much suffering and destitution, but the public sentiment in regard to woman is unsound and its practical effects most cruel. If by profligacy and dissipation the husband deprives the wife of a home and she is compelled to go out into the world alone, she receives but little of that charity and sympathy which the gentleman from Wayne (Mr. Rariden) tells us is her shield and protection in the absence of that property which is justly hers, but which our laws vest in the husband. And if in her dire extremity, when the offspring that are dearer to her than her own



life, if in her extreme destitution, when she can no longer obtain work even at the mean pittance afforded for female labor, she should in a single instance violate the rules of propriety, or for a moment forget the stern rules of morality, she is no more the wife or the woman entitled even to sympathy; she is the condemned outcast, her claims to regard and respect forfeited, and her restoration to society forever denied. The Pharisaical finger of society is pointed at her to withdraw attention from its deeper wound, though more artfully and successfully concealed from discovery. Not so with the husband. The magnanimous man makes haste to complete the ruin of weak and defenseless woman, whose errors are generally the offspring of their virtues, of their child-like trust and implicit confidence in him. The husband may steep himself in the wine cup and waste his energies and his substance in the retreats of dissipation and debauchery, can spend his days and nights at the gaming table, with the abandoned and the wanton, his passions fed, it may be by means of the property or the earnings of his heart-broken wife, yet society sets no Cain-mark upon him, he comes in and goes out as usual and may remain a respectable, oftentimes an honored member of society. The law gives him the authority, and the wife must obey. How cruel and unfeeling is man! It seems to be not enough that women should be deprived of an equal share of their property—equal opportunities for education, and confined to the menial drudgery of an exclusively domestic life, but ties, that to her are stronger than life, must be riven.

Sir, I am not speaking of barren attractions, but of practical realities. It is not fiction but sober truth. I contend that for the wife there is no law, but that of injustice. When neglected or ill-treated, her only defense is her imploring look, her flowing tears, and her heart-broken sigh. And, sir, I admit they would be sufficient to protect her from wrong and neglect, at the hands of a man who possessed a soul and a heart to feel. But, sir, can they reach the ear or heart of those who are sleeping the cold sleep of death? or the brute in man's guise, who marries the money, and not the woman; and who estimates domestic happiness and female worth and virtue, by the amount of property secured through the transaction? Sir, it is to guard against cases of this kind that the proposition now under consideration was submitted, and not to build up separate interests between man and wife, as has been so falsely and unjustly charged upon this floor, by the opposite side of the house. The man who dare not entertain the same respect, the same affection and interest, for the partner of his bosom, without property, as he would with it, is unworthy the name he bears, and should never be entitled to the name of a husband.

And yet, it would seem that this sentiment, true as it is to the thought and feeling of every

true man, is not practically regarded by those who oppose a change in the laws relative to the property of married women. The tendency of all their arguments is to the conclusion that property is the basis of the marriage contract; that, without it, the union of two young hearts is without the true cement that will make the tie indissoluble. I confess that I have looked forward to the time when I might be so fortunate as to secure the attachment of one of that sex, for the vindication of whose rights I would always volunteer my humble efforts, as the happiest period of my life. But, sir, if the doctrine preached by the advocates of the common law doctrine in this regard, be true, if it is *property* that constitutes the strength of matrimonial bonds, if that is the only cement and the great incentive; if property is literally the *principal* in this matter, and if its amount constitutes the motive by which parties are actuated, I trust that I may be delivered from what would literally be the *chains of wedlock*—golden chains though they might be, they would wear none the less galling. If, in contracting the marriage relation, the parties are actuated by no higher or holier aspirations than these, I pray, from the inmost recesses of my soul, that God, in his mercy, would avert from me the calamity.

But, let us examine this point a little further; this position that conjugal happiness is inconsistent with the securing to the wife the possession and control of her own property. Gentlemen have not yet told us what evil consequences are to be expected from the operation of laws securing to the married woman the property she possessed before marriage, or that she acquires afterwards, by gift, descent, or otherwise. Is it feared that the holding of property in her own name may lessen or destroy that dependence which it is thought a woman should feel towards her husband? Is it feared that, if this feeling of dependence is taken away, discord and unhappiness will follow, and, perhaps, a disruption of the relation? Or is it feared that frauds might be occasioned by the facilities offered to the husband to obtain credit on the strength of property belonging to his wife, which would not be liable for his debts? Now, when these objections are viewed in a practical light, they do not possess weight or the shadow of a foundation.

As to the first objection, that any diversity of interest, or any discord would arise between a man and his wife about property, that could only descend to their own children, I do not believe. Nor do I believe, between persons suitably matched, that the circumstances of the woman being possessed of property that could not be alienated, would produce superciliousness on her part, where the man had qualities to command respect. There are women who would, probably, from natural bad temper, and deficiency in proper training in early life, be *vixens* under any circumstances; whether the

property came by the one side or the other, or neither. And there are men, that are such *ninnies*, as to command no respect from their own children, who have passed the period of infancy, and, of course, do not meet with an average share of attention and respect from their companions. But, these are exceptions that neither the laws of God or man will reach. And, from the opportunities I have had of judging of these matters, from observation, I have arrived at the very distinct conclusion, that there is very little danger of difficulties arising between man and wife, about the property of either, when true affection was the attraction to marriage. A man of refined and magnanimous feelings would willingly see himself prohibited, by legal enactments, from the control of his wife's property, for the sake of the vast general benefit arising to females from such laws. We must remember, in framing a Constitution, that it is for the general good that we must frame provisions—not particular cases. All will admit that, where love exists between husband and wife, if the woman have property which it is right and proper and necessary for her husband to have the use of, there will be legitimate means by which she can confer upon him the right to use it; and where there is not this love, "this mysterious sympathy," as the gentleman from Wayne (Mr. Rariden) beautifully expressed the feeling, all will agree that no laws can be too strong to protect the wife.

As to the second objection, that this provision, giving to married women the possession and control of their own property, would open the door for frauds, by enabling the husband to obtain credit on the strength of his wife's property, but which property cannot be attached on account of any debts of his, it might have some weight, if the public were not well apprised of the real ownership of the property. It will be seen by a reference to the section in debate, that it is distinctly provided that "laws shall be passed, providing for the separate registration of the wife's property." This makes it clear and open, and secures society from the wrongs and frauds anticipated.

Matters of this sort, for various reasons, are apt to receive a thorough investigation, and to be well understood during a woman's maidenhood, and particularly if the amount of goods, chattels, lands, and tenements, approach at all to that amount called a competence, inasmuch as there are usually quite a number of good looking young men, of moderate merits, who have no particular objections to appropriating the person and property of the fair one to "their own proper use, benefits, and behalf," in the quaint old language of the law.

Nor have many instances occurred, where the relatives of the lady would put themselves to unnecessary pains to conceal or under estimate the value of the property in question—generally the reverse.

After marriage, the tax books of the county would exhibit the ownership. Hence, there could be no chance for fraud.

Mr. President, I am unwilling to take up any more of the time of this body upon this question. I have, in as brief a manner as possible, expressed the views I hold in reference to this matter, and which influence me to vote for the proposition of the gentleman from Posey (Mr. Owen). I know there is a strong opposition to a change in this regard, but I believe that most of the objections that are honestly entertained to the provision, will be dissipated by argument and contact with the clear statement of the nature and practical operation of such a provision. The contrast between the principle of the common law which now regulates the matter of the possession and disposal of the property of the married woman, and the principles of this proposition must, to every reflective mind, result favorably to the latter.

But let the proposition meet with what opposition it may, it will ultimately triumph, because truth is stronger than error. Though it may fall here, I should cling to its principles, and still advocate them to the extent of my ability. I would rather fall fighting over principle, than to triumph with sentiments against the injustice of which my conscience was arrayed. But whatever the result may be here, public attention is waking up to the subject, and discussion is all that is needed to secure in its favor the suffrage of the people of the State.

I would not be strenuous whether this proposition was adopted as a Constitutional provision or as a Legislative enactment, so that the laws in regard to the property of married women are made to conform to justice and correct principles. But I confess that my preference is to see this proposition adopted as a part of the organic law of the State, for it would then stand as permanent as the eternal principles upon which it is founded.

A MEMBER moved that the Convention adjourn.

A division being called for, the Convention refused to adjourn.

After a pause of several minutes—

Mr. PETTIT remarked, that as there appeared to be no one desirous to take the floor, he would again move that the Convention adjourn.

No one seconding the motion—

Mr. MAY rose and said: Mr. President, I do not take the floor for the purpose of making a speech on the very important question of woman and woman's rights, that is now before the House. Not by any sort or manner of means, sir. In the first place, Mr. President, I am not one of the speech-makers of this Convention. Perhaps all present can testify to the truth of this statement. And, sir, even if I were one of that indefatigable band, I realize too sensibly the embarrassment of my unfor-



fortunate condition, to willingly enlarge on so profound and ticklish a question as the one now before us. No, indeed, sir; I rise for a very different purpose from that. In fact, Mr. President, I am up simply to ask that I may be excused from voting at all on this, which is to me, I confess, a very embarrassing and ticklish question. [Here Mr. M. paused for several moments.]

I was in hopes, Mr. President, that I should have heard at once and from all corners of the Hall a unanimous cry of "consent, consent," in response to so reasonable a request. But if no one does cry "consent," and inasmuch, too, sir, as no one appears willing to take the floor until the adjournment, I will occupy a few minutes in giving my reasons for making this request; and, sir, my reasons being known, I flatter myself that my request will then be granted without a dissenting voice.

When I look around me in this Convention, I find that out of one hundred and fifty members, there is less than a baker's dozen of unmarried men, a class to which I confess, sir, I unfortunately belong. Yes, Mr. President, like the gentleman who preceded me, (Mr. Sherrod,) I am still one of that melancholy band. We are sometimes designated as "old bachelors," and men even seek to stigmatize us by that term of reproach. But, sir, we accept the appellation. If the Chinese were to speak of us with an eye to our unfortunate condition, I suppose they would describe us as a set of "outside barbarians," who had never yet been beatified by taking possession of "the celestial flowery land" of matrimony. [Laughter and applause.] But we are not thus styled here in our own land. "Old bachelors" is the term here applied to us. As I said before, we accept the term. Old bachelors we certainly are, and some of us really cannot very well help ourselves. [Laughter.] But while we accept the term, we shall object to its receiving a "literal construction." Old, in the literal sense of the term, most assuredly all of us are not. Indeed, looking over, but a few minutes ago, that political chart which gives in brief the history of the individual members of this Convention, I see that we have at least one of our number setting himself down at twenty-six, or perhaps twenty-seven years of age. Of course, sir, I am much older than that. I can hardly be said to have grown *gray* in the iniquity of celibacy; but, sir, you can see, any man with half an eye open can see, that I am a *little bald*! [Much laughter.] That, however, is certainly not the case with all of us. We are mostly young men; some of us in the very prime of life, as we fancy. And, sir, allow me to say, though perhaps I should not, we consider ourselves a highly respectable portion of this highly respectable body. [Laughter.] Whatever others may think of us, we are determined to think well of ourselves. We wish to be un-

derstood, then, as being a whole-souled, able-bodied, generous-hearted set of fellows, suitable matches for any body. [Laughter.] But, Mr. President, there is no use in denying it, we are but a small minority in this Convention. Less than a dozen of us in all, as I said before—there is, of course, something like one hundred and forty against us. And how, Mr. President, in the name of common sense, can we expect to contend successfully against such an array? Sir, the thing is impossible—evidently impossible—and, for my own part, when I am certain of defeat, I give up—when I know that I am certain to be shot, I am always willing to "come down." [Laughter.]

Let me mention another reason why I desire to be excused from voting on this question. The fact of it is, Mr. President, this Convention is getting into altogether too deep water for me. In this matter of woman and woman's rights, this Convention is fast taking me where, I frankly confess, I cannot touch bottom. Now, sir, I believe that gentlemen will bear me out when I say that I have nerve enough to follow on wherever I can, and that I have been reasonably diligent at all times, thus far, as a member of this Convention? [Several voices—"Consent"—"that's true."] Generally, in my seat, I have kept along, listening and voting as well as I could. For many successive days I followed in the wake of a highly distinguished gentleman, while, with many meanderings, he led the Convention on after him as he pursued that will-o'-the-wisp of his, that *ignis fatuus*, the abolition of the Grand Jury system. Though sometimes tired, still, sir, I was always present, and assisted with my vote when we took a general tilt all around against those "soulless corporations" which infest the land; and I believe you, Mr. President, will also grant that I followed on after the rest, though with sadly unequal steps, I acknowledge, when we had under discussion the subject of universal suffrage. But, now, sir, as I have already said, we have come to the consideration of a subject to which I confess myself unequal—such knowledge is too wonderful for me. I cannot attain unto it; and I think that I prefer no unreasonable request, when I ask to be excused from voting either on the main question or on any of its amendments. [A voice—"No consent"—"go ahead."]

I have said, Mr. President, that the unmarried men are in a distressing minority in this body. It follows, of course, that the married men of the Convention are in an overwhelming majority. Now, sir, if we were in some places I should more freely express my surprise at the very peculiar position occupied by these gray-headed gentlemen—"old coons" as we should call them on the stump—in discussing this question of the rights of women hereafter to be married. Why, sir, each one of them has already monopolized some one woman with all her rights.

And yet they come here, and in the coolest manner imaginable, enter upon the discussion of the rights of women hereafter to be married in this State! Into their own power they have long since absorbed all the rights that woman has, and yet they have now for several days been gravely debating the pending question! This certainly is a little the coolest performance ever enacted by *honorable gentlemen*! Why, sir, they have secured the game—they have carried off the prize—they have monopolized to themselves all of a woman's rights, and now, they are working for what purpose? Why, sir, (would you believe it!) to secure the rights of women henceforth to be married! [Great merriment.] It really seems to me, that, of the two, the unmarried men of this Convention are the proper tribunal before which such a question should be argued. It certainly cannot be denied that we take, to the full, as lively an interest in all which pertains to "women hereafter to be married," as gentlemen in the majority upon this floor.

Concerning this subject of woman, Mr. President, I am neither able nor disposed to say very much. I can ponder upon the matter, but have very little to say. I confess that, in this respect, I am a little like the Irishman's owl. A certain Frenchman once had a parrot of which he was wonderfully proud. He had taught his parrot to talk a little—to scream out "fire!" "fire!" and some other phrases, not perhaps proper for this refined audience to listen to, all which, you may be sure, made the Frenchman vain enough of his parrot. He was perpetually exhibiting it, and boasting of its wonderful qualities. In his little crowd of listeners, one day, was an Irishman, who interrupted the Frenchman's eulogies by remarking to the "jintleman" that he had a bird at home which could "bate" any man's "b-i-r-r-d" any day. "Was it a parrot?" the Frenchman asked. "My bird is an owl," said the Irishman, and then went on to tell how that his owl would ruffle up his feathers, and prick up his ears, and look as wise and consequential as a judge or an ex-Congressman. "But," asked the Frenchman, "can your owl talk like my parrot, sir?" "No," says the Irishman, "my bird cannot talk very much; but he keeps up a *devil of a thinking!*" [Much laughter.]

And, sir, it is somewhat so with me. I cannot talk, I confess, so fluently on this subject of "Woman, and woman's rights" as some gentlemen who have preceded me, yet I have listened with open ears to all their speeches, and while they, like the Frenchman's parrot, have now this long time been talking, they may be sure that I, like the Irishman's owl, have been "keeping up a devil of a thinking." [Great laughter.] More than this, sir, I have now been keeping up this thinking on woman and on woman's rights these ten years, and I hope I may be allowed to say, that during all that time

such an absorbing interest has it possessed for me, that, from earliest dawn to latest eve, it has literally engrossed my thoughts. And allow me to say further, that I have had a "devil of a time of it." [Continued laughter.] But, sir, "while there's life there's hope," it is said, and some guardian angels may yet bring relief to the gentlemen who are my companions in misfortune, and, possibly, even to myself. If so, to that unknown one, whether within the hearing of my voice or not, I would, in the expressive language of Scripture, say "whatever thou doest, that do thou quickly." [Laughter and applause.]

I have said, Mr. President, that my ideas respecting "woman" are somewhat vague and indistinct. I confess that it is but too true. Respecting woman's *rights*, however, I have fewer doubts. I am vain enough to believe I know all about that matter. I have my theory, however, on both these mystical questions.

Respecting "woman," sir, it is unbecoming in me to say much. My theory, however, is this: I believe woman to be essentially the same with man. Whether we regard her moral, her physical, or her intellectual nature, we find her the same with man, yet different. And, sir, as I think, in that difference consists woman's excellency.

I suppose that, perhaps, every gentleman on this floor has read an anecdote which appeared a short time since, and which, perhaps, illustrates my ideas better than I can directly express them. Now, sir, in telling a story I always blunder worse than any Irishman, yet I believe I shall venture to relate this one. [Cries of "consent," "go on."] It seems to me, at any rate, quite *apropos*—to the point—and if I blunder in the telling of it, I dare say that almost any gentleman on this floor can help me out.

A certain Methodist divine was once holding forth upon human nature in general. He first spoke of man—of his moral, his intellectual, and his physical nature. Thence, speaking of woman, of her condition, and of her nature, he exclaimed, "Brethren, let us not exult in our fancied superiority over woman, for God has made woman even as he has made us, with but little variation. And," continued the pious worthy, clasping his hands in the enthusiasm of his ecstasy, and shouting as he spoke, "I say, brethren, *thank God for that variation!*" [Prolonged laughter.]

And so, Mr. President, say *I*. In that very variation which God has made between man and woman, whether we regard their moral, intellectual, or physical natures, consists the excellence of each. Man arrogates to himself intellectual pre-eminence. Would woman, I ask, willingly lower man to her present attainments? As high as the heavens are above the earth, so high, all concede, is woman's moral nature in excellence above man's. Would any man to his own level bring woman down? Man,



too, has, we know, superior physical strength, before which, if attacked, woman must surely fall. But, sir, unto woman is given that beauty which disarms the strong man even to prostration. And even where beauty fails, woman's very weakness becomes her very strength. Who then, will gainsay, I ask, my theory, that the excellence of the one sex consists in its very variation from the other! I repeat, sir, that there is a difference between man and woman, as well moral and mental as physical, and, sir, I believe that it is that very difference between the one and the other that should cause us to be thankful.

I am not, sir, at this late hour, and unprepared as I am, disposed to descant very largely upon the vexed question of woman's rights. My theory is simply this, I can give it in a single remark: In my treatment of women I would always act upon this general principle, to grant unto woman whatever rights and privileges she demanded at the hands of man. I speak, sir, not now in jest, but the words of sober earnestness. I say then, in all my legislation for women I would be guided by the one principle to grant unto her whatever, on the whole, she might think necessary for her good—I do not mean what some individual one might ask, not what the young girl might heedlessly wish, or the old woman might peevishly crave, but what women in the aggregate, women collectively, might ask for—just whatever, after meeting together, considering their true station, their sphere, and having taken a full and comprehensive view of their relations to man and to society, they might then desire. And, sir, for one, I very frankly say that if after such a mutual consultation and such a deliberate consideration, women should then ask to share the rights and privileges of man, I would be the last person to withhold from them a single one. But, sir, I would also ask woman to recollect that from the exercise of man's rights and privileges would result certain duties, from the performance of which she must not seek to shrink.

It is evident to all that I might amplify and enlarge upon this idea—this theory as I call it—of mine. But I shall not occupy your time in so doing. I rose, Mr. President, not to make a speech. I confess, sir, that I rose for a very different purpose; what I commenced to say was prompted more by my remembrance of the old saying that—

"A little nonsense now and then,  
Is relished by the wisest men,"

than any better motive. I know, sir, this to be confessed by an assembly of the wisest men of our State, and it occurred to me that a few confessedly nonsensical remarks might be acceptable, if for no other reason, as an agreeable relief and contrast to the profound speeches which preceded me. [Laughter.]

Upon the whole, Mr. President, I think I will withdraw my request to be excused from voting

on this question, with which I commenced my remarks. I believe, sir, I have fairly argued myself into the conviction that I know all about a subject, of which when I rose I really thought I knew nothing. Perhaps, sir, this is not the first time that a member has argued himself into a conviction that he fully understands a subject concerning which others can see that he really knows nothing at all [great laughter]. I believe, sir, I shall vote on this question and on all its amendments; and, sir, I shall vote entirely on a general principle. I shall vote, sir, as I should wish woman to vote, were I to put the question to her, as man sometimes puts the question. I shall vote, "aye," every time. [Renewed merriment.]

But before taking my seat, I will prefer another request, Mr. President. It is that the Convention will excuse our Stenographer from making any report of my remarks. [Cries of "no consent," "no indeed."] Very well, sir, it is no great matter anyhow. I care little about it; my only fear is of my worthy constituents. They know, sir, that on this matter of women, I am by nature a little excitable—a little "cracked," some call it—but when they come to see in print, what I tremble to think I have said, inasmuch as the fascinations of this city are beyond their conceptions, I fear, sir, they will think me as the Scotchmen say, "gane clean daft," the English of which, I believe, is "stark staring mad" [laughter]. Surely my request is a reasonable one.

Thanking gentlemen for their patient indulgence, I will occupy their time no longer.

On motion, the Convention adjourned until nine o'clock to-morrow morning.

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SATURDAY, NOVEMBER, 16, 1850.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. —

In conformity with the resolution adopted yesterday, the list of the delegates was called over, and the names of those who were absent, not having obtained leave of absence, were noted upon the Journal.

RIGHTS OF MARRIED WOMEN.

The Convention proceeded to the consideration of the unfinished business of yesterday, being the section reported by Mr. OWEN, in relation to the rights of married women to hold property, and the amendments thereto.

The pending question being upon the amendment offered by the gentleman from —

Mr. PEPPER of Ohio. The subject which has been under consideration for two or three days past, is the section which reads as follows:

"Women hereafter married in this State, shall have the right to acquire and possess property to their sole use and disposal; and a law shall be passed, &c."

Now, sir, I have been an attentive listener to what has been said upon this important subject; and certainly I must say that, in my poor judgment, no subject of equal importance has been under consideration before this body, that has created, or that in the progress of discussion upon it, has exhibited greater digression in debate from the subject under consideration, than has occurred in the discussion of this subject, and particularly so far as the arguments which have been adduced by gentlemen who have opposed this proposition or this section are concerned.

It has, by almost every man who has thought proper to oppose it, been regarded—at least one would suppose so from the character of the arguments employed—as a proposition to take from the husband a part of his rights, and surrender them to his wife.

Now, sir, it seems to me that we should approach this subject as we should approach every subject that comes before this Convention for our grave consideration and action. We should look at the proposition and see if it contains any thing that is just and proper to be done in behalf of the party for whose benefit the provision is intended.

Women hereafter married in this State shall have the right to acquire and possess property to their sole use and disposal. I have not been able, Mr. President, to discover in this proposition anything that does not meet my entire approbation, except it be that the property which it provides shall be possessed by the wife or married woman, should be also at her disposal without the consent of her husband. Perhaps there may be a manifest propriety that the disposal of the property which she owns in her own name, and which she ought to have a right to use agreeably to her own wishes, should be under her exclusive control; at the same time, I say, it may be manifestly proper that she should not be able to dispose of it without the consent of her husband. For I view this matter as intended solely and entirely to provide for the protection of the rights of married women against the wrongful acts of an improvident or dissolute husband. And if the section should be adopted, and if a law should be passed to carry out this provision, I have no idea, and I think no one can have any just apprehension that any difference in the social relations that now exist, will take place hereafter in consequence of the adoption of such provision. Husbands and wives who are now in the habit of conducting their business and social relations harmoniously, will continue to do so notwithstanding the introduction of this provision into the Constitution. It is therefore, as I have remarked, only intended to provide against contingencies that may happen, and that frequently do happen; as we all know, where a dissolute and improvident husband becomes embarrassed, either by mismanagement

of his affairs or dissipation or otherwise, that the wife may then have it in her power to restrain him from taking away and squandering the property that belongs to her, and which she brought with her into the marriage contract, or rather into the marriage connection.

Then, sir, it is important that we should look at this subject, and examine whether it be just and proper to grant what is asked for. What is it that is demanded? Why, sir, it is that the woman shall be entitled to possess, use, and enjoy that which is her own; at least that she shall be so entitled, in the event of a necessity arising, for restraining the husband from a wasteful use of the property.

This subject, sir, has been treated as if it were intended, or as if it contained a proposition that would lead to a direct interference with the relation of marriage. I see nothing in it of this kind. The simple question is whether the married woman shall be entitled to use and enjoy her own property in the event that her husband shall not, in her opinion, be capable of managing the property agreeable to her wishes.

We have been told, Mr. President, that the marriage relation is a sacred one. No one disputes that. We are told that the husband and wife shall be one flesh, that they shall dwell together in unity and harmony. So far as that can be practically carried out, they should be one and undivided, and they will always be undivided, so long as the parties act with propriety towards each other, and so long as this marriage contract shall be regarded, as being, indeed, a sacred engagement.

But what is the fact in relation to the primitive state of this contract or relation of marriage? The twain were to be one flesh. How long after its original introduction did those, among whom it was adopted as a rule of action, adhere to it? It was not very long until its character was changed; and if the marriage engagement did constitute a bond of union between individuals, it comprehended a great many individuals; and when this became the rule of action in those primitive times, it was not long until this institution was regarded as being a very weak tie indeed; for we have, in the same divine history, an account that a man, if he wished to put away his wife, might give her a bill of divorcement and put her away.

Now, sir, it seems to me, that, in the progress of light and knowledge, and in the progress of Christianity, we have become wiser and better able to judge of our own rights and of the rights of others, and particularly of the rights of the other sex.

But, Mr. President, it is not my purpose to address myself to this subject, nor to the various views which have been expressed before this Convention; but rather to address myself to the justice of the proposition, and so far as I can, by observation and experience, fortify my mind with reasons to satisfy me whether the proposition is

a just one, or not. If there be no injustice in a party in possession using that which is his own, that is one argument, I think, in favor of this proposition; if there be no reason shown, by argument offered, that the enjoyment of the right—the privilege—of thus using that which is his own, does not interfere materially with the rights and privileges of others, surely that is another argument in its favor. I cannot, therefore, see, that, in this proposition, there is anything to be apprehended. I know that the imaginations of some gentlemen seem to have been tortured by bringing to their minds, and to the minds of this Convention, images calculated to produce the persuasion of a great change that is to be produced in society at large, and of apprehension that such a provision of law will work great mischief. I can see nothing of the kind in it. It seems to me to be a very plain question. At present, except to a very limited extent, a married woman has not the power—the legal right—to make a contract in relation to property, though she may purchase property and pay for it with her own means. She has not the right to rent property, or to receive the rents and profits arising from property that she may own, and dispose of them at her own will, and to her own use. That is a matter which has heretofore been entirely under the control of the husband. Now, it seems to me, that, what we have to guard against—and I look at things as they present themselves to me—what we have to guard against is, the improvident use and disposition of property which comes with the wife into the marriage engagement, when the husband shall prove to be unworthy of the trust and incapable of managing it in such a manner as to preserve it for the support of the wife and offspring.

Mr. President, it seems to me that I can address myself to the sympathies, and to the lofty bearing, if you please, the high-toned feeling of both old and young in this Convention in respect to this matter.

We have, sir, in our country—as there are in all circles, perhaps—a class of beings, in the shape of human beings, yet possessing none of the elements or qualities of those beings who came pure from the hand of the Creator, and who were created in the image of the great Creator of the universe. I refer, sir, to a class of beings, to be found in almost every section of this country, who come to our homes—to our domestic firesides—who insinuate themselves into farmer's houses throughout the country, with their fine clothes, their soap locks, and their imperial; they approach the plain and unsophisticated daughters of the farmer, make themselves extremely agreeable and acceptable to them, and create an idea in their minds that they, to be sure, are calculated to make any lady happy. Well, sir, they are heartless beings. Thousands of them seek not the woman, but the money which she has, or which her parents

may give her. They indeed present themselves to our imagination in no other view than simply that of offering themselves to engage in the marriage contract with the daughter of the plain farmer, asking him, indirectly, to be sure—for this is really the truth of the matter—asking him how much he will give to have his daughter married to a gentleman with soap locks.

Well, sir, if our daughters are to be thus imposed on, at least, let us do the best we can to provide a security that they may, after they shall have been led into this deception, and into an engagement of marriage, and after it shall have been consummated—when it is too late for securing many other important rights—let us provide that they shall at least have some protection for their property; let them at least be protected in the use of whatsoever property they may have, be it either personal or real.

I have heard a great deal said, sir, about the danger of producing schism and discord and division of feeling between husband and wife if this proposition should be carried into effect.

Mr. President, I can speak both from observation and experience to some extent in respect to this matter. For more than a dozen years just such a state of things as has been held up to awaken the dread and apprehension of this Convention has existed in my own family, and I have found it no cause of discord. On the contrary I feel well assured that in consequence of the management of property which my wife has in her own name, and which she has well managed for the last twelve years, from the attention she has given to that subject she is infinitely better qualified now, should I be called away, to manage the affairs of the family than she would have been if she had not taken charge of that property at my request.

Mr. OWEN. I have risen, sir, at this stage of the debate, chiefly for the purpose of endeavoring to render it somewhat more brief, by preventing, if that be possible, the introduction of extraneous matter, which, in my view of it, has nothing to do with the present debate.

In the first place, I ask, that the sections and amendments now under consideration may be read by the Secretary.

The sections, amendment, and amendment to the amendment were read, as follows:

"Women hereafter married in this State shall have the right to acquire and possess property to their sole use and disposal; and laws shall be passed, securing to them under equitable conditions, all property, real and personal, whether owned by them before marriage or acquired afterwards, by purchase, gift, devise, descent, or in any other way; and also providing for the registration of the wife's separate property."

The amendment proposed by Mr. Holman is as follows:

"Every married woman shall have the right to the exclusive use and benefit of all real estate and every interest therein of which she may

be seized or possessed at the time of the marriage, or of which she may become seized or possessed at any time, during coverture, by devise or descent, or in any manner other than by gift from her husband or in fraud of third persons; and laws shall be passed securing to the wife, on equitable principles, the use, issues, and profits of her separate property, and a just interest in her husband's estate, in the event of the dissolution of the marriage contract by death of the husband or otherwise."

And the amendment to the amendment, by Mr. Nave, is as follows:

"No law shall be passed whereby the property owned by a *feme covert* at the time of her intermarriage, or by her acquired subsequent thereto, either by inheritance, gift, grant, devise, or otherwise, shall ever be taken for the debts of the husband, contracted before or after said marriage."

Now, Sir, who would have supposed—who that had listened to the debate on yesterday, more especially, could have imagined—that the question before the Convention was the substitution of one or other of these amendments for the section reported by the committee? No one surely.

Mr. President, it is not for me, it is not for any delegate of this Convention, to dictate to his fellow delegates what course they shall pursue in debate; yet I may be allowed to express the opinion, that instead of wandering off in aimless flights of fancy, we should have done well to treat this subject, as it deserves to be treated, in a plain, earnest, straight-forward, business-like manner. We have surely, sir, heard enough by this time about bright eyes and winning smiles and mysterious influences and mystical unions and this Anglo-Saxon man, who figures so largely sometimes in our discussions, and I know not how many other irrelevancies.

The question legitimately before us is a plain and simple, and, I may add, comparatively a restricted one. It is a question, however, in which is involved one of the most sacred rights of the citizen, the right of property. It is a question concerning the rights of one-half of the citizens—not the inhabitants—the white citizens—of this State.

The question resolves itself into two inquiries; first, as to the justice, and secondly, as to the policy, of granting the right referred to.

I shall say a few words in the first place in reference to the former branch of the inquiry and in reply to the remarks made yesterday by the gentleman from Dearborn, who has spoken well, and generally in a proper tone and spirit. He has said, that he does not agree in the opinion I have expressed, that women, if they had (as I do not propose that they shall have) the right to vote and to select those who legislate for them, would find their rights as to property better attended to than now they are. The

gentleman said, (for I took down his words at the time,) "We may be selfish in all the other relations of life, as politicians, in our commercial dealings; but in regard to women we can never, never neglect them." Our apparent neglect to confer upon married women rights of property is, in his view of it, no real neglect. We withhold these—such is his argument—because if we attempt to introduce any new rule on this subject and make wives independent owners of property, we shall "risk the destruction of the fair harmony which now exists," and shall "invade the sanctity of the marriage contract." A word or two about this invasion of the marriage contract by-and-by; but for the present, let us pursue the inquiry whether the neglect in question is real or apparent.

I desire to ask the gentleman from Dearborn a question, and I should be glad if he would answer it now. In the first place, I remind him, that, in the case of the death of a husband, there cannot be, as to the widow left behind, any question in regard to conjugal relations; and, therefore, if property be withheld from her, it cannot be from the apprehension spoken of by the gentleman, that we may introduce discord into families.

This being so, I ask the gentleman from Dearborn whether he thinks we have dealt fairly by women as widows? whether he thinks the law of descent, in the case of a husband dying intestate and childless, a just one? I ask him, whether it imposes such checks only as are salutary and proper; and whether, if women had had a chance to select and instruct our law-makers, it is not likely that a fairer measure of justice would have been meted out in their case? I ask him, whether he holds it to be fair and just, that, if a husband die without a will, leaving neither children, nor father, nor mother, nor brother, nor sister, and leaving property, with a yearly rental say of one hundred and fifty dollars—yes, sir, I will leave it to the gentleman's own sense of justice to say, whether, in such a case, it be right or equitable, that some aunt or uncle, or even some cousin, or cousin's child, should take two-thirds of the estate, a hundred dollars of the rental; leaving but the poor residue of fifty dollars for the support of the widow? I am sure he will not maintain that justice is done by such a law.

But now, sir, I pray you to bear in mind what the gentleman from Wayne told us the other day, that some twenty-five years ago, being a member of the Legislature, he sought to procure a change in this iniquitous law of descent; that he was ridiculed for his pains, and his project scouted and put down.

Take, in connection with this, the attempt made by myself some thirteen years ago, as I have already stated to the Convention, to amend this same law. I shall never forget the torrent of abuse it brought down upon me; such an attack, in truth, as I never experienced in

any legislative or deliberative body, before or since. And, since I have touched this subject, I will say here, in passing, that I consider myself indebted to the Convention for the courtesy with which I have personally been treated throughout this discussion. He must have small experience of public life, and know little of human society, who, when about to introduce and advocate a novel change of the peculiar character of that now under consideration, did not feel, that he ran no little risk of being attacked, however unjustly, in a violent and personal manner.

But to return from this digression. It is thirteen years since, after a violent debate, a change was effected for the better in this law of descent. Was this change, moderate and insufficient as it was, maintained? No, sir; five or six years afterwards, when our code was revised, even this small mitigation of the original statute was discarded, and it fell back to the old heartless law, the same to which I have just referred.

Now it will not do to say, that these humane changes have been resisted, lest thereby that conjugal harmony which the gentleman regards as the offspring of the common law, should be disturbed. Then why have they been resisted? Why has the land been so long cursed with this legal injustice? Is it not because the injustice is done to women? to those who have no votes, or voice in the matter? Have they not been neglected? I appeal to the gentleman himself for the answer.

I ask him also to justify another matter in connection with this subject; namely, the rule of the Common Law, which gives to a widower, if he has, or has had, children by his deceased wife, the "tenancy by the curtesy," that is, the rents and profits, during his life, of the whole of his wife's real estate, while to the widow, under similar circumstances, one-third of the rental only is assigned. Will the gentleman defend or excuse this favoring or trusting of the man, and this mistrusting and disfavoring of the woman? Is not the woman, as to her children, the more trustworthy? Ought she not to have been trusted, even in preference?

Mr. HOLMAN (interposing). I have never undertaken to justify or defend our law of descent, in these particulars.

Mr. OWEN (resuming). I was very sure the gentleman's sense of justice would not permit him to do so. And glad I am to find, that some of these old laws infringing so flagrantly on the rights of women, are beginning to be regarded as they deserve.

But now, as to the policy of the change proposed. And this brings me to the comparison made by the gentleman between the two great rival systems, the Common Law and the Civil Law.

Sir, these rival schools of law divide between them the civilized world. Each has its admir-

ers and supporters among men distinguished for their talents and legal ability. Neither is to be spoken of without respect, or uncereemoniously condemned in terms of sweeping censure. Each has its advantages. Each must also be confessed to have its defects.

If it should be thought to savor of presumption in me, that I, not bred a lawyer, should enter on a discussion as to the relative merits of systems of law with one of the profession, I say here, in my defense, that I have been compelled to give to the subject of law not a little attention. It became necessary to the due fulfilment of the public duties with which I have been charged, that I should thoroughly investigate, not the various details of law, indeed, but its general rules; the *leges legum*, as Bacon phrased it; the *laws of the laws*; the great foundation principles that underlie and govern all laws; by the study of which we learn the spirit of all laws, and the rules by which to classify, and the standard by which to test them. I need hardly add, that I have read, as every public man ought, Coke, Blackstone, Kent, and other similar works, including the standard authorities on international law. If I now mention this, it is merely that I may escape the censure incurred by those who touch on matters to which they have given no sufficient attention.

If I understood the gentleman from Dearborn aright—or if not, I will here give way for his correction—he condemns the Civil Law as a whole, and prefers, in all things, the Common Law to it. Well, sir, if such be his opinion, it differs from that of legal writers of the greatest experience and highest reputation. I concede to him, that in everything which concerns civil and political liberty, in all principles determining the relations between government and people, in all provisions, also, for personal security in criminal cases, the Civil Law cannot be compared with the free spirit of the English and American Common Law system: and to this may in part, doubtless, be attributed that national superiority and prosperity to which the gentleman from Dearborn has adverted as the characteristic of nations governed by the Common Law when compared to others living under the Civil Law rule. In accordance with this view, we find, that in Louisiana, various guards of civil liberty, and personal privileges, incorporated in our bill of rights, and peculiar to the common law have been borrowed thence and incorporated into their civil law code.

But as regards private rights and personal contracts, and the duties thence resulting, the civil law, beyond all reasonable question, stands pre-eminent. In these departments it is as far in advance of the common law, as is the common law superior to it in its governmental relations. This view of the case is admitted even by Kent, no partisan of the civil law, certainly. Speaking of its provisions as to contracts between individuals, Kent admits, in his commen-

taries, that there is "no system of law in which principles are investigated with more good sense, or declared and enforced with more accurate and impartial justice."

It seems to me, then, the part of wisdom, to act in this matter, in the spirit of the text, which bids us "prove all things and hold fast to that which is good;" not to remain wedded, with exclusive preference, to the one system, and to reject, with sweeping condemnation, as the gentleman from Dearborn seems disposed to do, every part and parcel of the other; but to take from each its best portions; those most in accordance with the mild spirit of modern civilization and the progressive advancement of the age. Kent tells us, that in England, "a national prejudice against the Civil Law was early formed and too much cultivated by English lawyers;" and I fear, that though my friend from Dearborn is an American, not an English lawyer, the remark is not without its application to him.

I turn, now, to the gentleman's argument deduced from the domestic felicity of the English home circle as compared to continental Europe, France especially; where, he asserts, no such thing as true home feeling, and quiet fire-side comfort is to be found. Without adverting, at this time, to the injustice which prejudice has often done to the French in their domestic relations; without doing more than simply to remind the gentleman that Germany and Holland (truly domestic nations) are included in the category; I turn once more to an opinion of Chancellor Kent, somewhat at variance with that of the gentleman from Dearborn as to the influence of the civil law on the character of women. Here are Kent's words, already, on a former occasion, quoted by me, but which will well bear repetition: "Whatever doubts may arise in the mind of a person educated in the school of the Common Law, as to the wisdom or policy of the powers which, by the Civil Law, and the law of those modern nations that have adopted it, are conceded to the wife in matters of property; (the very case of my friend from Dearborn!) yet it cannot be denied, that the pre-eminence of the Christian nations of Europe, and their descendants and colonists in every other quarter of the globe, is most strikingly displayed in the equality and dignity which their institutions confer upon the female character."

The institutions of the Civil Law, says Kent, confer "equality and dignity on the female character." This is strikingly displayed, he tells us, in the pre-eminence of Continental Europe. Here is a great variance of opinion between Kent and the gentleman from Dearborn. If we borrow from the Civil Law but a single principle, says the gentleman; if we concede to married women, as that system does, independent rights of property, we "risk the destruction of the fair harmony that

now exists." The Common Law elevates: the civil law degrades; that is, in brief, the drift of the gentleman's whole train of argument. Far other is the opinion of Kent—"It cannot be denied," says he, that the rights accorded by the Civil Law "confer equality and dignity" on the female character. And this, too, I pray you to observe, in virtue of the powers which, under the Civil Law are "conceded to the wife in matters of property;" the very powers which my friend from Dearborn denounces as an actual "invasion of the sanctity of the marriage contract." No two opinions can be more widely at variance than those of Chancellor Kent and the gentleman from Dearborn. I leave it to the Convention to decide—on sober re-consideration, I believe I might almost leave it to the gentleman himself to decide—between them.

But a word more in regard to the happy homes—almost proverbially so—of England, and to the source whence the gentleman thinks that happiness has its birth, the pecuniary dependence to which the Common Law reduces the wife. I can speak in this matter, from actual experience. Half my life time was spent in my native country. Of course, then, I am likely to know more of its habits and customs and the effects thence resulting, than the gentleman, who, as I think, has never visited it. I may be unduly partial to the country of my birth; yet I do believe, that, so far as regards those classes fairly removed above want, the circles gathered round the domestic hearthstone throughout the British Isles comprise as happy and harmonious groups as are to be met with in any other nation on earth. In the families of England, and in those of America, like to the land of her ancestors in this, there is, I concede it to the gentleman, as much of that "fair harmony" of which he speaks, as he himself claims for them.

But whence its origin? Has it birth in pecuniary dependence? Does England owe to the Common Law doctrine, her domestic happiness? She does not; for the best of all reasons; and that is, that doctrine does not, as a general rule, but in exceptions only, regulate in practice the property of English married women. The gentleman from Dearborn is entirely mistaken in supposing, that the practice of conveying to trustees for their benefit, and this custom to which he objects, of ante-nuptial contracts, are confined, in Great Britain, to the nobility and very wealthy alone. The practice is universal. Of this there is sufficient proof in the statement endorsed by Kent, that half the real estate of England is vested in nominal owners, on account of trusteeships growing out of the practice of marriage settlements. Half the land of the kingdom! Think of it! It shows, what has come under my own observation; that in England the general rule is, where property comes by marriage, to make a settlement for the wife's benefit; and that the cases where the property

is abandoned to the husband, as the Common Law provides it shall be, and the gentleman thinks it ought to be, are the exceptions only; and rare exceptions, too. The married women of England may be said to be living, as to property, under the Civil Law rule.

What becomes of the gentleman's argument now? It is turned against himself. In a country where evasion of the Common Law on this subject is the rule, and conformity to it the exception; where almost all married women, having property, become, through the intervention of trustees, the independent owners of it; in that country, by the gentleman's own admission, is most especially to be found that domestic harmony, which he would have us believe flees away at sight of a wife with any rights to property at all.

I have myself known hundreds of families in England, where such arrangement of property, by trusteeships, was made: and I never yet heard it intimated, that any domestic dissention grew out of the arrangement.

I remark, further, that this English evasion of the Common Law is harsher towards the husband than the Civil Law rule, itself; it usually requiring the consent of the trustee as well as of the wife, to transfer any part of her property to the husband.

If, now, I am asked, why, if this be so, the plain, straight forward Civil Law rule has not been adopted in England; I reply, first: that the extreme reluctance of the English courts to depart from ancient precedent, is, doubtless, one cause; and I do not think it is doing the legal profession much injustice to conjecture, that the heavy fees incident to the complicated machinery of the trusteeship system, may be another.

But in this country, the gentleman may, perhaps, remind me,—in this western country, this wholesale evasion of the law is not commonly practised; and upon this fact he may base an argument, that, if not in England, here at least, we are satisfied with the Common Law rule, in all its strictness. The argument would be without any foundation whatever. We abstain from adopting this cumbrous and complicated system, simply because it is cumbrous and complicated, and, as such, unsuited to our habits. Whether we like the general law or not, we seldom, here in the west, trouble ourselves to escape, by special contract, from its provisions. There, for example, is the law of descents. I undertake, with that law in my hand, to canvass any county in the State—the gentleman shall have choice in selecting it anywhere, from the Michigan line on the north, clear down to the Ohio River—and, if I do not get nine out of every ten of the inhabitants to condemn it, and to sign a petition for its repeal, then I will admit, that I know nothing of human nature. Yet how often is that law evaded by a will? Not in one case out of five, certainly; perhaps hardly in one case out of ten. Such is our habit. We take

things as we find them; sometimes without inquiry; sometimes putting off to a to-morrow, which never arrives, our resolution to change them.

For this reason, it is the more necessary that our general laws should be good and just ones. Such as they are, they will usually govern, even in cases where special provision is made, whereby individuals may, at their pleasure, modify or rescind them.

But the gentleman from Dearborn further defends this common law rule, descending to us as it does, from ancient feudal times, by the assertion, that it "conforms to the natural fitness of things." I trust he will not impute it to me as presumption, if I ask him, at this juncture, a few legal questions.

It needs not that I remind one versed in law as the gentleman is, that, if the husband acquires by marriage, along with other property of his wife, certain *choses in action*, as the phrase is; that is, notes or other demands due to her; it needs not, I say, that I remind him, that these become actually the husband's property only after they are reduced to possession by him; and that if, before he has succeeded in reducing them to possession, the wife die, they are no longer his, but descend to her heirs. But has the gentleman ever pursued this matter a little further? If he has, he knows that if, in order to realize these *choses in action*, the husband find himself compelled to ask aid from a Court of Chancery, it is the custom of the court to require, that he shall make, out of the expected proceeds, a reasonable provision for his wife and children. Thus, so long as the husband proceeds, without legal process, to turn into money the debts and demands due to his wife, equity stands aloof, and sees him appropriate, unchallenged, the proceeds to his own use, or surrender them to satisfy a creditor's claims; even if, by so doing, he leave his wife and her little ones, in case of accident to himself, wholly without resource. But, if it so happen, that he must resort to chancery for assistance, then equity is wont to step in and require, before she gives the aid demanded, that, as the condition on which it is given, the wife shall have something secured to her. And this, according to the maxim favored in chancery courts, that "he who seeks equity should do equity." Why he should *not* do it, who is not compelled to seek it, is a question in ethics which I commend to the gentleman's attention, and to which, I think, he will find some trouble in replying.

To the uninitiated it certainly seems a somewhat startling inconsistency, that, where the husband is taxed with no expense, encounters no difficulty, he takes from the wife the whole; but where he incurs costs, and trouble, and delay, he is compelled to surrender to her a part. I am too dull to see in this any remarkable conformity "to the natural fitness of things." If the gentleman from Dearborn can enlighten

me on this point, it will be very much, I think, to the credit of his ingenuity.

There is another provision of the Common Law of which I remind the gentleman, and which does not seem to me to have much "natural fitness" about it.

If a woman, at the time of marriage, be indebted, the husband, as the gentleman doubtless knows, becomes liable for the debt, and it may be recovered by action against him, provided judgment be obtained while the wife yet lives, but not otherwise. Thus, if a wife, owning a millner's store perhaps, brings to her husband a stock of goods, worth four or five thousand dollars, owing thereon a single thousand dollars, and the husband refuse to pay; and, after suit brought against him but before judgment rendered, the wife die, in that case, the husband holds the goods, and is exonerated from payment of the balance due for part of the very goods he holds. Will the gentleman defend this rule? I remind him, that, even to some of the English courts, wedded as they are to the Common Law, its injustice has been so apparent, that they have scrupled to recognize and enforce it. The gentleman will find a reported case before Chief Justice Talbot, in which a strong effort was made to charge the husband, after his wife's death, with a debt of hers to the extent of the property she had brought him, which greatly exceeded the debt.

Lord Nottingham, impressed with the hardship of the case, and not seeing, I suppose, much of the "natural fitness of things" in this Common Law rule, declared, that he would alter the law; but the Chief Justice said nothing less than an Act of Parliament could do that, and that the rule could not be disturbed by a court of equity. It has accordingly remained undisturbed to this day. One of the reasons given by Lord Talbot why it ought not to be disturbed, is remarkable enough: "If relief ought to be given," said he, "against the husband because he received sufficient property with the wife, then, by the same reason, if the wife had brought no fortune to her husband, and judgment was recovered against him during coverture, relief ought to be afforded to the husband against this judgment." Very true. The one rule of the Common Law is quite as unjust as the other. Both are contrary to conscience and justice between man and man. Why the law should not be changed, and relief be granted in both cases, I leave to the eulogist of the Common Law, my friend here from Dearborn, to explain.

The gentleman called in question an assertion made by me, or by some other gentleman, that "woman occupies an inferior position in society"—legally, of course, was meant. Now, leaving out of view the right of dower, which confers upon the wife, while she remains a wife, no actual right of property whatever, but only a sort of partial veto power, whereby she

can prevent her husband from conveying real estate except by an incumbered title,—leaving this profitless right out of view, wherein does the relative position of husband and wife, under the Common Law, unmodified by statute, differ, as to property, from that of the Mississippi planter, and the slave that works his cotton field. If the gentleman, or any other gentleman, can perceive and can point out the difference, I should like to have him do it, here and now. I shall gladly give way for the purpose.

There is no difference. In both cases the individual wronged has not the right to own personal property. In both cases the individual wronged has not the right to derive revenue from real estate. The wife has the right to demand necessary apparel. So has the slave. The wife has the right to subsistence. The slave, too, may demand that from his master; and, as in the case of the wife, the law of any slave State will enforce the demand. The claim of the slave who toils from earliest dawn till darkness closes around him, on the hot cotton fields of Mississippi—just that claim and no more—the claim for necessary food and raiment—may enlightened woman, the pride and ornament of civilized society, demand, at Common Law of her husband.

And yet we are told by gentlemen, whose sincerity cannot be doubted, but whose clearness of perception in this case seems woefully at fault, that woman, in law, under this system, is the equal of man? His equal? Whenever I can be made to perceive the legal equality existing between a Southern slaveholder who owns everything and his negro who owns nothing, then may I also believe that the common law makes woman the legal equal of man; but not till then.

"No gentleman here," says my friend from Dearborn, "proposes to attack the rights of women." I dare say not. It would be a difficult matter to attack anything impalpable, invisible, non-existent. We cannot very well take away what is not there to take. (Laughter.) We can more readily seize and touch the viewless winds of Heaven, than to lay hands on the wife's rights to property under the strict Common Law rule. The one has an existence. We can feel if we cannot see it. It is far more tangible than the other.

But there is a charge of the gravest character brought against the Civil Law rule as to the property of the wife. "It invades," says the gentleman, (and others, in this discussion, have said the same)—"it invades the sanctity of the marriage contract." I regret to see a topic so utterly irrelevant dragged into this debate. Has the gentleman duly considered the character and the bearing of this accusation? Half the nations of the civilized world live under the Civil Law. Have they all invaded the sanctity of the marriage contract? Not Louisiana alone, on this continent, but a dozen other States,

New York, Pennsylvania, Maine, Wisconsin, and others heretofore alluded to by me, have adopted the Civil Law rule, which makes the wife an independent owner of property. Have they all invaded the sanctity of the marriage contract? What says Judge Story of this civil law rule, thus unceremoniously denounced? "There are," says he, "in the Civil Law system (in regard to the rights of property between husband and wife) a great many admirable provisions; and I am not sure, as a whole, whether it does not work better than the Common Law on this subject." What says the same eminent jurist of such a change as that now proposed? He says, that the Common Law rule "requires great alterations and amendments for the protection of the property of married women, coming to them after as well as before marriage." He approves, then, the change which the gentleman considers an invasion of the sanctity of marriage; and could not, of course, so have regarded it. Judge Story and my friend from Dearborn differ widely here. Had he not better reconsider his opinion? He may vote against the sections under consideration; but, in so doing, he ought to bear in mind, that the principle contained in them—not the exact words, of course—has been approved and endorsed by one of the most able and enlightened jurists of modern times.

Nor is this all. Our own State, by the law she passed four years ago, granting to the wife as her separate property all rents and profits of her real estate, effected a radical alteration in the Common Law principle on this subject, and has already, if the gentleman's argument be good for anything, "invaded the sanctity of the marriage contract." Shall we deem all those who voted for that law—even ourselves for tolerating it—guilty in this matter? I do not see how the gentleman, if he adhere to the premises, can avoid the conclusion; for this change as to real estate was, in fact, a greater innovation than that I now propose to add to it, by securing to women personal as well as real property.

And, finally, I believe the gentleman has even himself justly incurred a portion of the reproach which his argument virtually casts on all innovators in this matter. The very amendment he has introduced to the sections as reported, is an encroachment on the Common Law rule. Is it, on that account, an invasion of the sanctity of the marriage contract? I leave the gentleman to settle that question with himself.

To one other remark of the gentleman I must, for a moment, advert. "The husband," he told us, as a vindication of the justice of the common law rule—"the husband, on the death of the wife, takes none of her property, while she is always entitled to dower in his."

That is a strange defense of the Common Law. As to personal property of the wife, the husband takes none of it at her death, for the very suffi-

cient reason that it is all his already. It became his, absolutely and irrevocably, at the moment of marriage; and a man cannot very well take the same thing twice. As to real estate, if there be no children, it is true that it goes from him to the wife's heirs; but if there be children—by far the most usual case—its rents and profits are his for life, as tenant by the curtesy.

Mr. HOLMAN. Not as the law now stands.

Mr. OWEN. If the gentleman refers to the law on our statute book, I have only to say, that it is an encroachment on the Common Law; one of those encroachments which the gentleman fears may disturb domestic felicity, and break up the kindly relations that should exist between husband and wife.

In conclusion, sir, as to the gentleman from Dearborn, I cite a question which he put forth: "Are not the weak," said he, "already protected by the strong?" After the specimens I have given him of the Common Law, and the exposition I have made of the true legal position in which the wife is placed by its provisions, I am willing, I believe, to abide by the answer he himself may make to his own question.

I have a word now to say to my friend from Hendricks (Mr. Nave). I ask him, in the first place, whether he has ever been a flat-boatman?

Mr. NAVE. I have not.

Mr. OWEN. Well, I have. I have dwelt for months on a flat boat, trading with the planters of the Lower Mississippi; and I claim, therefore, to have had more experience as to the honesty and mode of dealing, in Louisiana and the adjoining States, than the gentleman, studying law at home, is likely to have obtained. At a former period of my life I was occupied, somewhat extensively, in the raising of stock—cattle, horses, and mules—for the lower market. And I can say, as the result of my experience, that, for every dollar I ever lost by bad debts in Louisiana, with her Civil Law code, I lost twenty in Mississippi, where, I believe, the Common Law rule, as to the wife's property, still prevails. The argument of the gentleman from Hendricks was, that the effect of the Civil Law doctrine in Louisiana is evinced in the fate of the thousand unfortunate traders who, in that State, are swindled out of their property in consequence of its existence there. The facts are unfortunate for his theory. I see over the way my friend from Gibson, (Mr. Miller,) who has traded down the river far more frequently than I, and I will ask of him, whether, in dealing with the Louisianians, he has found, in consequence of the prevalence among them of the Civil Law, any greater difficulty in collecting debts than elsewhere, in Common Law States?

Mr. MILLER of Gibson. In reply to the gentleman from Posey, (Mr. Owen,) I state, that, in all my dealings with the people of Louisiana, they have uniformly paid me promptly; the only delay being the three day's grace allowed by

custom there, after a note falls due. In Mississippi, on the contrary, I have often had great difficulty in securing debts, and have had many losses.

Mr. OWEN. I see another gentleman here, one who I know has made his fifteen or twenty trips down the river, and who may be able to give us some testimony on this subject; my friend from Warrick (Mr. Graham).

Mr. GRAHAM. My experience is similar to that of the gentleman from Gibson.

Mr. OWEN. Still additional testimony. It was an unfortunate allusion made by the gentleman to Louisiana and the commercial probity and promptitude of her planters. In Mississippi, a Common Law country so far as I know, it has been found much more difficult to obtain prompt payment, or even payment at all, than in Civil Law Louisiana.

But the gentleman is even more unfortunate in another respect. After deploring the consequences of the Civil Law rule to the creditor, and opposing on that ground the sections as reported, he himself introduces an amendment providing that the wife's property, real and personal, shall be exempt from seizure for her husband's debts. I ask the Secretary to read the amendment offered by the gentleman from Hendricks.

The amendment was read by the Secretary as follows:

"No law shall be passed whereby the property owned by a *feme covert* at the time of her intermarriage, or by her acquired subsequent thereto, either by inheritance, gift, grant, devise, or otherwise, shall ever be taken for the debts of her husband contracted before or after said marriage."

Mr. OWEN. Exactly, sir. The wife's property is placed by the gentleman's amendment beyond the reach of the husband's creditors. The gentleman thus himself becomes the author of a proposal, containing the identical feature which he considered so obnoxious and dangerous in the law of Louisiana! I have done with the gentleman from Hendricks.

I had a few words to say to the gentleman from Putnam, who sits next to me, and regret to see that he is not now in his seat. I desired to remind him that he had given a general challenge to all comers to controvert the position assumed by him, namely: that the principle of the Civil Law embodied in the sections on your desk is "contrary to the spirit of the Christian Scriptures." And I desired to add, that I was ready, either now or at any future time, to join issue with the gentleman on that point.

The gentleman from Putnam (Mr. Badger) talks much about "what the people expect," and about "what they were promised on the stump," and seems to protest against our even mooted any thing here that does not come under that category. What was promised to the people from the stump in Putnam county, I

know not; nor is it very essential to know. If the gentleman from Putnam declared to the people of his county, that he would never vote to restore to married women those rights of property which have been so unjustly withheld from them, I cannot help it; nor, though his action in the premises may be a very proper guide to him, is it any guide to me, or the rest of his fellow-delegates. No gentleman has a right to dictate to another, in this Hall, what he shall or shall not introduce. We are independent, and each judges for himself.

Throughout the entire canvass in Posey county, from the very first meeting held to the last, I mooted, before the people, the reform embodied in these sections. It obtained, with hardly an exception, the assent of the people there; a sober, quiet, reflecting people, I will take occasion to say; not at all given to wild innovation.

But if it had never been discussed there or elsewhere during this canvass, it would not alter the right or wrong of the question. If any proposition be just in itself, if it be clearly conducive to human welfare, and if, in addition, it be suitable for incorporation in an organic law, that proposition should have our votes, no matter if it had never been spoken of during the canvass. And if it be just and expedient that women should be recognized as independent owners of property, what place so appropriate to assert a right thus unjustly withheld, as in that Constitution, where all the important rights of the citizen are set forth and permanently established?

[About this time the gentleman from Putnam (Mr. Badger) entered and took his seat.]

Mr. OWEN. I am glad to see the gentleman from Putnam in his place. I repeat to him, what I said in his absence, that I am ready and willing now, or shall be prepared at any future time, to join issue with him on his assertion, that the rule of the Civil Law contained in the sections under discussion, is "contrary to the spirit of the Christian Scriptures." He assumes the affirmative; I undertake the negative. And I will add, that if the gentleman succeeds in proving his position, I shall at once withdraw all support from the sections, and here publicly pledge myself to vote against them.

I shall now briefly advert to the speech of the gentleman from Tippecanoe (Mr. Clark). That gentleman, in opposing the proposition before us, goes back, for his weapons, into somewhat remote antiquity. He cites examples from the history of ancient Rome. He reminds us, among other things, of some of the incidents connected with the repeal of the Oppian law, some two hundred years before the birth of Christ, when the Roman matrons demanded their rights, and were rebuked for that demand by Marcus Porcius Cato. If we look fairly at the circumstances connected with that episode,

they do not tell, I think, very favorably for the argument of the gentleman.

Let us see, in the first place, in what company, in those old days, the proposal to deprive women of their rights to property, is found. Not in very reputable company, I think; but the Convention shall judge for itself.

I have here the volume of Livy whence the gentleman drew his authorities, and find quoted the provisions of the Oppian law. That law, passed during the heat of the Punic war, enacted, that "no woman should possess more than half an ounce of gold, or wear a garment of various colors, or ride in a carriage drawn by horses, in a city, or any town, or any place nearer thereto than one mile," &c.

Here was a law depriving women, single, it would appear, as well as married, of the right to possess more than a very trifling amount of property. As to married women, our Common Law goes further still, for it does not permit a wife to possess, in her own right, even a penny-worth of gold. And does the gentleman from Tippecanoe propose to renew, in our day, the propositions associated with this old disqualification as to property? Are we to have a sumptuary law, forbidding women to indulge in garments of various colors, and robing them, from head to foot, in one uniform Quaker hue? And are they to be compelled, in all our towns and cities, to traverse the streets on foot, no matter how great the storm, or how deep the mud may be? If the Romans are to be quoted for precedent, let us carry the matter fairly out, and adopt this triumvirate of restrictions at once.

But, in seriousness, is not the very association of such propositions an indication of the rude character and spirit of the times in which the rule which deprives woman of property had birth?

The Roman matrons, we find, took a deep interest in the deliberations which were to decide their rights. And this circumstance, as the gentleman from Tippecanoe reminded us, stirred the indignation of Cato, well named the Censor, and caused that denunciatory harangue, of which he has quoted a portion. He has omitted, however,—ashamed of it, perhaps,—the Philippic therein introduced against the matrons, because they ventured to approach the scene of the discussion of their rights.

"It was not," said this proud and harsh dictator, "it was not without painful emotion of shame, that I, just now, made my way into the Forum, through the midst of a band of women."

It would seem that in those days, as now, they whose rights were at stake sought the scene of debate. Whether the matrons of that day were as fair as those who, during this discussion, have graced our Hall with their presence, may well be doubted; but this we do see, that neither on that occasion nor on the present have the sex shown that indifference to

their legal rights which some gentlemen have ascribed to them. I return to Cato's speech.

"Had I not," he proceeds, "been restrained by respect for the modesty and dignity of some individuals among them, rather than of the whole number; and been unwilling that they should be seen rebuked by a Consul, I should not have refrained from saying to them: 'What sort of practice is this, of running out into public, besetting the streets and addressing other women's husbands? Could not each have made the same request to her husband at home? Are your blandishments more seducing in public than in private? and with other women's husband's than with your own? Although'—listen, I pray you, Mr. President, to this concluding sentiment—"although, if females would let their modesty confine them within the limits of their own rights, it did not become you, *even at home*, to concern yourselves about any laws that might be passed or repealed here.'"

"Even at home," says Cato. It is unbecoming, he thinks, for a woman to speak, even to her husband in the privacy of home, about any law which he and the rest of his sex choose to pass or to repeal, touching the rights of women. That is the old Roman's doctrine. Does the gentleman from Tippecanoe think it entirely accordant with the mild and Christian spirit of modern times?

So much for Cato's denunciation of the matrons of Rome. But there is another side to this picture. There was a reply made to this speech which the gentleman has omitted to notice; a good reply, too. Lucius Valerius, one of the Plebeian tribunes, and who had made the motion to repeal the law, commented upon Cato's attack upon his countrywomen as follows:

"What new thing, let me ask, have the matrons done in coming into public in a body? Have they never before appeared in public? I will turn over your own Antiquities and quote them against you." (This was an allusion to a historical treatise by Cato, on the antiquities of Italy.) "Hear, now, how often they have done the same, and always to the advantage of the public. In the earliest period of our history, even in the reign of Romulus, when the capital had been taken by the Sabines, and a pitched battle was fought in the Forum, was not the fight stopped by the matrons running in between the two armies? When, after the expulsion of the kings, the legions of the Volscians, under the command of Marcus Coriolanus, were encamped at the fifth stone, did not the matrons turn away that army which would have overwhelmed the city? Again: when the city was taken by the Gauls, where was the gold procured for the ransom of it? Did not the matrons, by unanimous agreement, bring it into the public treasury?"

That was a hard hit, Mr. President, and I think that Cato, impassive as he was, must have

felt its force. When the matrons had the right to money that was the use they made of it! Ay, sir, and if the matrons of our own Revolution, instead of being deemed, by the common law, unworthy of any right to property, had been, like the Roman matrons, capable of holding it, do you believe that, in the "days that tried men's souls," they would have shown less public spirit than did their sisters of Rome? Who will say so? Who believes it? But I proceed with the reply of Valerius:

"In the late war, not to go back to remote antiquity, when there was a want of money, did not the widows supply the treasury? And when new gods were invited hither to the relief of our distressed affairs, did not the matrons go out in a body to the sea shore to receive the Idæan mother? The cases, he says, are dissimilar. It is not my purpose to produce similar instances; it is sufficient that I clear these women of having done any thing new. Now, what nobody wondered at their doing, in cases which concerned all in common, can we wonder at their doing in a case peculiarly affecting themselves? But what have they done? We have proud ears, truly, if, though masters disdain not the prayers of their slaves, we are offended at being asked a favor by honorable women."

I will take that speech, any day, as an offset to Cato's peevish diatribe. It procured, as it well deserved to procure, the repeal of the Oppian Law. Spite of Cato and his censures, the rights of women prevailed, as I hope and believe they will to-day, in the face of the opposition that is still made to them.

But the gentleman from Tippecanoe has remarked that the law proposed by me "may answer very well for the rich, but does not suit the poor."

The very reverse, sir! emphatically the reverse! We have already legislated for the rich, and if we had not, they commonly know how to take care of themselves. To the rich the common law itself is no rule. By trusteeships and ante-nuptial contracts they constantly evade its provisions. And our statute aids them in this. A woman who is a land-owner is already protected by our laws, and has been for four years past. Her rents and her profits are her own separate property. The proposal before us, the very sum and substance of the sections, is to mete out to her less wealthy and less fortunate sister the same measure of protection. It is to secure to the wife personal property, as we have already secured to her real estate. And who, among our women here in Indiana, are usually those whose property is personal alone? And what sort of personal property is owned by the great majority of young girls about to be married here? Is it bank stock, or railroad stock, or other similar securities, to a large amount, as in the large cities on the Atlantic border it often is? No, sir; such cases are

rare; they are mere exceptions here. The general rule is, that if a girl about to be married in Indiana is possessed of only personal property, that personal property is, to a small amount, usually household furnishings, with, perhaps, a few head of cattle or horses; on an average, probably, not exceeding in value one or two hundred dollars. It is this class of women who will chiefly be protected by the rule embodied in the sections under consideration.

And if it be said, that because the amount of this personal property is usually small, it is of no great consequence whether it be protected or not, I reply, that small as it is, it is the poor girl's all; as much to her, as to others may be their thousands or tens of thousands; a portion of it, perhaps, endeared to her by early recollections, or as the gift of a parent soon to be numbered with the dead. Be its amount great or small, she is as much entitled to have it legally protected and secured to her, as if she were heiress of princely wealth, the possessor of millions.

Mr. President, I have spoken on the present occasion, because I was unwilling that some of the remarks, made by the opponents of this measure, should go forth to the Convention and to the public, unnoticed and without reply, and not, I desire distinctly to say it, because I desire here to see closed the discussion on the sections under consideration. I am willing at the proper time, that they should abide their fate; to be voted down if they be wrong; to be incorporated in our Constitution, in some shape or other, if the principle they embody be right. But let us hear the reasons for adopting or rejecting, and discuss in accordance with their worth, the various amendments that may be offered. I am by no means desirous of cutting short debate, or hastening the vote upon this question. No good cause ever lost ground yet by having time afforded to consider its details. I am rather desirous that definitive action should be postponed upon the question until it shall come up again in regular order for final adjudication. We have seen already, with regard to the Grand Jury question, that the discussion had here upon its merits has done good. Public sentiment which was not very extensively consulted in regard to that question during the canvass is coming back to us. Let us take the same course with regard to the present question. The debate already upon it has elicited useful interchange of opinion; and a postponement of final action for one or two weeks will afford time for further thought and more deliberate judgment.

Mr. BLYTHE. I would inquire of the Chair whether it would be in order now to propose an amendment to the original section? I understand there is an amendment pending to strike out and insert.

The PRESIDENT. The Chair would inform the gentleman that there is pending an

amendment to strike out and insert a substitute for the original section. The gentleman has a right to amend the original section.

Mr. BLYTHE. Then I propose the following amendments to the first section:

Amend section—, by striking out the first and all the second line to the word "law," and also the word "them" in the third line, and inserting in its place the word "women;" also the words "gift and devise," in the fifth line; and inserting between the words "purchase" and "descent" the word "or;" and also the residue of the section after the word "descent," in the fifth line.

So that it will read—

"SEC. —. Laws shall be passed securing to women, under equitable conditions, all property, real and personal, whether owned by them before marriage, or acquired afterwards, by purchase, gift, devise, or descent."

The PRESIDENT having stated the question upon this amendment,

Mr. READ of Monroe said:

Mr. PRESIDENT—With the gentleman from Posey, (Mr. Owen,) I most deeply feel that no subject more important than the one now before the Convention will occupy our attention—nay, can occupy it during its session. It is a subject which most intimately concerns the happiness and welfare of our daughters, our sisters, our mothers, our wives. There is no family in Indiana—not one—which is not interested in the result of our deliberations upon this most momentous subject.

The law of husband and wife, as it exists in theory, is, I hesitate not to declare, a disgrace to this age of Christian civilization. I do not mean to say that the actual condition of married women in our country is one of degradation and slavery; but if it is not such, it is because the sentiment of the age rises above the law. It is because there is a law reigning in the hearts of Christian men which is above the law of the land.

I do not stand here to advocate the political rights of women. But even in regard to these I will adopt the words of an eminent lawwriter in saying, "they form a positive exception to the grand doctrine of equality. Women have no part in the formation or administration of government. They cannot vote or hold office. We require them to contribute their share in the way of taxes to the support of government, but allow them no voice in its direction. We hold them amenable to the laws when made, but allow them no share in making them. This language applied to males would be the exact definition of political slavery; applied to females, custom does not teach us so to regard it. Perhaps it would be difficult to deduce from any abstract reasoning the justice of making this their political condition. But we know it always has been what it now is, and there is no prospect of changing it; and probably the most

refined and enlightened of that sex would be the last to desire a change, which would involve them in the turmoil of politics."

Why, sir, the very negroes and mulattoes, whom we propose to exclude from the State for the very reason that we cannot admit them to terms of political equality, have all the political rights of women.

No man upon this floor proposes any change in this respect. But, sir, I do insist in the name of every generous sentiment, that from this very consideration we, their brothers, fathers, and husbands, who claim that in our persons we represent them, are the more sacredly bound to guard and protect their rights. Did I speak of generosity? There is, sir, no generosity in the case. It is a question of justice which is before us—that simplest form of justice of which Justinian speaks—the rendering to each one his own. The question is not what part of the husband's property the woman shall have, or whether, indeed, she shall have any of it. It is simply whether, under the Constitution of Indiana, she may have *her own* property—that which comes to her from her parents—that which is given her by a brother—that which is earned by her own hands? The question is, whether in declaring the great and fundamental right of acquiring and possessing property, we shall say that married women may have *any* rights of property?

Mr. President, when I think of the simple, naked question, divesting myself of the prejudice growing out of long established usage, it is to me a matter of utter amazement that we are here seriously debating the propriety of granting a right so fundamental in its character that it would seem to belong to the most abject of the human species.

The writers on natural law tell us that the highest title of property which any human being can have, is that of *maker*. The celebrated Locke says that the labor of a man's body, and the works of his hands, are properly his. But, sir, even this most sacred title will not avail the married woman. It will not stand against the husband's grog bill! The product of many a day's toil and labor, bestowed with all the earnestness of woman's busy care, are not, under our laws, safe to herself and her children against the debts of a profligate and spendthrift husband.

The spirit of the common law in relation to husband and wife is fully breathed forth in the very technology which it uses in designating the parties. It calls them *baron* and *feme*—the LORD and his WOMAN! The day a woman is married, however different in the heart of the husband, this is the relation in the eye of the law. From this day she has no more rights of property than has the slave of her lord. Over his property, or her own, though it may have been millions, she has no legal power whatever. Her contracts, except as his servant, are void.

For a living her claim is exactly that of the slave—for the necessities of life—and this, though she may have brought him the very fortune which he is spending in riotous living.

This, sir, is the law—this the law which has been praised for its tender regard to the female sex—the law which, on this subject, has been pronounced, on this floor, the same as that of Christianity—the law which, according to the gentleman from Dearborn, (Mr. Holman,) has made England and the United States the scene of the felicity and virtues of domestic life beyond all the countries where the civil law and its principles prevail. The common law of England, for which so much is claimed in making happy and virtuous homes, is the basis of our law as now existing, and, humanized by a few alterations, is in fact the same.

But let us look at this system in its original symmetry, and mark its provisions for promoting connubial happiness, and the dignity and elevation of the female sex. Here I adopt the language (abbreviating it) of Christian, the celebrated annotator upon Blackstone.

If the baron (the lord) kill his *feme*, it is the same as if he killed a stranger. But if the *feme* kills her baron, it is treason, and her punishment is, to be drawn and burnt alive.

Women, not being entitled to plead benefit of clergy; might be executed for the first offense in simple larceny, bigamy, manslaughter, &c., however learned they were, merely because their sex precluded the possibility of their taking orders, though a man who could read was, for the same crime, subject only to burning in the hand, and a few months' imprisonment.

A son, younger than all his sisters, (and of course an elder one,) took the whole real estate, leaving sisters utterly unprovided for; while the personal property, in case of intestacy, was divided equally among brothers and sisters.

A woman's personal property, by marriage, becomes absolutely her husband's, which, at his death, he may leave entirely away from her [this, I blush to say, is this day our own law, under which a man, by marriage, may receive thousands, and the very next moment, will every dime of it from his wife]; but if he dies without will, she is entitled to one-third if he has children, if not, to one-half.

By marriage, the husband is absolutely master of the whole profits of the wife's land by the *curtesy*, in case he has had by her a living child; but the wife by *dower*, has her third only. This is now the law in Indiana!

The husband can be tenant of the trust estates of the wife, though the wife cannot be endowed of the trust estates of the husband.

With regard to the property of women, there is taxation without representation.

In regard to chastity, it is protected from violence; but the only mode by which the parent has redress in case of seduction, is by alleging that his daughter is his servant, and that in con-

sequence, he has lost her service, or by alleging a trespass upon his close.

Female virtue is perfectly exposed to the slanders of malignity and falsehood; for any one may proclaim in conversation, that the purest maid or the chastest matron is the most meretricious and incontinent of women, with impunity. Thus female honor, which is dearer to the sex than their lives, is left by the common law to be the sport of an abandoned calumniator.

Blackstone says, by the old law the husband might give his wife moderate correction. For, as he is to answer for her misbehavior, the law thought it reasonable to entrust him with the power of restraining her by domestic chastisement.

Mr. President, this is the common law in regard to females, too much of which remains to this day—most of it, indeed, so far as relates to their rights of property. Does my friend from Dearborn seriously think that this system has had anything to do in making the happy homes of England and America? Does he think the graces of character and purity of life which distinguish our women, are the result of the coarse and unjust legal system—coarse and unjust so far as they are concerned—under which they have lived? No, sir; other causes have made our firesides what they are. Christianity—Christianity, with its hallowed and blessed influences, which, in Great Britain and the United States, exercises a wider and more controlling power in families than anywhere else—it is this which has so elevated and purified the females of our land. The same great influence has placed the women of Scotland, which is a civil law country, in every virtue, by the side of our own women. The gentleman has committed the common logical error, called by logicians *non causa pro causa*. He has assigned quite the wrong cause for an existing state of facts.

But, Mr. President, we are told of the Anglo-Saxonism of the present law of husband and wife. The injustice and cruelty of the system was by no means congenital with that race of which we so often speak, and from which we claim to derive our origin. Here is the picture which Tacitus presents of their marriages, while yet in their native forests of Germany: "The bride brings no portion; she receives a dowry from her husband. In the presence of her parents and relations, he makes a tender of a part of his wealth; if accepted, the match is approved. In the choice of presents, female vanity is not consulted. There are no frivolous trinkets to adorn the future bride. The whole fortune consists of oxen, a caparisoned horse, a shield, a spear, and a sword. She, in return, delivers a present of arms, and, by this exchange of gifts, the marriage is concluded. This is the nuptial ceremony, this the bond of union, these their hymeneal gods. Lest the wife should

think her sex an exemption from the rigors of the severest virtue, and the toils of war, she is informed of her duty by the marriage ceremony, and thence she learns that she is received by her husband to be his partner in toil and danger, to dare with him in war, and suffer with him in peace. The oxen yoked, the horse accoutred, and the arms given on the occasion, inculcate this lesson, and thus she is prepared to live and thus to die. These are the terms of their union : she receives her arms as a sacred treasure, to be preserved inviolate, and transmitted with honor, a portion for their wives, and from them descendible to her grand-children." Such were the rights of the wife in the very cradle of the Saxon race.

Mr. President, the law of husband and wife, as now existing, had its origin at a much later period, under the feudal system—that system which regarded war as the great business of human life—a system which, from its very design, paid little respect to the rights of minors and females, whether married or unmarried,—a system of tyranny which, for centuries, held its iron sway over the rights of men, and is not even yet eradicated from the legal code. The grand principle of the system is, that all property is held upon the condition of military service. As women could not take the field as soldiers, their rights were not acknowledged, or they were disregarded and trodden down. Under this system—not in Christianity, which gives rights to women and takes none from her—originated the common law doctrine of *baron and feme*.

Such, Mr. President, is the power of custom and usage over the reasons and consciences of men, as utterly to blind them to enormities which would otherwise shock their sense of justice. The African slave trade was an example of this strange perversion of the moral sense of men, through the power of custom. Upon this principle alone can I account for it, that we do not cry aloud against that wickedness and iniquity which, upon marriage, strips a woman of all that is her own, and gives her no fair reciprocity in the property of her husband.

When we mention any particular case of cruel injustice, we are told it is but a single case, and hardships will exist under any system. Such cases have been given as occurring by the sanction of the law, and that they do not often happen, is owing to the moral sense of men and to public sentiment. One such instance which awakened great sympathy, and which was mentioned to me by the lawyer who had examined the case, I will state : A lady worth about \$10,000 married a man worth nothing. In some six months, the man dying, under some diabolical influence willed the whole from her. She had no remedy. Under the statute of distribution it was found that she could hold nothing. Now, sir, I grant you such cases are not common ; until men turn into wild beasts they

cannot be ; but so far as the law is concerned, they may occur just as often as there is a concurrence of circumstances rendering them possible. I charge this very case, and all like it, upon the law. The law is in fault. We, as Christian men, are in fault for allowing the law to continue as it is. In the case I have named, the money was, upon every principle of justice, the woman's, and should, by law, have so continued, notwithstanding the marriage.

But the gentleman from Dearborn tells us, we shall mar the simplicity and brevity of our legal system, and render it voluminous and complex, by providing laws to give married women their own property. No where in the world, Mr. President, are the laws so simple and brief, as where there are no legal rights at all. In the Asiatic countries, the laws are simple enough in all reason. The despot has all the rights—the people none. Their code is a short one. Is not the very reason, why, according to the common law, the system so far as relates to women is so short and simple, that the lord has all the rights, and his woman none?

There is, on this subject, an advancing public sentiment, which is exhibited in all our later American law writings, and in the ameliorated legislation of the country. We are not proposing an experiment. We propose, in declaring the great right of acquiring and possessing property, to make some declaration, in behalf of married women. We do not approve the reason of the law, nor its humanity, which, in order to promote a union of interest between husband and wife, strips the wife of all her rights, lest, perchance, she should be tempted to assert them. We believe that proper laws, securing the rights of the wife, will afford the true home-stead exemption, and so far from working discord in families, will promote unity, and in cases of adversity, in many instances, prove the sheet anchor of their safety.

Mansfield, of Cincinnati, who is known to be sufficiently conservative upon all questions of reform, makes the following remarks, in his late work upon the rights of women :

"There are, doubtless, amendments of the laws of property, in relation to the wife's control over her own property, its release from the debts of the husband, her capacity for separate business, and her rights of dower, which may, and ought to be made. There is, at this time, very little doubt, that from the tendency of public opinion, and the general progress of liberal principles, all such amendments in the law as seem really to promise any social improvement will be made."

He says further, in speaking of what has been done : "the reader will see in the following pages, detailing the laws of the United States, in relation to women, how great has been the improvement in the laws of *inheritances* already made, an improvement which has done more to equalize the people of the United States than

any other legal measure could have done. It must be recollected also, that this was an improvement which did not necessarily follow either the establishment of our national independence, or the formation of our Constitution. Both these events left the municipal laws, with regard to property, as it found them. It was the general effect of the principle of liberty, acting on the people, and through them on the State Legislature, which abolished, everywhere in the United States, the feudal principles of inheritance."

The question being now demanded from different parts of the house—

Mr. BLYTHE said, before the question was taken, he would like to modify his proposition by striking out the words included in brackets in the above copy.

The PRESIDENT said, the gentleman had a right to modify his amendment as he might see proper.

Mr. DOBSON said, I suppose, from the indications, and especially from the quiet which we have just now, that perhaps the ammunition of gentlemen is pretty much exhausted; therefore, if every gentleman has said all that he desires to say, I will move to postpone the further consideration of the subject, until it shall come up in the regular order of business.

SEVERAL VOICES. "No, no, no."

Mr. DOBSON (resuming his seat). Oh, I'll take it back again, if any gentleman wants to speak.

Mr. OWEN. If I understand aright the gentleman from Vanderburgh (Mr. Blythe) he proposes to alter the words in the first of the two sections, "to their sole use and disposal." I have no special objection to this; but I ask the gentleman whether he has any objection still to retain a declaratory clause, say in this form: "Married women shall have the right to hold property to their own use?" Or whether he objects to this also, as perhaps conferring certain undefined rights, which may be claimed before the actual passage of the laws contemplated in this section?

Mr. BLYTHE. I will explain the motive which I had in view in offering the amendment, and that, I suppose, will furnish a sufficient answer to the gentleman from Posey (Mr. Owen). It has occurred to me, sir, upon looking at the section, that the first clause opened up almost too wide a field. We can hardly tell what consequences will flow from the use of language of this character; and it occurs to me at present, that the language which the gentleman from Posey now proposes to use, would be obnoxious for the same reasons. As it seemed to be the main object of the gentleman from Posey to secure to women hereafter married, the right to possess and enjoy personal as well as real property, and as this seems to be the wish of all who have spoken upon the subject, in favor of the provision, my object was to confine the language

to the declaration of this simple principle as near as possible. It seems to me unnecessary to go beyond the declaration, that we recognize the right of all married women to possess and enjoy the right of property. This is the object which I had in view: and my amendment relieves us from the consequences which might flow from the use of the language of the original section, as well as the language which the gentleman now proposes to use.

Mr. OWEN. If the gentleman from Vanderburgh thinks there is any objection to the modification I have suggested, I will not press it. I suppose the gentleman thinks the language would make a difference in the decisions of the courts upon the present law.

Mr. BLYTHE. That is my objection.

Mr. BASCOM. I call for the previous question.

But the Convention refused to second the call.

Mr. MOWRER. I move to postpone the further consideration of the subject, till it shall come up in regular order.

Mr. PETTIT. I favor the motion made by the gentleman (Mr. Mowrer) over the way, and I am satisfied that a large number of members entertain the same feeling. A postponement has already been suggested by the gentleman from Posey, (Mr. Owen,) the mover of the proposition, in order that it might receive the attention of members who have not yet been heard upon it. I do not know but I shall desire to say something with reference to the question myself. I had drawn up a substitute for both sections reported by the committee, putting no difference between women married and women to be married. I think there ought to be no difference made in the provision. One reason why I hope this motion will prevail is this: Last evening I handed my proposition to the gentleman from Posey, for his examination, and he forgot to return it to me. It is now in his room, and I cannot have it here before dinner.

Mr. NILES. I would suggest the propriety of postponing the consideration of the subject to some certain day—say two weeks from Monday, if that day would be acceptable to the gentleman from Posey. The gentleman has intimated his purpose to be heard again upon this question, and I hope that all who desire it, may have a fair opportunity of being heard. I will take the liberty of saying, on my own behalf, that I came here wholly unprepared to vote upon this question. I was not even aware that it was to be considered at all by the Convention; but I have been listening attentively to the debate for the purpose of forming a sound and correct judgment upon the question. Perhaps I may desire to make a few remarks upon the subject whenever it shall come up in order, though I am by no means certain that I shall. The proposed change may vitally affect the

condition of society. I hope it will not be precipitatedly adopted.

Mr. MOWRER. I withdraw my motion.

Mr. SMITH of Ripley. I renew the motion of the gentleman from Henry. I am in favor of postponing this subject, and taking up every subject in regular order. I do not know what amount of business there will be in advance of this upon the calendar, but I apprehend there is a good deal. I object to postponement to a certain day; while at the same time, I sympathize with the gentleman on my left, (Mr. Niles,) who has suggested such a course for the purpose of enabling him to cast a judicious vote. But I would prefer the proper order, for the reason that I, also, have been absent, and heard but little of the debate, and know but little of the subject, being but little acquainted with women, at any rate. Perhaps in the mean time, after looking over the subject and learning something of its merits, when it shall come up in regular order, I shall be prepared to define my position, and I hope also, by that time, that my friend on the left—knowing with what facility he can gather up his ideas—will be prepared to give us a learned dissertation upon the subject.

The PRESIDENT. If gentlemen will take the trouble to turn to the 28th Rule, which reads: "All questions relative to priority of business, shall be decided without debate"—they will perceive the duty of the Chair in the premises.

The question being first taken upon the motion to postpone to a certain day, it was rejected.

And then the motion of the gentleman from Ripley (Mr. Smith) was agreed to.

POLL TAX.

The PRESIDENT having announced the order for the presentation of resolutions and memorials—

Mr. McCLELLAND presented a petition from sundry citizens of the county of Randolph, praying the Convention "so to amend the Constitution that henceforth and forever, no tax shall be levied or collected off the polls of the citizens of the State of Indiana," and moved that the paper be referred to a select committee of five members.

The petition having been read through by the Secretary,

The motion to refer to a select committee was rejected.

Mr. EDMONSTON said, the matter contained in this petition had been already before the standing committee, to which it would naturally be referred; he therefore moved to lay it upon the table;

But the motion being immediately withdrawn—

Mr. BASCOM said, that he, himself, with other gentlemen from his portion of the State,

were instructed upon this very point, and they were desirous of acting here in accordance with the known will of their constituents. They were aware that the subject had been already referred to the standing committee on finance and taxation. Now they wanted this petition to go to a select committee, and for this reason he hoped the Convention would not lay the subject upon the table. The people of his county were opposed to a poll tax. They believed their property to be the legitimate subject of taxation, and not their heads.

Mr. McCLELLAND said, in addition to what had already been advanced, there were many reasons going to show that the citizens of every portion of the State had a right to be heard by way of petition, and that their representatives should have the right to set forth some of the reasons why their prayer should be granted. The standing committee had already come in with their resolution upon this subject, and it would be wrong again to refer the same thing for the action of the same committee; and to be unceremoniously cut off by laying the petition upon the table, he thought it would be treating the petitioners very discourteously.

Mr. EDMONSTON asked for the reading of the petition; and accordingly it was again read through by the Secretary.

Mr. HOLMAN said, the question had not yet been before the committee just in the shape that it was brought up by this petition; and, notwithstanding the fact that the subject had been acted upon to some extent, he would be glad if the petition could be referred to a select committee, according to the wish of the gentleman who had presented it. If this could be accomplished only by a re-consideration of the vote just taken upon the question, he would make that motion. If the reference was made, probably some reason would be given for the course which the committee might take.

This motion was agreed to; so the vote by which the Convention refused to refer the petition to a select committee was re-considered.

And then the question recurring upon Mr. McClelland's motion to refer to a select committee of five members, it was agreed to.

GOT THROUGH.

The PRESIDENT then proceeded to call the committees for reports; and the committee on county and township organization being called,

Mr. SMITH of Ripley stated that this committee had got through, and reported upon every subject which had been before them, and therefore he would move that they be discharged from further duties.

SEVERAL VOICES. "No," "no," "no."

The PRESIDENT. The Chair would inform the gentleman from Ripley that it would be rather out of the common order of doing business to entertain his motion.

Mr. SMITH thereupon withdrew the motion. He had only thought to save the time and trouble of calling over the committee every day.

APPORTIONMENT OF REPRESENTATION.

The PRESIDENT announced the order for the consideration of resolutions, under the amendment of the rules, making Saturday resolution day, and stating that there were a number of resolutions which had been referred to the committee of the whole, not likely to be considered there, and he asked what would be the pleasure of the Convention in regard to them?

Mr. DOBSON remarked that gentlemen had been looking out for precedents, going outside of the State, and even beyond the continent, in quest of them, and he thought it would be well enough to have the sanction of a precedent for the action of the Convention in this case. He recollected that the Convention which formed the State Constitution in 1816, at a certain state of their proceedings found themselves encumbered with a pile of papers, and they ordered the Secretary to burn them. He recommended this as a good precedent for the action of this body with reference to those resolutions which had been referred to the committee of the whole.

The PRESIDENT said, these resolutions had reference to the subject of the apportionment of representation.

Mr. CLARK of Tippecanoe moved to refer them to the committee upon that subject.

Mr. EDMONSTON observed that there was no necessity for such a reference. The committee had already reported upon that subject.

Mr. CLARK withdrew his motion.

And then on motion by Mr. EDMONSTON, which was agreed to by unanimous consent, it was

Ordered, That the resolutions lie upon the table.

THE LICENSE LAW.

The resolution originally offered by Mr. Robinson on the ninth instant, instructing the committee on the legislative department to report to the Convention a section to be placed in the new Constitution, prescribing that the General Assembly shall neither pass nor continue in force any law authorizing license for the sale of ardent spirits, next coming up for consideration—

Mr. EDMONSTON moved to lay the resolution upon the table, but withdrew the motion for

Mr. OWEN, who moved to change the phraseology so as to make it a resolution of inquiry; Which motion was agreed to;

And then the resolution was adopted by unanimous consent.

THE HALF HOUR, RULE.

The PRESIDENT next announced the consideration of the following resolution offered by

Mr. Sherrod on the twelfth instant, which was read by the Secretary:

Resolved, That no member, in making a speech upon an original proposition or resolution, shall occupy more than "thirty" minutes, and on amendments more than "ten" minutes.

Mr. SHERROD. That resolution was laid on the table, but I will now move to take it up for consideration.

The PRESIDENT. The Journal does not show that it was laid upon the table.

Mr. SHERROD. It was, however, laid upon the table by a vote of this Convention.

The yeas and nays were demanded and ordered upon Mr. Sherrod's motion.

Mr. OWEN. I would ask whether a motion take a proposition from the table is debatable?

The PRESIDENT. It is not debatable.

The yeas and nays being taken, the Secretary reported—yeas 66, nays 25—as follows:

YEAS—Messrs. Badger, Balingall, Bascom, Beard, Berry, Blythe, Bowers, Bracken, Brookbank, Carter, Coats, Colfax, Crawford, Davis of Parke, Dick, Dobson, Duzan, Farrow, Foley, Foster, Frisbie, Garvin, Gootee, Gordon, Hadson, Hardin, Helm, Helmer, Hitt, Hogin, Holman, Huff, Johnson, Jones, Lockhart, Logan, Maguire, March, McClelland, McFarland, McLean, Miller of Fulton, Miller of Gibson, Moore, Morgan, Morrison of Washington, Newman, Pepper of Crawford, Read of Clark, Read of Monroe, Ritchey, Schoonover, Shannon, Sherrod, Sims, Smiley, Smith of Scott, Spann, Steele, Stevenson, Tague, Todd, Trimby, Watts, Wiley, Wolfe, Zenor, and Mr. President—66.

NAYS—Messrs. Alexander, Barbour, Beach, Carr, Chapman, Clark of Tippecanoe, Crumbaker, Edmonston, Fisher, Graham of Miami, Graham of Warrick, Hall, Kinley, Miller of Clinton, Milroy, Mooney, Morrison of Marion, Nave, Niles, Owen, Pettit, Smith of Ripley, Taylor, Work, Wunderlich—25

So the resolution was taken up.

Mr. CARTER proposed to amend, by striking out all after the word "resolved," and inserting the following:

"That, after Tuesday next, no member of this Convention shall speak more than fifteen minutes on any amendment, and then only by way of explanation, or more than thirty minutes on any original proposition."

Mr. CARTER. The object which I have in view in offering this amendment, is, to cut the wind of some of our four-mile horses. I want, if possible, to get through with our business here before crop-time next spring.

The amendment was agreed to, upon a division—yeas 49, nays 34—and the question recurred upon the adoption of the resolution as amended.

Mr. EDMONSTON. Is it in order now to amend the resolution?

The PRESIDENT. It is in order to amend by adding new matter, but not by striking out.

Mr. EDMONSTON. Would it not be in order to strike out any of the words of the resolution?

The PRESIDENT. It would not.

Mr. EDMONSTON. Then I am opposed to the resolution; for, if we are to adopt this arrangement, I wish to tie all down alike. If we are to tie down our four mile horses, I wish the ponies, also, to be tied up to the rack along with them.

Mr. RITCHEY. I have heard the speeches of some of our four-mile nags—I have heard them by the hour, when hardly two ideas could be gathered from their remarks. I wish to proceed with business better than we have heretofore; and we must proceed, or we shall not get through before next harvest. We have been here already six weeks, and yet not one single point has been settled, that has occasioned any difference of opinion. When, sir, do you think we shall get through at this rate? I tell you, sir, we shall never get through, unless we adopt some other course of proceeding. If a man have any ideas at all, it is my opinion that he can express them in half an hour. But, unfortunately for this body, many of the speeches here have not been so full of ideas as of words. I voted, when this resolution was first before the Convention, to lay it upon the table; but I am now satisfied that I was wrong, and I shall vote for its adoption.

While I am up I will take this occasion to say that I pledged myself to my constituents, while upon the stump, that I would be a conservative so long as I might hold a seat in this body. I told them that I was opposed to embarking in the wide ocean of political experiment—that I was against engrafting any provision in the Constitution of the State, which had not been fully examined, and which was not generally demanded by the people. And, sir, I say now, here—and I wish it to be distinctly understood—that if, in the amended Constitution, this body shall lose sight of the old land-marks of experience, which have obtained in the State government for the last thirty odd years, I will pledge myself to employ whatever lawful means may be in my power, to procure the rejection of the instrument which may be submitted to the people, so that we may, at least, get back under the wholesome influences of the old Constitution. Sir, there are but a very few prominent objections to the old Constitution; and, if the old Constitution had contained a provision by which the people could have amended it by means of the Legislature, this Convention never would have been called. Some three or four, or, perhaps, half a dozen amendments to the old Constitution, are all that the people have desired; whilst we have been sitting here, day after day, proposing and debating changes which the people have not demanded, and do not desire; and we have been here already about as long as the people expected it would require to complete our

labors. I hope, therefore, that the Convention will be willing to act upon every proposition promptly, and allow us to hope that we may yet return to our homes in some reasonable time.

Mr. CARTER. If the gentleman on my right, (Mr. Edmonston,) intended by his remarks to class me with the ponies, I desire to let him know that I have a disposition to travel well.

I have occupied the floor but twice during the last six weeks—during the session. Once I made a few remarks on the Grand Jury system, and then only for the purpose of stating that I could not vote for the resolution of the gentleman from Tippecanoe, but that I would favor a change or modification of the system; and once I stood up to offer a motion to adjourn.

But, sir, with reference to the resolution under consideration, I would, if possible, go even further than the terms of my amendment. I would not only stop the four-mile horses, which have proved themselves possessing more wind than bottom, but I would say that hereafter gentlemen shall have the privilege of reading their speeches by their title, with a standing order for their publication. If such a rule were to be established, the Convention would not only be relieved from the hardship of hearing interminable lectures, but the public interests would be subserved, by the time which would be saved for the transaction of business. Sir, I want to obtain a good Constitution, with as little expense as possible, either of time or money, and this is a common feeling among the people.

Sir, how much of your forty thousand dollars appropriation has already been expended, and where will it be by the last of November? And where will be the advantage of your labors if you procure the rejection of your work? It is true that you have passed upon and adopted the principle of biennial sessions of the Legislature; you have decided that certain officers of State shall be elected by the people, and their terms shall be limited; and you have said, after a long discussion, what no man in this State has opposed for the last ten years, that there shall be no imprisonment for debt. And what more have you done? Nothing. But still the cry is, let us have more speeches—speeches for home consumption—speeches for Buncombe, and nothing else. And I agree with the gentleman from Jefferson, (Mr. Gregg,) when he asserted that every long speech which gentlemen shall make on this floor will be to their own injury and political destruction.

Sir, it is my object to tie down this spirit of debate and discussion. Here we have been three or four days, consuming our time and the money of the treasury, doing what? Discussing woman's rights, without coming to any conclusion; and still gentlemen have postponed the further consideration of the subject, for no other reason, that I can see, than to have a rehearsal of the former arguments.

We were a week on the Grand Jury resolution; and there, again, we did nothing. We were sent here for some other purpose than for blowing Buncombe wind. I desire to see what will be the effect of the adoption of the resolution, upon the business of this body; and I want the yeas and nays called, so that the people of the State of Indiana may see who in this Convention are working men and who are men of wind.

Mr. GRAHAM of Warrick. The gentleman who has just taken his seat has passed his judgment upon the deliberations of the Convention; and he has gone so far as to declare upon what ground his people will accept or reject the amended work—their acceptance or rejection depending entirely upon the length of time in which we may be engaged in concocting it. I profess to represent a constituency of a very different temper. They do not look to the length of time we may be engaged here; they look to the principles which may be adopted, and their applicability to the general welfare.

The gentleman affirms that all the long speeches made here have been exclusively for "Buncombe;" and that they answer no good purpose here. I do not wish to be uncharitable, but I will say, that if there was anything but "Buncombe" in the last speech of that gentleman, I am not capable of perceiving it. I can see no other object which the gentleman could have in view; I am able to see nothing in his remarks which does not indicate a desire to be thought a leader of that party (of which we find many leaders in every community) commonly styled the dollar-and-cent party—a party looking not to the value and importance of fundamental principles so much as to the cost of maintaining them—a party proceeding upon the principle that whatever comes cheap in legislation and jurisprudence, will be acceptable to the people.

Sir, I have myself been interested and enlightened by the discussion in which we have already been engaged; and I hope to find interest and improvement in the discussions that are still before us.

The gentleman from Johnston (Mr. Ritchey) says we should take up the consideration of no subject here, which has not been canvassed before the people and upon the stump; and he seemed to assume that every necessary amendment had been discussed in Johnson county—as though there were no other people in the State.

Mr. RITCHEY (interposing, and Mr. G. giving way,) said, I wish to correct the gentleman. I did not assume any such thing. I did not pretend to say that the people of Johnson county had discussed all the propositions to amend the Constitution, which have been agitated throughout the State of Indiana; but I did say, that those questions which have been generally discussed throughout the State are

the only questions that ought to be acted upon here. My objection was urged against the practice which has obtained here, (and which has detained the Convention some five or six weeks,) of discussing questions that are almost entirely new to the masses of the people, so far as known to me.

Mr. GRAHAM (resuming). Still I ask, what is the legitimate inference from the gentleman's remark? Is it not that we should not entertain any question here, which had not been discussed in Johnson county, for does he not mean that when he instances matter of debate here which had not been discussed in the session of the State from which he hails? I think such an inference might be fairly drawn.

With regard to the proposed gag law, I have only to say that, by our rules, as they now stand, we have the power to stop discussion at any time, whenever the majority of the body may desire to do so. We can call the previous question, and whenever debate has proceeded to a wearisome extent, the previous question ought to be sustained, bringing the Convention directly to a vote. So long as we have the power, therefore, why should we gag the speech of members? I hold that every question proposed upon this floor should be fairly considered—that its friends should have a right to give their views in its favor; that those who are opposed to it should have a right to state their reasons against it—and that this right should be without restriction. I have some respect for this body; and I feel that there might be such a thing as the people of my district being heard here, without their delegate. I believe it is the right of every delegate here to exercise his own judgment, and to act upon all questions as though he were a representative of the interests and views of the whole State.

So long, then, as we have the power to stop debate, whenever a majority of the Convention think proper so to do, I am opposed to the resolution, and shall oppose it in every shape it can assume.

Mr. COOKERLY. I propose the following amendment:

The Secretary read,
"That a committee of five be appointed to inquire whether or not" _____

The PRESIDENT. The amendment is not in order.

Mr. WOLFE. If there was any hope of getting a vote upon this resolution, I would not move to lay it upon the table. [Several voices "no, no"]. Very well. I will just remark, then, that I have been looking over the committee reports in my hand, and I find that we have now before us 108 pages of reports from the various standing committees, and we have not yet disposed of more than two or three sections. If we continue to progress only at this rate, sir, when do you think we shall be able to get through? Look at these pages, and consider

what we have done during the six weeks time we have been in session. Eight weeks were the extent of the time thought to be sufficient for the entire session, amongst my neighbors. Now, sir, I hold up these pages [holding a file of the committee reports] as my speech upon this resolution. We have then 108 pages, which are yet to be passed upon by sections, and afterwards adopted as a whole. Should we not be admonished that these propositions will run up and accumulate upon our calendar, just as matters do in the Legislature, until towards the close of the session, when we shall begin to hurry through them?—and whatever is done in a hurry is ill done.

Mr. NAVE here made an ineffectual motion to adjourn.

Mr. NEWMAN. It is certainly the duty of gentlemen to condense their remarks as much as possible. This duty we owe to ourselves and the country. Therefore, for the purpose of disposing of the question, I move that the resolution, as amended, be referred to a select committee, with instructions to report the following rule:

"That no member, debating any question before this body, shall speak more than thirty minutes, without special leave of the Convention."

Mr. KILGORE. I move to amend the instructions, by striking out the word "thirty," and inserting, in lieu, the word "sixty."

Mr. WOLFE (interrupting). I move to lay the subject upon the table.

The PRESIDENT. The gentleman from Sullivan must withhold his motion until the gentleman from Delaware yields the floor.

Mr. KILGORE (continuing). I make that motion, sir, in good faith. It seems to me, if we were to adopt a fifteen minutes, or a thirty minutes rule, that such a thing would be a reflection upon the intelligence and statesmanship of the members of this body. You know, sir, that, in the Congress of the United States, whose members are selected without special regard to talent and statesmanship, they are allowed to speak a full hour; whereas, the members of this body are chosen men, charged with the most important and responsible duties—men selected for their wisdom and statesmanship, from various parts of the State. This being the case, I ask you, whether it would be doing ourselves justice to declare that fifteen minutes or half an hour of time is long enough for any one of us to express our views? I am willing to say we shall be restricted to one hour; for I do not believe there are ten men upon this floor who would commonly desire to occupy more than that length of time. I really do not think it would be treating our four-mile horses well, at this period of the session, to limit them to fifteen minutes or half an hour. For there are some of those whom I know to be very modest men; and they have not been manufactur-

ing capital either for Buncombe or for Montgomery. They have hitherto allowed the younger members to occupy the time with making speeches to their constituents, and now, having enjoyed this advantage so long, I ask whether it would be generous and fair for them to place this limit upon others? And besides this, the reported speeches will give a false idea of the statesmanship of members. For here is one man to whom the people have been looking as a man of superior ability, but his speech will occupy only about half a column of a newspaper; and then, turning back a few leaves, the reader will find his man entirely thrown into the shade by some young sprout, who has made a speech some four or five columns in length.

With reference to Buncombe speeches, permit me to remark, that the speech of the young gentleman over the way, the gentleman from Montgomery, (Mr. Carter,) must have been intended exclusively for Buncombe; and the resolution itself was intended for Buncombe. [Cries of "no, no."] Yes, sir, it was; and it will be held up in the next canvass all over the gentleman's county. As evidence of his habitual support of measures of economy, he will say to his constituents, "I once offered a resolution in the Convention, limiting all the speakers to fifteen minutes," and then, perhaps, by turning over the leaves of the *Register of Debates*, it might be shown where he made a speech an hour long in support of it!

I hope, sir, that the resolution will not be adopted; but that the amendment which I have offered to the instructions of the gentleman from Wayne (Mr. Newman) will prevail. My people, sir, are a talking people; and they are willing to pay for my talking here, whenever I feel like it; and, as for those Delegates who are opposed to talking, I would recommend to them to remain quiet in their places; and then, before their constituents, they can point to their silence as an indication of their feeling upon this subject.

On motion of Mr. CRUMBACKER,
The Convention adjourned.

AFTERNOON SESSION.

The PRESIDENT remarked, that the pending question when the Convention adjourned was upon the motion to commit the resolution and amendments to a select committee of three, with instructions to strike out from the original resolution, (Mr. Sherrod's,) relative to restricting members in the length of speeches, all after the resolving clause and report the following:

No member shall speak more than thirty minutes "at any one time."

The original resolution as amended is:

"Resolved, that on and after Tuesday next no member of this Convention shall speak for more than thirty minutes on an original proposition nor more than fifteen minutes upon an

amendment, and then only by way of explanation.

Mr. CHAPMAN moved to amend by adding that,

"No member shall hereafter have leave of absence except in case of sickness of himself or family."

Mr. COOKERLY called for a division of the question.

The PRESIDENT. A division being called for, the first—

Mr. WATTS. Mr. President, one word as to the amendment just offered. I trust that my friend from Marion (Mr. Chapman) as he is living at home, as he has but to cross a street from the Capitol to the residence of his family, will withdraw his amendment, which, if it were adopted, would operate upon other members—he being safe from its application. Is it not indecorous to the Convention, is it not in bad taste for the gentleman living in Indianapolis, to seek to restrict members who may live within twenty miles, from visiting their homes! Had the amendment been proposed in any other quarter than the one from which it comes I presume that there would be no opposition. I hope the gentleman from Marion will withdraw his amendment in consideration of the somewhat delicate position he occupies on this floor in regard to that matter.

Mr. CHAPMAN. I shall not be strenuous for the adoption of the amendment, and I would withdraw it if such was the general desire of the Convention. I shall make no objection to granting leave of absence where it is evident that it is necessary for a member to be absent with his family or on account of his own health. But, sir, I think it quite unbecoming in members who have had frequent leave of absence, while members from this county and others have attended during every hour of the session, to come in here occasionally and deliver us a periodical lecture upon our incompetency and upon the tardiness with which the public business is conducted. There are those upon this floor who have had frequent leave of absence, and who have been but for a small portion of the time in their seats attending to the progress of business who, when they do come here, improve the first opportunity to consume the time of the Convention by haranguing us upon our slow progress, declaring that the people are in favor of a short session and short speeches, and delivering themselves of a general lecture as to what we should and should not do. As the object claimed for the resolution before the body is economy of time and money and the expedition of business, I think we may as well go the entire length of the subject and prevent the non-attendance of members except in case of sickness.

It may appear indecorous in a member from Marion county to present the amendment which I have sent up to the Chair; it is not that I in-

dulge in any feeling toward any members. I certainly should do the same thing if I lived elsewhere. But when properly considered, the fact of my residence here places me in no "delicate position" in offering the amendment. It provides that members may have leave of absence in case of sickness—what more is wanted? Absence for the purpose of business or pleasure? Then the rule would operate upon the members from this county equally with others, for it certainly would be very much to my interest, to have a few days or a week of leisure, to attend to business, and it certainly would be most agreeable to have a week's interval for a trip, for the double purpose of health and pleasure. Therefore it is evident that we of this county would be as much restricted by the rule as others.

Mr. President, I will withdraw the amendment.

Mr. RITCHEY. I am rather sorry, on the whole, that the gentleman from Marion has withdrawn his amendment. I imagine that the speech and the amendment were both intended for my benefit—that they were aimed especially at me. I am informed that it has been the subject of remark and animadversion outside of the bar of the Convention, that I have occupied a portion of every day that I have been in the Chamber in lecturing the members upon their duties. The remark that I have been in my place but a day or two, is untrue. I have been in my place now four weeks. As to my absence, it is well known that I came up here on the day of the organization and stated that I had come up to assist in the organization of the Convention, but should be obliged to return to my home, as I then had a son lying very sick of a disease prevailing in my neighborhood that had carried off between thirty and forty persons living all around my home. I returned, however, as soon as I could leave my son without the apprehension that he would die in my absence, which was in some three or four days. But, as soon as my son had recovered, a little daughter was taken sick, but during a part of that time I was here in my seat. Now if, under these circumstances, any member will object to the amount of time I have been absent, let him say so. Sir, I have, on one occasion, in obedience to a sense of duty, and in the discharge of a public duty, left my home, and during my absence one of my children died. And now am I to be taunted that I forget my duty to my constituents, am absent a great portion of the time, and when I do come here I seize upon the first occasion to make a little "Buncombe" by lecturing the working members that they make long speeches, and do not get along fast enough? I hope that such remarks will not be repeated—even for "Buncombe."

Mr. CHAPMAN. The last charge that will be made against my course in this Convention by intelligent persons who watch its proceedings will be that I do anything for "Buncombe"

—the reverse will more likely be said of my course, for I shall certainly deem it right to oppose with whatever strength I have, certain measures, popular not only with an overwhelming majority of members here, but claimed to be most popular with the people. Neither am I here, sir, to bring in remarks made outside of this Hall for effect in debate; what I say outside of this Chamber, I am responsible for outside of it; and what I utter upon this floor I am responsible for, both to the Convention and to the community at large.

Mr. President, the gentleman (Mr. Ritchey) has lectured the Convention—when he has been here—upon the course they should take, the time consumed in debate, and “all that,” and I declare that in my judgment he is not entitled to the sympathy he expects to result from his statements and explanations. He did lecture us here in the first days of the session, because we did not sooner organize, and he has since, upon other topics, pursued the same obnoxious course. I am among the number who are restless under such castigations, and say so frankly to the Convention and to the gentleman (Mr. Ritchey).

Mr. STEVENSON. I regret that the discussion of this resolution has given rise to an exhibition of feeling, and to the severe remarks of the gentleman from Marion (Mr. Chapman). The question, nevertheless, is one of interest to ourselves and to the people, and deserves a serious consideration, void of all personal feeling. There has already been a very considerable latitude, in debate; every person has had all the time given to him while on the floor; and I think that now, with six weeks of the session already passed, the proposition in the resolution before us is fair and will work injustice to no one, while it must serve to expedite business and bring nearer the close of our labors. Half an hour is certainly long enough for any member to occupy at any one time in debate—by condensing, not the *argument*, but the *remarks*, gentlemen will be able to express all they desire to in that time, and frequently in fifteen or twenty minutes.

A speech of half an hour occupies about one-fourth of an entire day's session, and will fill two columns of the paper in which our debates are published. Now, when we take into consideration that there are upon this floor one hundred and fifty delegates, all anxious to express, in one form or another, their opinions, certainly no gentleman will be willing often to occupy so much more time and space than would fall to his proportion, even when restricted to half an hour. Speeches of half an hour in length would give from eight to ten long speeches each day—four or five on each side of a question. With speeches of this length, we can fairly and fully investigate and discuss every question brought before the Convention, and still get through with our labors in a very reasonable

time. If a gentleman, in discussing a proposition, does not quite finish all he has to say in half an hour, his friend upon the same side can carry out the argument. Upon amendments it will be unnecessary to occupy so much time as upon original propositions, and therefore fifteen minutes will be ample for that purpose. It is very evident that at the rate we are now proceeding, we cannot get through this winter. The country will become restless under a protracted session, and the Constitution that we shall frame and send out to the people will not be so well received as it would otherwise be. I am not disposed to repress needed discussion, nor would I knowingly “gag” any man. I am not only willing but anxious that all should have an opportunity to express their opinions and give their reasons for and against the engrafting in the new Constitution of the several propositions as they come up for approval or rejection. This is what they come up here for, and it is the valuable privilege of every member to give the reasons for the support of a measure, or for his opposition to the same. But I really think that half an hour is a liberal allowance of time for this purpose, and therefore shall support the resolution, for I am satisfied that while it will expedite business, it will work injustice to no one. I hope that the amendment proposing to let members speak longer than half an hour by common consent will not be adopted, for it will surely result in confusion and the virtual nullification of the half hour rule. For no gentleman here would refuse, on an appeal to the generosity and forbearance of the Convention, to allow a member to proceed with his speech. You will have continual appeals of this kind for indulgence, and they will always be effective to secure the privilege of speaking *ad libitum*. My resolution is obviously a fair one, and I hope it will not be voted down.

Mr. SHERROD. Sir, it has been remarked, I believe by the gentleman from Delaware, (Mr. Kilgore) that this resolution was intended for “buncombe.” Now, sir, if acting under a high sense of the duty I owe to those who sent me here, and with an eye single only to the interests of the great masses of the people, by bringing the proceedings of this Convention to a speedy and happy close, merits this remark, I for one sir, am willing to bear the charge. And I can inform the gentleman, if he expects to deter me from my position by such remarks or declaration, he is mistaken in the man. No sir, I am here to act for those who are only interested in the best interests of our common country; sir, I am well satisfied, unless there is something done, to check this everlasting debating on the various questions that are brought up here, why gentlemen will talk an hour, on questions of minor importance, and if we continue to pursue this course, I predict, this Convention will be in session until spring, be-

yond a doubt. Hence sir, I am in favor of placing restrictions and limitations upon this body in debates especially.

The gentleman from Delaware (Mr. Kilgore) spoke disparagingly of some of the younger members of this body. Now I do not know whether in this he wished to allude to me or not.

Mr. KILGORE. I certainly had no intention to include the member from Orange in the class of "young sprouts" [laughter].

Mr. SHERROD (continuing). I am sure, sir, that any man here can condense his remarks within the space of half an hour. I have that good opinion of the abilities of this Convention and hope no gentleman will disappoint me by showing, by a speech of an hour or more, that I have over-estimated his powers of condensation [laughter]. In the New York Convention, the proceedings of which are so often quoted approvingly on this floor, the fifteen minutes rule was adopted. For my own part, although I have taken a deep interest in many of the propositions before us, I have not at any time occupied so much as thirty minutes in expressing my views.

I hope that the motion to commit to a select committee of three, with the instructions proposed, will not prevail, because I believe that a majority of delegates are prepared to vote understandingly upon the resolution now, and thus obviate the necessity that will otherwise occur for spending another half day upon this subject.

Mr. SPANN. Inasmuch as I voted to take the pending motion from the table, I will remark that I am now, after hearing the objections urged, satisfied that the best course would be to lay it again on the table, I therefore move to lay the motion of the gentleman from Wayne (Mr. Newman) which is to commit the pending resolution to a select committee with instructions, upon the table.

Mr. WOLFE. Does this motion to lay on the table, should it prevail, carry with it the original resolution?

The PRESIDENT. It is to lay the original resolution and pending amendments upon the table.

Upon the motion to lay on the table, the yeas and nays were demanded by ten members, and being ordered, resulted yeas 24, noes 74, as follows:

AYES.—Messrs. Alexander, Beach, Biddle, Carr, Chapman, Clark of Tippecanoe, Crumbacker, Dunn of Perry, &c., Edmonston, Graham of Warrick, Hall, Jones, Kent, Kilgore, Miller of Clinton, Milroy, Mooney, Niles, Owen, Rariden, Spann, Steele, Taylor, and Wunderlich,—24.

NOES.—Messrs. Badger, Balingall, Bascom, Beard, Blythe, Bowers, Bracken, Brookbank, Carter, Coats, Colfax, Cookerly, Crawford, Davis of Parke, Dobson, Duzan, Farrow, Fisher, Foley, Frisbie, Garvin, Gootee, Gordon, Graham

of Miami; Haddon, Hardin, Hawkins; Helm, Helmer, Hitt, Hogin, Hovey, Howe, Huff, Johnson, Kendall of Wabash, Kendall of Warren, Lockhart, Logan, Maguire, March, May, McClelland, McFarland, McLean, Miller of Gibson, Milligan, Moore, Morgan, Morrison of Washington, Mowrer, Nave, Newman, Pepper of Crawford, Read of Clark, Read of Monroe, Ritchey, Schoonover, Shannon, Sherrod, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Stevenson, Tague, Todd, Trimby, Watts, Wiley, Wolfe, Zenor, and Mr. President.—74.

So the Convention refused to lay upon the table.

Mr. WOLFE. Is it now in order to move to lay the pending amendment upon the table?

The PRESIDENT. The Chair would remark, that the pending question is upon committing the resolution to a select committee, with instructions to strike out the original proposition, and report a resolution that after Tuesday next, no member shall occupy more than thirty minutes in debate, at any one time, without consent of the Convention. The gentleman from Vigo (Mr. Cookerly) having demanded a division of the question, the same will first be upon committing to a select committee.

Mr. COOKERLY. I move to lay the motion on the table.

Mr. OWEN. A few words, Mr. President, if the gentleman from Vigo will withdraw his motion?

Mr. COOKERLY. Certainly, to accommodate the gentleman.

Mr. OWEN. I should not have made the request, if I did not consider this an important matter. Let us look at the subject deliberately, and be careful, that in some heat and confusion coupled with haste, we do not take a step which the common sense of the Convention will compel it to retrace before the expiration of another week. Things done in a hurry are often done badly; done so as to be repented of afterwards.

It is quite evident, that this resolution has enlisted in its favor, wholly or in part, a majority of the Convention; and that, in some shape, it will be finally adopted. The pending question is upon the motion to lay upon the table the resolution of the gentleman from Wayne (Mr. Newman). That leaves us the resolution of the gentleman from Montgomery; and his resolution is, in substance, that after Tuesday of next week, no member shall be allowed to speak more than thirty minutes upon an original proposition, nor more than fifteen minutes upon an amendment, "*and then only by way of explanation.*"

I ask a moment's attention to the last clause. How many speeches are ever made here upon an original proposition? How long is an original proposition ever under discussion before amendments are proposed? Discussion hardly ever arises, as all our experience has shown, before amendments are proposed. All the dis-

cussions we have had, with but few exceptions, have arisen and have been predicated upon amendments. It is evident, then, that the resolution, as it is drawn, will operate not only as an unjust restriction, but almost as an absolute prohibition of debate. Even the brief space of fifteen minutes is not allowed except for purposes of explanation.

While it is upon my mind, I will remark to the gentleman from Orange, (Mr. Sherrod,) that he is partly mistaken in his statement of the rule adopted in the New York Convention. The restriction of the time occupied in debate to fifteen minutes, was not adopted until near the close of the session, when all the important propositions had been fully discussed, and when the Convention was already, in a measure, prepared to vote upon the amendments which had been debated.

But the effect of this proposition, even if the clause requiring explanation be stricken out, is to limit debate to fifteen minutes. No matter how important the subject, no matter how anxious the Convention may find itself to hear an argument finished, fifteen minutes is to be the extent of time allowed to each member in the discussion of amendments; or, in other words, in nineteen out of every twenty cases of debate that arise. Subjects the most vital to the interests of the people of Indiana, decisions to endure, perhaps, for half a century to come, will be before this body. The Convention may find itself in need of the most thorough and elaborate discussion of the principle of some important amendment, before its members are willing to take the solemn responsibility of casting a vote which may decide its rejection or adoption as a part of the organic law of the State. No matter! Speech, argument, deliberation shall not be allowed. There stands the imperative resolution that no member shall occupy more than fifteen minutes in debating an amendment, and then only "by way of explanation!"

Sir, if this resolution is passed, it will be without example in the history of deliberative bodies. What! no argument whatever upon the adoption or rejection of matters that may be a blessing or a curse to our people for half a century to come!

Are we ready to pass such a resolution? Pass it, then! It will not stand unchanged on your journals through one day's session. The gentleman himself who moved it, could never have looked narrowly to the words he used; could never have clearly seen whither his proposition led, or calculated, with any forethought, its practical effects.

Sir, the proper disposition of the various propositions which will come before this Convention, is of more practical importance to the people of Indiana than the action of twenty Congress. [Cries of "consent—consent."] And shall I not feel the deepest interest in the

settlement of a question which involves the deliberate consideration of propositions destined so intimately to affect the great future of this State; the State in which for a quarter of a century I have lived! the state in which I expect to die! For one, sir, never shall my vote be given to a proposal that shall hurry through the consideration of those great questions which we were sent here to examine and decide. Never by my vote shall be passed a resolution, declaring that no member shall occupy more than fifteen minutes in the discussion of any one of these—and then only by way of explanation! It is an outrage upon common sense!

Take such a question as that which occupied our time for nearly a week, the question of the right of way for public improvements. I ask any gentleman who was present during that debate, if the provision finally adopted could have been carried without the full discussion which preceded the final vote? The ground was carried by sheer debate—carried inch by inch. When the subject first came up, the Convention were wholly unprepared to act upon it. Not only was there an almost infinite diversity of opinion, but that opinion was in an unformed, unsettled condition; and it was the contact of mind with mind, laboring to evolve the right, that finally concentrated a majority upon the provision as it now stands. In that single proposition were involved interests to the amount of hundreds of thousands—yes, of millions of dollars. Some gentlemen may think we decided wrong. No matter; it was the deliberate, well considered opinion of the majority of this body. And propositions of corresponding magnitude—yes, of greater magnitude—are yet to come up. Each gentleman has his own ideas of duty, and has a right to them. I dictate to no man; but I say, that for myself, I should consider it a violation of my sworn pledge as a delegate, were I to vote for a resolution restricting debate within such narrow and impractical limits.

More than a third of a century has passed since the formation of the present Constitution. Are we so little acquainted with the history of the world—have we so carelessly read its lessons—as not to feel that such a lapse of time renders necessary and proper many changes, many reforms, many radical alterations in unison with the progress of the age and the advance of civilization! And can we shut our eyes to the fact, that these are to influence, for good or for evil, the destinies of our children and of our children's children?

No man is more anxious to secure reasonable despatch than I am—no man more desirous to see once more his home and his family than myself. But I am not willing to purchase that gratification at expense of a solemn duty—by the sacrifice of great objects, to secure which we were sent here.

The gentleman from Johnson (Mr. Ritchey) says, he "is a conservative in principle;" that he desired to see as few amendments as possible made to the old Constitution; and that he hopes no propositions will be either debated or adopted, except those few and simple ones mooted in the canvass for delegates before the people. Everything else he wishes summarily disposed of, without question or hearing. And he has undertaken to tell us that we "were proposing changes which the majority of the people never thought of or desired." I purpose no disrespect to that gentleman when I ask him, whence he derived the right to make such an assertion? Who authorized him to lay down the rule, as to what the people of Indiana do or do not desire? He must remember that we have, in this State, a North as well as a South, and besides a South and a North, a centre. He must remember that subjects which may have engaged no attention in his immediate section, may yet have been warmly advocated in another; and that if it should chance that a few simple measures only were talked of in an Eastern county, they may not constitute the complement of constitutional reforms desired in the West. The gentleman, I presume, did not canvass the entire State before his election? How can he determine, then, what questions have been debated before the people, and what subjects have received from them no consideration? Such remarks are unadvised, and little calculated to create or to maintain good feeling among us. I repeat, that no delegate is more desirous of reaching his home than myself; yet that shall never cause me to run into an extravagance in this matter; or to pursue a false economy at expense of interests of which the value can hardly be estimated in dollars and cents. The money which our session may cost, is as dust in the balance, compared with the proper performance of the task we have here to accomplish. The main point is to make a good Constitution. It is a mere secondary consideration how long it takes us to make it. Patient deliberation is our first and most imperative duty as delegates.

I have been a member of many deliberative bodies, in and out of the State of my residence, but I have never been in one where the speeches of the members—taking them throughout—were as brief and as much to the point in debate, as in this Convention. There have been, indeed, some which might have been condensed and better arranged; and others which it would have been no loss to have omitted altogether. But this must be so in all such bodies as ours; and it furnishes no reasonable cause for complaint, nor just ground for a rule, stringent and unprecedented as that proposed on this occasion.

As to the resolution moved by the gentleman from Wayne, (Mr. Newman,) which allows to each member half an hour, in all cases, and a longer time with the consent of the Convention, I shall, at this time, offer no special ob-

jection to its adoption. I should never have introduced it myself, nor can I vote for it, except in preference to a more exceptionable proposal; but it is so much better than the one now before us, that, for the present, it may pass unchallenged.

I remark, farther, in relation to what was said by the gentleman from Sullivan, (Mr. Wolf,) that, while I know his anxiety to get through with business, I ask his attention to the fact, confirmed by legislative experience, that the first, and by far the largest, portion of a session is always consumed in speaking; in discussion, in doors and out of doors. At first, men's minds are unsettled. Members compare views, ascertain the ideas of others, get their own minds made up, and then, towards the close of the session, they go to voting, for they are prepared to vote. It will not do to apply to this matter the strict rule of three, and ask us, if it has taken six weeks to engross as many sections, how long will it take us to decide upon some hundred and fifty sections? If little is finally decided, much has been examined and prepared. I have often seen preliminary debate occupy seven-eighths of a session, and scarcely an eighth consumed in voting and final disposition.

The very collection of reports, voluminous as it is, which the gentleman held up to us as his speech, is a pretty good speech on the opposite side. It is an evidence of industry, and of the progress that has been made in business. These articles and sections thus reported have all been carefully considered and debated in committee, before they were brought in here to pass the severe test of the judgment of the Convention.

I have little doubt but that, at the rate we are now proceeding, we shall accomplish our business in some three months from the time of our convening; and that we shall get away not later than some time in January.

I trust, Mr. President, that, in preference to the pending resolution, the motion of the gentleman from Wayne, (Mr. Newman,) will prevail.

MR. NILES. MR. PRESIDENT: I can appreciate the motives of gentlemen who are in favor of this resolution, while I should deeply regret to see it adopted. It is very true, as remarked by the gentleman from Sullivan, that we have finally disposed of but few of the large number of subjects which will come before, and must be decided by the Convention. But, gentlemen will recollect that our work is all prepared, and that we have pretty thoroughly discussed the three most important questions, with only one exception, which will come before the Convention during its entire session. There does occasionally a man appear upon the stage, who can communicate his thoughts upon any subject, in a few brief and startling sentences. But such a man is the production only of a century. We can lay no claim to such ability. Who

among us, could attempt to discuss, in all its bearings, such a subject, for example, as that of currency and banking, if limited absolutely to the brief space of thirty minutes?

As remarked by the gentleman from Posey, (Mr. Owen,) this Convention is of more importance than any Congress ever assembled. And yet it is admitted on all hands that one hour is the shortest possible time in which questions of mere legislation and temporary expediency can be discussed in the House of Representatives. With what propriety, then, can members of this body be limited to fifteen or even thirty minutes, in debating great principles affecting the organization, and most vital interests of society? Were our action subject to be repealed or modified at the next session of a Legislature, it might be less important; but its influence may be felt for a quarter of a century, or for many generations.

I trust, then, that, anxious as we may and should be to save time and money, and to return to our homes, we shall adopt no such short-sighted policy as proposed in this resolution. I am free to say that I did not come here fully prepared to vote upon all the questions which have been submitted, and I can say, unhesitatingly, that I have listened with interest and profit to the debates which have taken place. I acknowledge my obligations to gentlemen who have expended labor and thought in preparing themselves to discuss the great questions which we are to decide. It may be that speeches have sometimes been more prolix than is altogether consistent with the most classical taste. Indeed, I myself may have been unfortunate in extending my remarks upon one occasion, to near an hour in length; and if by doing so, I have helped to prepare the way for the introduction of this resolution, I most sincerely regret—indeed I do—that I have ever uttered a syllable upon this floor—[several voices, “not so—no, not on that account.”] I can, however, assure gentlemen, that they have little to fear from me in the way of speech-making. But, if I should undertake to address the Convention upon any subject of great and practical importance, I should, under the operation of the rule proposed, be most seriously embarrassed. The reflection constantly uppermost in my mind, would be, how soon could I get through and sit down. Indeed, I should not be willing, under the operation of such a rule, to attempt to speak upon any important subject. I should not be willing to hurry through with remarks, leaving my thoughts half uttered, and in a shape liable ever afterwards to be misunderstood, and I cannot imagine but that our gentlemen must feel the same embarrassments. Without occupying more time, I will simply express the hope that the resolution now before the Convention will not be adopted in its present form. Under its operation, men would speak more frequently but

less satisfactorily to themselves or others. I do not believe it would save an hour's time.

Mr. COOKERLY. I asked for a division of the question upon the motion to commit with instructions, because I did not approve of the latter. I moved to lay the original resolution on the table, but if that portion of it were stricken out which provides that no member shall speak upon an amendment more than fifteen minutes, and then only by way of explanation, the remarks of the gentleman from Posey (Mr. Owen) were very pertinent upon that point, and I think they must convince every one of the folly of adopting that portion of the resolution.

I would move, if in order, to amend by striking out all after the provision that no member shall speak for more than fifteen minutes at one time. I would make no reference to or distinction between original propositions and amendments.

The PRESIDENT. It is out of order now to amend in that way.

Mr. NEWMAN. I was aware of that fact, Mr. President, and for that reason moved that the resolution be committed to a select committee, with instructions to report a resolution embodying the amendment I desired to see adopted, and which I should have moved had it been in order.

Mr. COOKERLY. While I wish to see this resolution amended, I am opposed to the commitment proposed by the gentleman from Wayne, because I think that now is the proper time to settle it, and right here. The minds of a majority are made up, and it can be decided just as soon as we can get a direct vote. I want to see the question met fairly and settled for the session. I am opposed to any compromise in the matter, and shall vote against the proposition to allow a speaker to continue after the expiration of their half hour by the consent of the Convention. We must do one of two things; either allow members to speak just as long as they choose, or limit them to a specified time and then enforce the rule rigidly. I do not want any clause as to extending the time by the consent of the Convention, in the resolution. The courtesy of the Convention will be appealed to by every wordy member, and the rule will be a dead letter, merely encumbering the Journal. I do not think that the speeches which have been delivered here have delayed the action of the Convention so much as the number of new and unexpected subjects of discussion which have been introduced since we convened. If this body had confined itself within its legitimate sphere of amending the Constitution, and if for the future it would only entertain that class of subjects which properly belong to it, we should soon get through. But when we assume legislative powers, and bring in matters which peculiarly belong to the legislative department of government, then we are

not only out of our proper sphere, but by continuing in that course we shall protract the length of this session to six months. Now, sir, whenever a member proposes any proposition which is essentially a proper subject of constitutional reform, I shall favor its full discussion, whether I am for or against it. I have no disposition to curtail debate when it is applied to subjects legitimately connected with constitutional reform, and when it confines itself within proper and reasonable limits. And I consider that if we fix upon half an hour for each speaker it will be so reasonable and just a limitation that no gentleman can complain of it. But, sir, when a gentleman rises here and proposes any measure which has economy in view, economy of time or of money, up jumps somebody, and declares that it is done for "Buncombe." Sir, I declare that had it not been for a general desire on the part of the people to see the expenses of the State government economized, to have a system by which government should be administered at a less cost, this Convention would never have been called. For one, I came up here as a reformer, and I sustain the present resolution on the principle of economy, and I am not at all disturbed by the cry of "Buncombe." I shall steadily pursue the course I have indicated. For the purpose then, of economizing the time of the Convention and the money of the people, I am in favor of the resolution, with the exception of the clause providing that upon amendments members shall only speak by way of explanation, and but fifteen minutes at a time. Most of the necessary and useful discussion is necessarily upon amendments, and therefore the clause is an unwise and ill considered one.

But we are told that without this resolution, debate can be stopped by the operation of the previous question. I never moved the previous question, and I never intend to, but, sir, those who speak the most in this Convention are the very men who have been in the habit of calling the previous question.

After two or three hours spent in debate, mostly consumed by the "long talkers," if one of those who are considered the "small fry" gets up to offer his views upon the subject, they will pop up and move the previous question. This I condemn as wrong, and mention it to indicate to gentlemen some of the causes which have contributed to the state of feeling which they see exhibited this afternoon, and which is bound to carry this resolution in some shape. But I will not vote to restrict members to fifteen minutes upon amendments, and then only by way of explanation. I wish to be reasonable in my opposition to long speeches, and I think that clause is unreasonable.

If the gentleman from Wayne will strike out from his motion the clause providing that speakers may continue after the expiration of half an hour, I will vote for it.

The PRESIDENT remarked that the gentleman from Vigo could effect his object by moving to amend the instructions.

Mr. COOKERLY accordingly moved to amend the motion to instruct the committee so that members should not be allowed to speak beyond half an hour by consent.

Mr. CARTER. I desire to amend my own amendment.

The PRESIDENT. You cannot do that now without getting a majority of the Convention to agree with you.

Mr. CARTER. I was going to accept of the amendment suggested by the gentleman from Posey and strike out from my amendment the words "and only then by way of explanation."

The PRESIDENT. It is too late for the gentleman or the Convention to amend in that manner.

Mr. CARTER. My only object in desiring to amend is to secure the passage of the resolution. I should vote for it as it is rather than to see it lost, but am willing to modify it. I would remark that in drawing up the amendment I copied the rule in force at the last session of Congress. There, no man is allowed to speak more than fifteen minutes upon an amendment, and then only by way of explanation.

Mr. OWEN. The gentleman is mistaken in his understanding of the Congressional rule upon this subject. When near the close of a session, a bill containing a number of sections is before the House, a resolution is introduced providing that no member shall speak for more than fifteen minutes upon any amendment to that particular bill.

Mr. CARTER. I supposed it was the rule that prevailed during the session—it is published so as to give the reader that impression. But be that as it may, I consider the rule a politic one, whether in force in Congress or not.

The object, however, which I had in view in rising was to remark that I was misunderstood by some gentlemen in what I said this morning. It seems that I was understood to say that the people of Montgomery county would vote against the adoption of the new Constitution for the reason that the Convention had been so much longer in session than it should have been. What I intended to say and probably did say, was that by our protracting the session to three or four months by long speeches, thereby increasing the expenses of the State some fifty thousand dollars beyond what it was supposed this Convention would cost the people, the people would become so tired of the matter, and so displeased with the waste of our time and their money that they would not receive the new Constitution in the same spirit they otherwise would; I feared they would be-

come prejudiced against the instrument itself and be more apt to vote against it.

There is another thing to which I will allude. It was intimated by some gentleman that I belonged to the dollar and cent party. Well, sir, I shall not deny the impeachment, I do belong to that party and am not ashamed to own it. [Several voices—"nor are we."] It was the party that sent me here, and the principle of economy and reform is one of the issues upon which I was elected. I declared that I believed economy should be practised in public as well as in private business. I believe that economy should be practised here at the Capitol, in the Senate and the House of Representatives as in all the different occupations of life. I shall therefore advocate the principle of economy in every shape and form, and especially in the administration of government. I desire to have this session a short one—to that end I wish to see less discussion and more voting. I venture to say that if the ayes and nays could be called now this resolution would be adopted, and so with a great number of other propositions; if we could get to a vote upon them they would all be settled in a comparatively short space of time. I cannot see that any outrage would be committed thereby, either upon the members or the people.

MR. OWEN. When I used the word "outrage" I meant no allusion to any person.

MR. CARTER. No sir, I did not suppose the gentleman from Posey meant the remark for an offensive or personal one. But no outrage will be committed upon the freedom of debate. A large portion of the time of the Convention has already been spent in debate, for much of which I could see no necessity, and as it has been in the first part of the session, so will it be for the future, unless a resolution like the one now pending is adopted. There are subjects of great importance not yet touched upon, the reports of committees "on the organization of courts of justice; on criminal law; law and law reform; elective franchise and apportionment; on currency and banking;" which, sir, will alone occupy two weeks each in discussion, at the rate we have been going on; then there are the subjects of "State debt and public works; corporations other than banking; finance and taxation; education; salaries, compensation and tenure of office;" besides several others, which as the country merchants say "are too tedious to mention." Now, sir, all the subjects which I have hastily enumerated come in the latter part of the orders of the day, and after the subjects which have already been discussed. Will there not be much discussion upon all these subjects, legitimate subjects, as they are of Constitutional reform, more important, certainly as important as the subjects which have engrossed our time for the last six weeks.

We have been told by the gentleman from Posey, (Mr. Owen,) that there is always more debate in the early than in the latter part of a session. But while I admit the fact I am not certain that it is necessary, why should it be so?

I am in favor of the resolution because we have already spent six weeks and done nothing, and I wish to avoid having the same thing said six weeks hence. The only way to draw the session of this Convention to a speedy close, is for the working members to cut off this interminable debate hereafter, commence voting upon the articles and sections already prepared, finish our work and go home, instead of sitting here at an expense of six hundred dollars a day until spring comes upon us, and find us still in the midst of debate.

The amendments to the Constitution desired and expected by the people, are few and simple. It is true, as the gentleman from Posey has said, that some peculiar measures of reform have been discussed in one part of the State that have not in another; but, sir, by far the greater number of propositions for Constitutional reform—the main principles of the whole subject—have been fully discussed in every newspaper and on every stump in the State. I shall venture the further assertion, that there is no member upon this floor who has not made up his mind upon the course he will take upon these questions before the discussion commenced.

The gentleman from Delaware (Mr. Kilgore) has made some remarks, intimating very plainly that I was actuated by a desire to make "buncombe" by advocating this resolution and proposing my amendment. Now, so far as this charge of "buncombe" is concerned, this is the first office, or the second, rather, that I have ever held, and probably the last. In offering this proposition with which my name has become connected, I was actuated only by a desire to secure a greater economy of time and money to the people. If I had been actuated as I am charged, by a desire to make "buncombe," I should have fixed the time at ten minutes, or at fifteen minutes, in all cases, instead of fixing the time at half an hour on original propositions, and fifteen minutes on amendments. I am willing to be restricted to this time myself, and consider it ample for any one member out of one hundred and fifty to occupy at a time. I can conscientiously defend the motives by which I have been actuated, and if the advocacy of such sentiments brings with it "buncombe," I am willing to take it.

But, sir, the gentleman from Delaware (Mr. Kilgore) having made a strenuous opposition to this resolution, I am willing, inasmuch as he declares he cannot express his views in half an hour, and inasmuch as he is a peculiarly modest man, [laughter,] an unusually modest man, I will add a proviso that that gentleman be allowed to speak without reference to the rule re-

stricting other gentlemen. I trust that the general rule will be set aside in his case. I know that he is a remarkably modest and retiring man; I have never seen his name figure more than *five times* in any one day's proceedings, and I am willing to hold out inducements and encouragements that may have the effect to draw him out, that we may have the benefit of his councils in debate.

I had no "buncombe" in view in offering this proposition. I desired, first, to have such a rule adopted for my own convenience and interest; and secondly, and which is the main reason, for the interests of the people.

I hope we shall be allowed to get at a direct vote upon the subject, for when we do, the whole matter will be settled in favor of the people and their treasury.

Mr. RARIDEN. I suppose, Mr. President, that the object of every gentleman in this Convention is about the same. While I accord to all of those gentlemen who have spoken on the subject, perfect candor in the manifestation of their feelings in regard to economy, I do not entertain the idea that the residue of the members of the Convention, who have omitted to give utterance to their sentiments in regard to that matter, feel any less disposition to study and practice economy than the gentlemen who have spoken so much on the subject. No, sir, not at all. It is not those gentlemen alone who are always talking about "economy" who feel that it is quite proper that the affairs of the State of Indiana should be honestly and economically administered.

Another word, sir, on this subject. I must confess that gentlemen, notwithstanding all their arguments and long speeches on the subject, have failed to convince me that it would be economy to cut off debate on any question. If, for instance, the majority of this House should not be so happily endowed as to arrive at a correct conclusion on any question which may be presented here, by a mere flash of the understanding, but must come to a conclusion by a tardy and laborious process of reasoning and thinking, it might be, that without sufficient debate, a majority thus organised, would carry measures that would neither be reputable nor profitable to the State; and it might be that, going on in this way, and cutting off all debate, and making it a matter of controversy as to who should make the shortest speeches and occupy the least of the time of this Convention, the Constitution which we are sent here to make, might not go out of our hands in a reputable manner, nor in any way redound to the honor of our State. What would be thought of such a course in the world at large—for we have a reputation abroad; the world at large judges us from what they see. Is there any State in this Union whose Constitution involves principles more important than that of the State of Indiana? Is there any State in this Union,

or any country on the face of the earth, in which the great mass of the people regard the principles of human liberty guaranteed by our Constitution more sacredly than do the people of Indiana? I apprehend there is not.

Now, Mr. President, I occupy a position perhaps somewhat different from a great many other gentlemen upon this floor. Although there are many provisions in the present Constitution which I would like to see changed, and among the foremost is that the election of officers should be invested in the people, yet apprehending the great expenditure of public money, which would necessarily result from a revision of the Constitution, and knowing that on a great many subjects there would be a great diversity of opinions manifested here, I voted against a call of the Convention; and have said from the beginning that the closer we stick to the old barque, the better will I and my constituents be satisfied with the result of our labors. And if a few new propositions are brought forward, which have never been tried in their effects upon society, I desire to have time to contrast these new theories with the principles which have been well tried and long established. I want time and opportunity for consideration, for I do not believe in this thing of men being inspired with wisdom merely from the fact that they have been elected as members of this Convention. ["Hear, hear," and "consent."] It may be a very unpopular notion that has got into my head, but it is there, and it cannot be got out without a longer speech than one occupying half an hour. Sir, I cannot believe that the mere fact of a man's being elected a member of this Convention makes him possess a greater amount of knowledge than he possessed before his election. Now when gentlemen propose new modes of organization, new principles as a basis of legislation which may operate very differently upon the interests of the community, from anything we have yet experienced, I want time to consider them, to go into details, and endeavor to discover how they will effect the various interests of the community; to compare those principles in their probable operation with the operation of those contained in the old Constitution, with the workings of which we are already acquainted; and then, having made the fullest investigation, and weighed the whole matter with as much care as my judgment will enable me to do, if my mind preponderates in favor of the new project, I will vote for it; but I do not want to go hastily to work, and "guess" at it. I feel that the questions which are agitated here are too important to the mass of the community to permit myself to "guess" at them, and to risk the possibility of doing great injury and injustice merely for the want of a little consideration.

Now what is the complaint which has been made in this Hall? It is about "much speaking." Well, sir, I have spoken perhaps as much

as any body else; but, at the same time, I feel that when I think I understand the probable effect of a measure and have given my opinion about it in my own way, and when gentlemen entertaining different opinions from mine, give utterance to their opinions, I thank them for so doing; and I will be candid enough to say that, on more than one occasion I have found that my own opinions have been changed by the remarks of gentlemen who have spoken, perhaps not more than a quarter of an hour; I mean those strong minded men who speak but few words, and yet put things in a strong common-sense light before this Convention. But, sir, I have found that even to men of this kind, men of strong minds and clear perceptions, who, unfortunately, have not had leisure to examine questions in all their bearings, nor of learning what the great men of the world have said and thought in past times on subjects similar to those which are in process of discussion here; I find that even to these men, full and copious debate is in no degree objectionable; and they perhaps more than any others in this Hall, are improved by it.

Now I submit to gentlemen, what time has been unnecessarily expended in this Hall from the first day of the session to the present moment? I believe that my friend from Tippecanoe did make a speech of an hour and three-quarters in length on the Grand Jury system, and I must say that I never listened to a speech with more interest and attention in my life. I was glad to think that that gentleman has subjected himself out of this house to the labor of mastering the whole subject, and of bringing it in all its phases before the consideration of this body. Was there any tautology in that speech? Was there any thing said that could have been omitted without detriment to the whole argument? And could he have delivered it in less time? Did he not begin at the first point and go through the whole subject? And how could a man do less? Sir: there has been less debate in this Hall—fewer long-winded speeches in this Convention than in any other Convention that has yet been convened in modern days. In that respect the proceedings of our Convention will compare with the proceedings of any Convention in America. It should be remembered too, that we labor under some disadvantages. We do not sit here perhaps quite as many hours as we should sit; the Hall is crowded and uncomfortable, and men listen less patiently to speeches delivered in a crowded Hall than they would if they had a moderately convenient place. But, sir, I do not think that any man should tell me that I must hurry through this business, and adopt new provisions in the Constitution without hearing the reasons which can be urged for and against them. Sir, we have come here to improve upon our Constitution, which I will say, at the time of its formation, was one of the best Constitutions in the United

States. It secures to every citizen all the essential principles of human liberty. It is convenient in its administration, and secure in what it proposes to accomplish; but time has developed some improvements which perhaps may be introduced into that instrument with advantage to the people; but are we to adopt them hastily, without understanding their details, and the probable effects of their operation? I hope not. Let me intreat gentlemen not to be impatient; and while they sit for hours in their seats—a business which perhaps they justly think is very tiresome—let them endeavor to become interested in what is being said; to comprehend the course of reasoning and remarks adopted by each speaker who may address the Convention, and they will become interested in his matter, however awkward and uncouth his mode of expression may be. Men who think on these subjects are universally disposed to hear the thoughts of others when they come in conflict with their own.

Now I admit that it is not uncommon with gentlemen who are in the habit of public speaking sometimes to speak for Buncombe, and sometimes to the gallery. This is especially apt to be the case with young men. Well, I like to hear young gentlemen speak, and I will say that if any gentleman of my age should occupy the floor to the exclusion of the younger members of the Convention, I would be the first to remonstrate; but the idea of laying it down as a rule for all to follow, that there is no principle which can be embraced in any amendment that may be proposed to the Constitution that could profitably employ more than half an hour's discussion is out of the question. This may do very well for those capacious minds of which I spoke in the beginning of these remarks, which do not pursue the common trodden path of reasoning, but arrive at a conclusion with the rapidity of a flash of lightning. Such, however, I must say is not always the safest mode of deciding upon a question.

Permit me now, Mr. President, to make one other remark as a practical man. Like my friend from Posey, (Mr. Owen,) I have been in a great many deliberative bodies, and from the experience of the past I do not hesitate to say that there will be more time consumed in useless debate if you adopt this rule than if you let every man alone, and permit him to take his own course. With regard to the practice in Congress—and gentlemen will find that it is so, if they will give themselves the trouble to inquire—allow me to say that in the beginning of the session, during the first eight, or ten, or twelve weeks, every man speaks upon some general subject for Buncombe, or for his party and against the other party. Every man's sentiments on all leading questions of the day are laid before the world through the medium of the reporters and the newspapers. Then when every man seems to be tired of speaking, and

when they are pressed for time and it is desirable to ascertain the sense of the House on the question under discussion, they commence by limiting the speeches to one hour, and as the thing progresses they shorten the time, and finally they interdict speaking altogether, especially on those subjects that have undergone much discussion, confining all remarks to mere matters of explanation. But this notion of limiting speeches to half an hour on any proposition to amend the Constitution, seems to me to be very improper. It is probable that I shall not want to speak half an hour on any question which may come before the Convention; but I think it is not at all improbable that many of those gentlemen who are now so anxious to limit the time of speaking will, when the discussion of some of the greater questions comes round, be as anxious for more time to deliver their sentiments as any other gentlemen.

So far, then, as economy is concerned, I hold such a proposition to be the very opposite of economical; for if we go through this work in a hurry and without due deliberation, we cannot expect the people to be satisfied with it, and they will reject it after all the expenditure of money that has been made. Then sir it will follow that if there was a necessity for the calling of this Convention to revise the Constitution, and if we make such a revision of it as is not acceptable to the people, then the same necessity will exist for the calling of another Convention and thus a double expenditure would be incurred. And does any man suppose that the people would vote for another Convention that should bedumb when they come here? We then are the people here to all practical effect and we have met to talk with each other and inform each-other's minds, and until that is done we cannot tell what principles ought to be embraced in the Constitution and what should be rejected. I do not suppose that any gentleman has come here under the idea that he is so far advanced in the knowledge of political science that he cannot be enlightened any further upon the subject—that he can see at one glance the practical effect of any principle that may be engrafted upon the Constitution. And even if there were any such gentlemen here, it would be uncharitable towards others in this Hall, who entertain different views to prevent them from portraying to the Convention what they regard as the practical workings and effects of measures proposed. And I think it is not at all improbable that—unless these gentlemen are determined to be deaf to everything like argument or reason—however confident they may be of the propriety and correctness of their own opinions, or however invulnerable they may have supposed themselves before they came here—if they will but have a little patience they may find good cause to change their sentiments in many particulars, I say this not from any want of respect towards gentlemen here,

but from a knowledge of my own feelings. I have in many instances in the course of my life, been certain that I could not be mistaken in regard to a matter; but when I have heard the opinions of other men on the same questions and reflected upon them and compared them with my own, I have seen that I have been wrong; and seeing this I have been led to change my views, without in any respect lowering myself in my own estimation. Now I think it may be just the same with every other man. All men cannot comprehend everything at a glance; and this thing of debating and “jostling” against each others minds—if I may use such an expression—is a great thing in enabling men to settle down finally to correct conclusions; and by this course only do I think we can arrive at those amendments in our Constitution which will make it acceptable to the people.

Mr. TAYLOR next addressed the Convention at considerable length and contended that there was no economy in adopting such a restrictive rule; that it would inevitably create confusion, and in many instances would tend to smother the sentiments of the people as entertained by their representatives. This was not the first time that such a proposition had been introduced; and although on a former occasion he had voted for a restriction of this kind he had on calmer reflection seen his error, and was now in favor of permitting every man on that floor to express his sentiments as fully as he desired, believing that, in the end, such a course would not only prove to be the most economical, but that it would be more satisfactory in every respect to the people of the State. He should therefore vote against the half hour restriction.

Mr. NEWMAN. As the motion which I made in the earlier part of this debate, has given rise, if not to considerable “buncombe,” to a good deal of allusion to that term, I will offer a word of explanation without taking up but a moment of time. I made the motion to commit to a select committee, because it was not then in order to move an amendment. I moved the instructions because I saw what is evident to every observing mind, that a large majority of this Convention is disposed, if not determined to limit the time a member may consume in debate. I could not go for the resolution as it was, and I considered my amendment a compromise between the two parties; fifteen minutes is too short a time, but I considered that to limit debate to half an hour would be quite reasonable.

The PRESIDENT. The question is upon the motion of the gentleman from Vigo.

Mr. COOKERLY. But I should not press my motion if the gentleman could change the character of his instructions. I am in favor of the restriction of debate but not to fifteen minutes in all cases.

Mr. NEWMAN. I will withdraw my motion to commit with instructions, and will move a reconsideration of the vote adopting the amendment of the gentleman from Montgomery (Mr. Carter). I did not fully understand the character and effect of the amendment at the time I voted for it. I make this motion with a view afterwards proposing to insert the half hour principle.

Mr. EDMONSTON. I had not intended to say a word, nor would I now, were it not for the fact that "Buncombe," has been used so often, and in so disrespectful a connection; I rise to make my objections to the practice of gentlemen making "Buncombe" the scape-grace of all their sins. I was born in Buncombe, [laughter] and cannot help feeling a respect for the old county.

But a word in seriousness as to the limitation of the time which each speaker may occupy in debate. I know that many who are favoring it are actuated by the best of motives, but have they well considered how much will be gained by the adoption of such a rule? One would think after hearing this day's debate that the majority of speeches in the Convention had been several hours in length. But how many have there been since the organization of more than half an hour in length? Sir, the aggregate amount of time consumed, over half an hour by gentlemen in debate during the session, is not equal to the amount of time consumed this day in debate about the economy of time! The resolution is an unwise one, and its practical working will be such that the Convention will be in as much haste to repeal it as they now seem to be to adopt it. A man cannot discuss any of the important questions coming up here, so as to finish in the course of half an hour.

Sir, without the adoption of such a resolution we have, as matters now stand, a way by which we can cut off useless and protracted debate. When we see that gentlemen are disposed to consume time unnecessarily we can resort to the call of the previous question which will most effectually cut off all debate.

There is no member on this floor more anxious to get through with the business which the people have intrusted to us, and to get home than myself, but I cannot indulge in such a gratification at the expense of that business. Questions of great importance have been brought before us which were not canvassed before the people prior to the election of delegates, and it becomes of the highest importance that those questions upon which public opinion, has as yet had no opportunity to become settled, should be most fully and patiently investigated. The interests of more than one generation may be dependent upon the decisions of this body, and I feel the responsibility which presses upon me as an humble and individual member of it. I am therefore, decidedly unwilling to jump to a con-

clusion upon any of the questions that arise for settlement in the organic law, merely for the sake of adjourning a week sooner than otherwise. But sir, while I desire to secure to every gentleman the freedom of discussion to a just extent, when I may see that a member is disposed to consume time unnecessarily, then I shall not shrink from motives of fear of delicacy from seconding a demand for the previous question. But right here is the difficulty in the adoption of the resolution now pending; it will apply to all gentlemen, to those who are giving to the Convention an argument of the greatest interest and pertinence to the subject in debate, which the Convention may be most anxious to hear, it will apply to such speeches as well and as stringently as to those mere wordy harangues which only serve to consume time without either interesting or enlightening the Convention.

For these reasons, Mr. President, I consider the proposition a perfect failure, and warn gentlemen that it will create more mischief than any resulting benefit will compensate for—it will consume money for the sake of saving time. I will not remark farther upon the matter and will close my brief remarks by moving that this debate be peremptorily closed, on or before this day week [laughter].

Mr. BASCOM. I am in favor of this resolution for the same reason that the gentleman from Laporte (Mr. Niles) is disposed to oppose it. There are many delegates upon this floor who would like to express themselves upon the various questions as they come up in debate, and whose duty it is to represent their constituents in debate, who will never have an opportunity of being heard for five minutes unless the Convention adopts a resolution similar to the one in debate. It is right that the counties represented here by members who as yet have been unable to get the floor, should be represented in debate, as well as upon your journals in the recorded vote by yeas and nays. They should have the opportunity, not of making long and tedious speeches—the Convention has had too many of such already—but to give their reasons, to render their arguments for the course they take. Questions become so complicated after the introduction of a plain, simple original proposition, by the proposed amendments and motions, that a man's vote is very likely to be misconstrued, unless he has the opportunity to render his reasons for his course. A section may contain one principle of which he approves, and in the next sentence a sentiment to which he is utterly opposed; the question may be taken on the section as a whole, and he may feel constrained to vote against it on account of the obnoxious principle; in cases of this kind which frequently occur, every gentleman should have the opportunity of a few minutes time in which to address the Convention. But what is the practice under the system which has prevailed? A few of the "leading men," or

those who consider themselves the leading men of this body, get the floor at the commencement of a session, and two of them will occupy all the time of a session to the exclusion of the more modest and retiring members. And, sir, when one of this class does get the floor at the close of one of these hour or hour and a half speeches, up jumps one of these great men and moves to adjourn, or says, "I suppose this question has been sufficiently discussed and until the Convention is weary of it, and I move the previous question" [laughter].

There is another course often taken when a young man, or one of those who may not yet have had an opportunity to debate the question, rises; those same gentlemen will commence calling "question! question!! question!!!" [Laughter.] For my own part I want that the voice of my constituents should be heard here, and with due deference to the gentleman from Delaware (Mr. Kilgore) I intend that their voice shall be heard and respected here. I shall not bow to the mandate of the Delaware Chief [laughter] while I have an equal position and equal privileges in this Hall. I desire to improve myself as well as to secure the interests of the people by the occasional opportunity to make brief remarks upon pending questions.

I desire, then, that the voice and will of all portions of the State shall be heard through representatives here, but unless you apply a gag to these long winded speeches about the white race, and the African race, and the Mongolian race the people will not be heard. If you want to know their sentiments, if you want to know the general feeling of the people you must let their representatives, humble and unpretending as they may be, speak within proper limits, and not allow the "big men" of the Convention to consume all the time, exhaust all its patience, and then, move the previous question [laughter].

Mr. President, I revere age, and I respect grey hairs, I bow with deference to the words of experience, but the mere age of no man shall hush me on this floor. No man, because he may be on the track for Congress, shall say that because I am young I shall not speak. And I think it would be well for some aspiring gentleman here to remember that he should thank God that he had somebody to help him when he was young [laughter].

I came here as a reformer, determined to support every thing that would effect more economy in all public business, but when, in endeavoring to support such principles, the Chief of the Delawares [merriment.] is allowed to tell us that we "have been permitted to speak" my indignation is aroused. Generally speaking I am opposed to the principle of the gag rule, but here there seems no way of avoiding its adoption.

I hope that the working members of this body will take this matter into their own hands; they have the power, let them use it for the

public good. Let them allow no man after having consumed an hour and a half to have still "another crack" at the question, while many have not spoken since the organization.

Mr. WOLFE rose and was proceeding to address the Convention but was arrested by cries of "question—question—question."

The PRESIDENT. The gentleman from Sullivan has the floor.

Mr. WOLFE. Now this is just what the young gentleman from Wells (Mr. Bascom) has been complaining of, he just told us that whenever one of the "small fry" got the floor he was put down by cries of "question—question—question."

I presume that many gentlemen are tired of debate and desirous of adjourning, but I shall not move that the Convention adjourn. I am one of those working members who have been alluded to and I will sit here until twelve o'clock to night if it is necessary to secure the adoption of this resolution, if others who are desirous of saving the people's time and money will stay with me and fight this thing through. It has been said that my holding up the file of reports of committee's not yet acted upon, as I did for my speech this morning, proves a better argument against my position than for it. I am not convinced of that. We have twenty-three committees and have acted upon but three of their reports and six weeks of the session has passed! How long will it be at this rate before we adjourn?

Nor do I think that these committees have performed the amount of work claimed for them by the gentleman from Posey (Mr. Owen.) Much of the time there has been but one session a day and these committees have certainly consumed much time and their reports are all to be brought up for a lengthy discussion afterwards. I am on one of those committees, and we met one afternoon and in a short session our whole work was done up and perhaps as well done as the work of any other committee—it certainly cannot be worse handled or torn to pieces than some reports which have been up for decision.

Why, sir, there was one report up here, that of the committee on the "rights and privileges of the inhabitants of this State," one section of which was debated for three entire days—Upon reflection, sir it was upon three words [Laughter.] that three days discussion was expended. Those words, if I can remember were—

Mr. SHERROD. "Strong presumption of"

Mr. WOLFE. Yes, sir, those are the very identical words—"strong presumption of"—each of which occupied an entire days debate of the the Indiana Constitutional Convention! This will show the rate at which we have been proceeding. After this, will gentlemen accuse those who favor this resolution to restrict speakers to half an hour, of desiring to gag free discussion?

When I was a boy I used to be very fond of fishing. I used to go out and after baiting my hook and fixing the fishing tackle, rod, line, cork and all, just right, would "throw in" and wait for "a bite." Well when the fish first swallowed the hook it would flutter much, but when you began to draw him out by "the gills" and got him near the top of the water he would flounder "right smart" and work to "get shut" of the hook. Now this is the way with some gentlemen: they begin to see that the proportions of their speeches must be "hailed in" and as the resolution is about to pass, you see them fluttering prodigiously. Now, sir I do not mean to let go, or to let them get the hook out of their mouths, unless I can get a better hook, with a stronger barb in place of the one in. [Laughter.]

Therefore, I say that if other members will stand by me, I will sit here until twelve o'clock to night for the sake of securing the passage of this resolution or a better one.

The gentleman from Tippecanoe thinks that half an hour is not long enough for a member to get through with an argument, carefully prepared, to meet an important question. But I will tell my friend that making speeches here, is not the most profitable kind of work that they can be engaged in. I like to hear short speeches coming without all this preparation, warm and fresh from the speaker. As with batter cakes, so with speeches. I don't care much what shape they come in so they are only warm and fresh.

Mr. Speaker, I want to know what the question is. [Laughter.]

The PRESIDENT. The question now is upon the motion to reconsider the vote by which the original resolution was amended by the gentleman from Montgomery (Mr. Carter).

Mr. WOLFE. Well, I may have been a little off the subject; and I will sit down.

Mr. KILGORE. As is well known, I am a very modest man—very. [Laughter.] And the "noise and confusion" which has prevailed this afternoon has still more confused my usually bashful and diffident nature.

But a single remark, in all seriousness. When I before had the floor, I made some jocular allusions, that seemed not entirely out of place, considering all the circumstances. These have been partially misunderstood. I am opposed to this resolution, because I believe it will prohibit that free interchange of sentiment so desirable among men assembled on an occasion and for a purpose like this. Every man has his own peculiar notions, to which, with more or less tenacity, he clings, because he believes they are right, and better calculated than any others to promote the general good. We shall not be able to agree upon any single proposition, I care not with what wisdom and forecast it may have been drawn, unless there is a concession "all round" of each one's peculiar no-

tions—a concession, not of principle, but of individual opinions, upon the detail of propositions. In order to make these concessions, it will become necessary to exchange views and opinions freely, for each to hear the arguments of the others patiently and attentively. After that, we can, upon all the points which will arise, adopt some compromise measure, upon which, for the sake of harmony, all will unite. This was eminently the case in regard to the provision relative to the "right of way" for public improvements. After a long and laborious consideration of the subject, the result was that we made a compromise, each member of his peculiar views—a compromise which is satisfactory to all parties. We must expect to have to compromise in respect to other important matters; and without we go on in that spirit, and unless the fullest opportunity for discussion is given here, the Convention will be dissatisfied, the members will yield to the new Constitution, framed by a mere numerical majority, a cold support, and after all, the result will be, that these very propositions, upon which debate is cut off here, will have to be debated at home, before the people, upon the final adoption of the new Constitution.

As was correctly remarked by the gentleman from Dubois, (Mr. Edmonston,) this Constitution, if it shall be adopted by the people of Indiana, is not framed for one year, nor yet for one generation alone; and it should be our high ambition, and our settled policy, to frame an organic law that shall be commensurate with the wants of the people of a great State for a century to come. Would any gentleman desire a greater temporal honor than to have been one of the members of a Convention which had the ability to frame a Constitution which would need no change for an hundred years' march of an enlightened people in social and political progress! Then let me again remark, without the fear of being misunderstood, that a calculation of "dollars and cents," abstractly considered, should not enter into our deliberations. The disposition should be, to hear the views of all gentlemen, to compare opinions, and to harmonize upon those propositions which most exactly express the will and feeling of the largest majority, if possible, that will meet with unanimous support. Let each man be disposed to contribute some sacrifice of his peculiar notions as to the details of propositions, to harmony, good feeling, and unanimity.

One of the gentlemen who preceded me spoke with ill-advised haste of the habit of some members here to call the previous question, in order to prevent the young men, perhaps, from expressing their sentiments. This must be a mistake. I think the greatest courtesy has been shown to all—the old and the young—through all the session. As for myself, although I have been for many years a member of deliberative bodies, I never yet called the previous

question—I never yet seconded a call for the previous question. But, sir, I am as much opposed to the rule proposed in this resolution as I am to the previous question. The proposition is, that, after Tuesday next, no member shall occupy more than thirty minutes in the discussion of any original proposition, nor more than fifteen minutes upon any amendment, and then only by way of explanation. The practical effect of this will be to cut off members when they may be in the middle of an argument. The evil of this is readily seen. Everything said here is properly noted down by the Reporter; if the speaker is cut short in the middle of his argument by the fall of the President's hammer, he must either have his remarks go out in a mutilated shape, or tell the Reporter to reserve his remarks for another day, when he may be able to finish his argument, and have the whole go out together in a finished and connected condition. But in order to effect this, he must travel back, at the commencement of his second speech, and recapitulate the positions formerly taken and developed, in order that the Convention may understand the last half of the speech; without so doing, it would appear ridiculous.

Thus we see, at every step after the adoption of this rule, we shall feel its inconvenience and its practical operation in delaying business and preventing that careful and satisfactory investigation of important propositions, so desirable to the Convention and for the State.

My young friend from Wells (Mr. Bascom) is much mistaken, if he really supposes that I would make a deliberate effort here, having for its ultimate object the closing of his mouth. [Laughter.] I shall not doubt that he is a very worthy, as well as a very smart young man, nor shall I doubt that he represents a most intelligent and respectable constituency; judging from the representative they have sent up here, we must conclude they are very intelligent.

And as to the young gentleman from Montgomery, (Mr. Carter), I would say nothing to mar his feelings. His remark relative to the number of times my name has appeared in the newspaper in one day, must be understood to refer to the record of yeas and nays which may have been several times called, and not to the number of times I may have addressed the Convention.

My young friend (Mr. Carter) will find, when he comes to discuss important propositions, if he should undertake to engage in such a discussion, that his powers of concentrateness must be much improved from what I think they are, and his "bump" of order much higher than I estimate it, if he could do justice to a grave subject of constitutional reform in the course of half an hour. I cannot do it, I confess. I am not an expert phrenologist, but unless I am much mistaken, there is another "bump" on his head of a greater altitude—it is known as the "bump" of self-esteem.

Mr. CARTER. What is that?

Mr. KILGORE. The "bump" of self-esteem, sir.

Mr. CARTER. I only asked for information.

Mr. KILGORE. Young men should watch the developement of such organs, and repress their undue proportions in time, lest they become confirmed.

But, Mr. President, I am not disposed to treat my young friend unkindly; he has qualities of mind which, if carefully and laboriously disciplined, would enable him to become a useful member of society.

I will not farther occupy the time of this body, but let me say, in all earnestness, let us not be in haste in the consideration of subjects which can be considered but once in a cycle of years. The time may come, in the course of this session, when it may be really necessary to cut off discussion, but that time is not yet arrived, nor will it, until after all the reports of committees shall have been faithfully and fully debated. Among the many important reports yet undebated, are the reports on currency and banking; on law and law reform; on the judiciary; on the organization of courts of law; the powers of the executive and the legislative department, all of which demand and must receive a patient and thorough investigation. It will not do, sir, to cherish this anxiety to get through in a hurry and get home. We were all willing enough to agree to come here without any proviso as to the length of the session, or the hardship of a toilsome and wearisome investigation and discussion of all subjects of Constitutional reform.

After all these subjects which I have enumerated, and others upon which committees have reported, have been fairly debated and examined, then I have no objection to any measures that may be taken to cut off discussion and confine ourselves to voting upon articles and sections. But let us go through once, and first, with the discussion of subjects, and then, if necessary, put on the gag.

I hope that the adoption and the further consideration of this resolution, will be postponed, for a few days at least. It may be, that in the course of two weeks, it will be proper to pass that resolution.

Mr. CRUMBACKER. I am on the floor, sir, neither for the purpose of moving an adjournment or making a speech.

My object in rising is, to move a postponement of the resolution in debate until one week from next Saturday.

Mr. WOLFE. No, no; we will not consent to that.

Mr. MILLER of Gibson. I move that the Convention do now adjourn.

The motion to adjourn was disagreed to.

Mr. COOKERLY. I move to lay the amendment to the resolution on the table.

Mr. WOLFE objected, and remarked that he did not consider that a proper course to take.

Mr. EDMONSTON. I move to lay the resolution also upon the table.

Mr. PEPPER was proceeding to make some remarks, when

The PRESIDENT said that subject was not debateable.

A MEMBER moved to lay the motion (Mr. Crumbacker's) to postpone the further consideration of the resolution, upon the table.

The question being put, and a division being called for, the vote stood, in favor of the motion 55, in the negative 32.

So the motion to postpone was laid on the table.

Mr. RARIDEN moved an adjournment.

The Convention refused to adjourn.

The PRESIDENT was understood to say, that the pending question was upon the motion to re-consider the vote by which the amendment (Mr. Carter's) was adopted.

The vote upon that motion was then re-considered.

The question then recurred upon the adoption of the amendment offered by Mr. Carter, so that the resolution should read, that on and after Tuesday next no member should be allowed to speak more than half an hour on any original proposition, nor more than fifteen minutes on an amendment, and then only by way of explanation.

Mr. COOKERLY moved to lay the amendment on the table, and remarked that the original resolution, in substance, was, that after Tuesday next no member should speak at any one time more than thirty minutes on original propositions, nor more than ten minutes on amendments, without the consent of the Convention.

Several VOICES. No consent, no consent to speak longer.

Mr. CARTER. I will withdraw my amendment to the resolution.

Mr. NEWMAN. I move to strike out all after the resolving clause and insert the proposition contained in the instructions with which I wish to have a select committee sent out.

Mr. PEPPER of Crawford. I move to amend the resolution by striking out the words "unless by the consent of the Convention," so that no speaker, under any circumstances, can speak longer than half an hour at one time.

This motion was agreed to, and the resolution was thus amended.

The PRESIDENT. The pending question now is to strike out all after the resolving clause, and insert the proposition of the gentleman from Wayne (Mr. Newman).

Mr. McFARLAND rose and said:

Mr. PRESIDENT: In the excitement and confusion which prevails, I do not know that it

will be possible for any one to be heard on this motion.

The PRESIDENT. The gentleman from Tippecanoe (Mr. McFarland) has the floor, and will be heard, for he has not addressed the Convention before during the session.

Mr. McFARLAND. I was saying that there is so much confusion, I do not know that it would be possible for any man to be heard at this time. The Convention, however, will bear me witness that I am not asking anything on my own behalf, when I express my hope that this resolution will not be carried. I have not thus far, been a troublesome member of this body, nor shall I be so in future, if I continue to be blessed with my reason. But I ask this Convention to consider whether or not, in the heat of passion, and under misguiding influences, they will destroy that which should be the result of their labors? What has produced this state of feeling? Perhaps the scenes of yesterday, or those of a day or two back, may have done more than anything else to produce it.

Now let me ask what of the proceedings will be cut off by the adoption of this resolution. A gentleman furnished me a few moments ago, with a close calculation on the subject of this rule, and he states that, had it been adopted from the first moment of our meeting here, we should have saved four hours and a half. [Hear, hear, and applause]. Now, for the purpose of saving four hours and a half during the next six weeks, are we to deprive ourselves of hearing the deliberate convictions of men's judgments, who may require more than half an hour to deliver them? Certainly both reason and common sense and common courtesy, would answer "no." Sir, what kind of speeches will this rule limit? It will limit those speeches which have been the result of months, and perhaps years of calm, close, and deliberate investigation, while we are to have flooded upon us those "fresh" speeches, of which the gentleman from Sullivan spoke a few moments ago. "Fresh," indeed, they are, sir; for some of them have not "salt" enough in them to save them, even in winter. [Great laughter and applause]. Sir, I will not further occupy the time of the Convention; but I felt it to be my duty to rise and give expression to what were my honest convictions in reference to the proceedings of the Convention upon this question. I feel, sir, that we are about to inflict an injury, not upon the few individuals who have made long speeches here, but it may be that we are about to inflict a deep and lasting injury upon our children, and our children's children, by acting hastily upon this subject. [Applause].

Mr. EDMONSTON. I hope the Convention will now adjourn.

Mr. FOSTER. There has been time enough spent upon this question. I hope the Convention will now proceed to vote.

The question was then taken, by yeas and nays, upon the adoption of the resolution, and it was decided in the affirmative, as follows:

YEAS—Messrs. Bascom, Beard, Berry, Blythe, Bourne, Bowers, Bracken, Carter, Coats, Colfax, Cookerly, Crawford, Davis of Parke, Dobson, Duzan, Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Gootee, Haddon, Hardin, Helm, Helmer, Hitt, Hogg, Howe, Huff, Johnson, Kendall of Wabash, Logan, Maguire, March, May, McClelland, McLean, Milligan, Moore, Morgan, Morrison of Marion, Morrison of Washington, Mowrer, Newman, Nofsinger, Pepper of Crawford, Read of Clark, Read of Monroe, Ritchey, Schoonover, Shannon, Sherrod, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Stevenson, Tague, Trimby, Watts, Wheeler, Wolfe, Work, Zenor, and Mr. President—68.

NAYS—Messrs. Badger, Beach, Biddle, Brookbank, Chapman, Clark of Tippecanoe, Crumbacker, Dick, Dunn of Perry, &c., Edmonston, Gibson, Graham of Miami, Graham of Warrick, Hall, Hawkins, Holman, Hovey, Kent, Kilgore, Lockhart, McFarland, Miller of Fulton, Milroy, Mooney, Nave, Niles, Owen, Pepper of Ohio, Rariden, Spann, Steele, Taylor, and Wunderlich—34.

So the resolution was adopted.

The Convention then adjourned until 9 o'clock on Monday morning.

MONDAY, Nov. 18, 1850.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. BAEB.

The journal of Saturday was read and approved.

The list of the names of delegates was called over, in accordance with the resolution of the Convention,

DEATH OF MR. VANBENTHUYSEN.

Mr. HENDRICKS rose and said:

MR. PRESIDENT: Upon my return to the Convention, after a necessary absence of a few days, I find the seat of my colleague (Mr. Vanbenthusen) vacant. He has left us, sir, to return no more. He has been called from labor, to repose. The transition is his gain—it is our loss.

He died at his boarding house, in this city, at half-past one o'clock, on last Wednesday night. From the morning of the tenth inst., he complained of diarrhea, but continued in the discharge of his duties, as a member of our body, until Tuesday ensuing. After the adjournment on that evening, he complained of increased illness; and, about ten hours before his death, the epidemic, which carried him off so hastily, was upon him. His sufferings were soon over, and he died quietly, as the good man only, dies, who has no regrets when he looks back over the scenes of life, and no fears when he looks forward, into the great future.

Our deceased friend was a native of New York; born in Albany county, in the year 1777. As a soldier, he served his country in the war of 1812, and was connected with some of the most exciting scenes of that period. In 1829, he emigrated to this State, and settled in the county of Shelby. Until called upon to serve in this Convention, he lived retired from public life, occupied in the cultivation of his farm. He asked of his fellow-citizens no official position; and held no office, until he took his seat with us in this Hall.

I can give no higher evidence of the confidence of his fellow-citizens in him, than that his nomination to this position, was the free-will offering of his party, and that without his seeking, he was selected to so important and responsible a position.

In all the relations of life, he was a true man—as a member of the benevolent institutions of the country—in his political connections—as a citizen, and as a christian—he was faithful to all of his espousals. To his order, his party, his country, and his faith—in their prosperity and adversity, their bright day and cloudy day—he was the same true brother, warm friend, zealous patriot, and unwearying christian.

At home, he enjoyed the confidence and esteem of all, and in this body, I am glad to know, that, by his wise and prudent action, he secured the regard and confidence of all with whom he became acquainted.

Whilst all have cause to mourn that a faithful public servant has fallen at his post, I feel in the death of my colleague, a personal loss. I had relied much upon his mature and ripe judgment, for council in the discharge of my duties here.

His circumstances in life were easy, and he left his family comfortably provided for.

The death of my colleague having heretofore been announced in this Hall, and the Convention having taken such action thereon as seemed appropriate, I have no farther action to propose.

On motion of Mr. MAGUIRE, it was

Ordered, That the remarks of the gentleman from Shelby be entered upon the journal.

Mr. BORDEN. I find, Mr. President, that since I have been away on leave of absence, a rule has been adopted, which directs that the roll shall be called every morning, and the names of the absent members noted in the journal. I had occasion this morning to step into the Library for a moment, and while there the roll has been called. I would like to have my name recorded as being present.

The PRESIDENT. The Chair will remark to the gentleman from Allen, that the rule provides that any delegate may upon application to the Secretary, have his name stricken from the list of absentees.

Mr. PEPPER of Ohio moved that the order of business be suspended in order to enable him to offer a resolution, requesting the Presi-

dent of the Convention to invite the surviving members of the Convention, that formed the present Constitution, to seats within in the bar.

The question being taken, the order of business was suspended, and the resolution, by unanimous consent, was agreed to.

Mr. MOWRER asked a suspension of the rules to enable him to introduce a resolution instructing the committee on the executive to inquire into the expediency of abolishing the office of Lieutenant Governor.

Mr. EDMONSTON. I will remark to the gentleman that there has been already one or two resolutions of a similar character adopted and referred to the appropriate committee. So that there can be no necessity for adopting another.

Mr. MOWRER said he was not aware that there had been any such resolution adopted. He had inquired of several gentlemen and was told that there had not been any such resolution adopted.

Mr. EDMONSTON. I do not object to the gentleman's resolution, I only suggest that it is unnecessary.

The order of business was suspended, and the resolution was adopted.

Mr. CRUMBACKER. I wish to know, Mr. President, whether upon the calling of the roll this morning I have been marked as being absent. If so I wish the record to be changed.

The PRESIDENT. The Secretary informs the Chair that he has not marked any gentleman absent. [Laughter.]

CALLING OF THE ROLL.

The PRESIDENT. Does the gentleman from Warrick design making the motion of which he gave notice?

Mr. GRAHAM. Yes, sir. I will move to take up the proposition in order that some disposition may be made of it.

The proposition of the gentleman was read. It is that the 39th rule be amended so as to dispense with the calling of the roll each morning.

The question upon the adoption of the proposed amendment being put, a division was asked for, and by 54 ayes, 23 noes, the amendment was adopted.

Mr. McCLELLAND presented two petitions; one from citizens of Randolph county, and the other from persons of color of the same county, praying that no prohibition against the immigration of negroes into the State be inserted in the Constitution; and that no restriction be placed upon persons of color, in regard to giving testimony in courts of justice.

The petitions having been read, On motion by Mr. McCLELLAND, they were laid on the table.

Mr. READ of Clark, from the committee on State officers, other than executive and judicial,

reported a section, which was read a first time, and passed to a second reading to-morrow.

The section provides for the election of Trustees on the part of the State, of the Wabash and Erie Canal, Warden of the State Prison, and Public Printer, to hold their offices for two years; to be eligible only four years in any term of six years.

Mr. FOSTER. Will it be in order, Mr. President, now to move to reject the section.

The PRESIDENT. That motion would have been in order before the section passed to a second reading.

Mr. FOSTER. I do not like to see every thing run into the ground in this way.

ORDERS OF THE DAY.

The Convention then proceeded to the consideration of the orders of the day, being the three blank sections which had been ordered to be engrossed, and read a third time this day.

The sections were read by the Secretary.

They are the sections in relation to imprisonment for debt, the right of trial by jury, and remuneration for property taken by corporations for public improvements.

The PRESIDENT. The question is, shall these resolutions pass.

The yeas and nays were demanded.

Mr. MAGUIRE inquired whether the yeas and nays would be taken upon the other sections together or upon each separately.

The PRESIDENT said, he supposed the vote might be taken upon the three sections together. The Convention had ordered their engrossment together. The yeas and nays would necessarily be taken, as the rule required that upon the final passage of all the sections the vote should be taken by yeas and nays.

Mr. EDMONSTON. Is it in order to move an amendment.

The PRESIDENT. The only motion in order is to re-commit with instructions.

Mr. EDMONSTON. I move, then, that the last of the three sections be re-committed to the committee on rights and privileges, with instructions to strike out the words "to the owner." The motion will read then "without just compensation being made or tendered."

Gentlemen will observe that in the case of a non-resident owner, it will be very difficult to find the real owner. The party should be at liberty to tender compensation to the agent or guardian of the property.

Mr. PETTIT. They are the owners for all legal purposes.

Mr. EDMONSTON. I am not lawyer enough to know whether such tender would be legal, but it is contended by some gentlemen that such tender would not be sufficient.

Mr. LOCKHART said, that he would prefer that the section under consideration should go to the committee without instructions; but if in-

structions were necessary, he desired that they should not be confined to striking out the words indicated by the gentleman from Dubois, for if those words were stricken out it seemed to him that the section would remain in legal contemplation precisely what it now is.

When this section was up for consideration the other day, said Mr. L., I offered an amendment which was voted down, laid on the table, without consideration, reflection or debate. The amendment proposed that when the owner should be a non-resident, a *feme covert*, an infant, an idiot, or a lunatic, or should be otherwise incapacitated for transacting his or her business, the tender or payment of the money could be made at the clerk's office of the proper county, and paid to the Clerk of the Circuit Court, or some officer to be designated by law, and thus the company, corporation, or individual engaged in constructing public improvements of any kind could avoid the necessity of going in search of the owner. It seems to me that such an amendment would be wholesome, wise, and prudent. I do not propose, sir, to take away the obligation to make pre-payment; indeed, I am in favor of requiring all corporations when they take individual property for public use, to make pre-payment; but I do not wish to throw an obstacle of this kind in the way; I do not wish to say in the Constitution of the State that the payment shall be tendered to the owner when a non-resident, or incapable of receiving payment. Sir, by adopting this section, the company or corporation may have to send an agent all over the globe in search of an owner in order to make payment or tender.

It has been said by some gentleman—I believe by the gentleman from Dubois—the other day, while speaking upon this question, that it would be sufficient to make the tender to the agent of the owner of the property. In answer to this I would say that that question would depend entirely upon the authority the principal might have conferred upon the agent. The gentleman will recollect that it is the principal by whom the agent is constituted, and not the Legislature. He will remember also, that the agent can only act within the authority delegated to him. It is not the Legislature that creates the agent. The law cannot, if this section is adopted as it now is, create an agent to whom a valid payment or tender can be made. The Legislature may pass as many provisions as it pleases, making it lawful to make tender of payment to an agent thus constituted, and it will be of no avail. Unless the principal has constituted an agent for himself, and clothed him with authority, payment or tender to him (I care not what laws you pass) will not bind the principal unless he ratifies the act.

I say it is not in the power of the Legislature to create an agent for the owner of property, to whom tender or payment can be made, if you adopt this section as it is. You have defined in

this section what shall be done; you have set forth that amends shall be tendered to the owner, it cannot then be tendered to an agent, unless the owner himself has constituted some person with ample power and authority to act for him in that behalf. For this reason I am in favor of referring the section. I would prefer that it should go to the committee without instructions, leaving the committee free to make amendments as in their judgment they might think proper, after having heard what has been said in relation to the matter. But if the committee are to be instructed to strike out the words proposed to be stricken out by the gentleman from Dubois, and to do nothing more we will not progress, as it seems to me that it will not materially alter the force and signification of the section.

The section will then read thus: payment shall be first made or tendered. Tendered to whom? The legal implication will be that the section means tendered to the owner. Will it be said then that the Legislature can create an agent for the owner, to whom the money can be tendered? Certainly not. I have already said that I do not think the section will be materially altered by making the amendment proposed by the gentleman from Dubois; but if the words "in such manner as the Legislature may prescribe" be added to the section after the words indicated by the gentleman from Dubois shall have been stricken out, the whole difficulty will be obviated. It appears to me that this is the shape in which this section should pass.

Mr. PETTIT. I hope, sir, that this section will not be recommitted, but that it will be passed. It will be recollected that we have spent a good deal of time over these three sections; and I am satisfied that if they are now recommitted, they will not come back to the Convention in any more acceptable form than they are in at present. The whole question will be open again for discussion, and we know not when there will be an end of it. Is there any probability that it will be returned in any more acceptable form than when first reported to us? None at all, in my opinion. And in reference to this legal difficulty, the gentleman from Vanderburgh is right in saying, that striking out the word "owner" will make no difference. The law, by implication, will supply the word "owner." By the word "owner," the law does not mean the actual *fee simple* owner, but the person who stands in his place, and acts for him—the guardian, the administrator, the agent. The law recognizes the acts of these as the acts of the owner himself. One of the tritest maxims of the law is, that what a man does by his agent he does by himself. There is, therefore, no difficulty at all in finding the person to whom payment is to be made.

But suppose this section be adopted, and a railroad company desire to run a road through a piece of land which has no accessible owner,

or the owner of which is not known; what is the result? The company will go on constructing the road. The law itself will not prohibit proceeding with the work, digging the ground, grubbing the trees, laying down the timber or iron, and passing over the road thus constructed. It only secures the right of the party to be compensated for his property; and if he be in a condition to do so, he can by injunction restrain the work; but if he be not in a condition to obtain such injunction either by himself or his representative, his guardian, or agent duly appointed, the work shall go on. And when the unknown owner is found, he will seek his remedy for the injury already done. That is the situation of the matter. If the owner be absent or unknown, you proceed with your work and leave him to take his legal remedy for compensation. It is only where the owner is present, by himself or his representative, that you are obliged to make pre-payment, if he require it. He may then, upon application to the court, obtain an injunction restraining the company from taking any step in the progress of the work until compensation be first made to him for the property which may be required to be taken.

Now I am satisfied, I repeat, that we shall not get these sections reported back in a better form than they are now; and if it were not an odious thing, and one that I abhor to do, I would now call for the previous question. But having myself debated the question, I am not disposed to do so ungracious an act as to prevent other delegates from expressing their opinions; therefore, I shall not move the previous question. But I hope that the proposition to recommit, either with or without instructions, will be voted down by the Convention, and that the sections will be adopted; being satisfied that they are now as perfect as they would be if referred to the committee and reported back.

Mr. EDMONSTON. My object in moving to re-commit the section was to avoid a difficulty that has been suggested by some gentlemen. That difficulty, however, having been explained away by the gentleman from Tippecanoe, and other gentlemen around me, I will withdraw the motion.

Mr. LOCKHART. I move to re-commit the section, with instructions to add the following words:

"Except in cases otherwise to be provided for by the Legislature."

Mr. STEVENSON. It will be recollected that since these sections were ordered to be engrossed, the Convention has adopted a rule declaring that each section shall be engrossed by itself; or rather, that the question shall be taken upon the engrossment of each section separately; and it seems to me, that the fair inference from this is, that we shall pass each section by itself. Now I am satisfied that if the Convention is to vote upon each section sepa-

rately, there will be no necessity for the recommitment of any other than the section that it is proposed to amend.

The PRESIDENT. The motion is only to re-commit one section.

Mr. STEVENSON. I was mistaken, then, sir; I supposed that it was to re-commit the three sections.

Mr. OWEN. I am not very particular as to whether this section shall be re-committed or not; but if it is to be re-committed, I think clearly that the instructions ought to be these: to strike out the words, "to the owner," and insert, "in such mode as may be prescribed by law." [Cries of "consent."]

Mr. NAVE. Is it in order to move to amend the instructions proposed by the gentleman from Vanderburgh?

The PRESIDENT. It is.

Mr. NAVE. Then I move the following:

"Strike out the words 'to the owner,' and insert, 'in the manner to be prescribed by law.'"

Mr. LOCKHART. I will accept the amendment.

Mr. DOBSON called for a division of the question.

The PRESIDENT said that the question was not divisible; because, at this stage of the proceedings, it was not in order to re-commit without instructions.

Mr. PETTIT moved to lay the instructions on the table. [Cries of "consent."]

The question being put on the motion to lay the instructions on the table, it was, upon a division—yeas 57, nays 45—decided in the affirmative.

So the instructions were laid on the table.

Mr. BORDEN. It will be recollected that when this subject was up before, a motion was made to lay on the table the proposition of the gentleman from Jefferson (Mr. Bright). Lest my purpose in making that motion should be misunderstood, I will now move to re-commit this section with the following instructions, and upon that motion I should be glad to have the yeas and nays:

"But such assessment shall be made irrespective of extrinsic objects."

Mr. WATTS called for a division of the question.

The PRESIDENT. The Chair would remind the gentleman, that at this stage the question and the motion to commit with instructions is not divisible.

Mr. BRACKEN moved to lay the instructions on the table.

Mr. EDMONSTON moved to amend the motion so as to lay on the table also the motion to re-commit.

The PRESIDENT said that the motion to re-commit being inseparable from the instructions, the motion to lay one on the table of course included the other.

Mr. EDMONSTON. I wish to be informed by the Chair whether, the motion that I made to re-commit with instructions having been laid on the table, it is in order again to move to re-commit.

The PRESIDENT. The gentleman's motion having been laid on the table, it does not preclude another motion to lay on the table with other instructions.

The yeas and nays on the motion to lay on the table were ordered, and being taken were—yeas 63, nays 52—as follows:

YEAS.—Messrs. Alexander, Badger, Balingall, Barbour, Bascom, Beard, Berry, Biddle, Bourne, Bracken, Brookbank, Carr, Clark of Tippecanoe, Coats, Davis of Parke, Davis of Vermillion, Dick, Edmonston, Farrow, Foley, Frisbie, Garvin, Gootee, Gordon, Graham of Warrick, Haddon, Hall, Hawkins, Helm, Helmer, Holman, Hovey, Howe, Huff, Jones, Kent, Kendall of Wabash, Kendall of Warren, Kinley, Lockhart, Logan, McFarland, Milligan, Morgan, Mowrer, Murray, Nave, Niles, Nofsinger, Pepper of Crawford, Pettit, Rariden, Read of Clark, Robinson, Schoonover, Shannon, Sims, Snook, Steele, Stevenson, Todd, Walpole, and Zenor—63.

NAYS.—Messrs. Anthony, Beach, Blythe, Borden, Bowers, Chapman, Clark of Hamilton, Colfax, Cookerly, Crawford, Crumbacker, Dobson, Dunn of Perry, Duzan, Fisher, Foster, Gibson, Graham of Miami, Hendricks, Hitt, Hogin, Johnson, Maguire, March, McClelland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Moore, Morrison of Marion, Morrison of Washington, Newman, Owen, Pepper of Ohio, Read of Monroe, Sherrod, Smiley, Smith of Ripley, Smith of Scott, Spann, Tague, Taylor, Trimble, Watts, Wheeler, Wolfe, Work, Wunderlich, and Mr. President—52.

So the motion to re-commit with instructions was laid on the table.

Mr. WALPOLE moved to re-commit the section to the committee on rights and privileges, with the following instructions:

“Strike out the entire section and insert the following:

“That no man's particular services shall be demanded, or property taken, without the consent of his representatives, or without a just compensation being made therefor.”

Mr. PETTIT. It does seem to me, Mr. President, that we have already spent time enough to-day over this matter. The vote of the majority of the Convention has already indicated that they intend to sustain these sections as they now stand, and therefore, it is only a waste of time to offer motions for re-committal with instructions. I call sir, for the previous question on the adoption of the sections.

The PRESIDENT. The question is, will the Convention second the call for the previous question?

On this question, a division being called for, it was decided in the affirmative—yeas 53, nays 51.

So the demand for the previous question was seconded.

The PRESIDENT. The question is, shall the main question be now put?

The motion was agreed to.

The question then being upon the motion of the gentleman from Hancock, (Mr. Walpole,) to re-commit the section to the committee on rights and privileges, with instructions,

Mr. BORDEN called for the yeas and nays.

The yeas and nays were ordered and taken, with the following result—yeas 42, nays 75:

Those voting in the affirmative were,

Messrs. Badger, Balingall, Barbour, Beard, Blythe, Bourne, Brookbank, Clark of Tippecanoe, Colfax, Farrow, Foley, Frisbie, Gordon, Hall, Hawkins, Helm, Helmer, Hitt, Howe, Kendall of Wabash, Kilgore, Kinley, Lockhart, Maguire, Morgan, Murray, Nave, Newman, Niles, Pepper of Crawford, Rariden, Read of Clark, Robinson, Smith of Ripley, Steele, Stevenson, Taylor, Todd, Walpole, Watts, Wolfe, and Work—42.

Those voting in the negative were,

Messrs. Alexander, Anthony, Bascom, Beach, Berry, Borden, Bowers, Bracken, Carr, Chapman, Clark of Hamilton, Coats, Cookerly, Crawford, Crumbacker, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, &c., Duzan, Edmonston, Fisher, Foster, Garvin, Gibson, Gootee, Graham of Miami, Graham of Warrick, Haddon, Hendricks, Hogin, Holman, Hovey, Huff, Johnson, Jones, Kent, Kendall of Warren, Logan, March, May, McClelland, McFarland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Morrison of Marion, Morrison of Washington, Mowrer, Nofsinger, Owen, Pepper of Ohio, Pettit, Read of Monroe, Schoonover, Shannon, Sherrod, Sims, Smiley, Snook, Smith of Scott, Spann, Tague, Trimble, Wheeler, Wunderlich, Zenor, and Mr. President—75.

So the motion to re-commit, with instructions, was laid upon the table.

The PRESIDENT. The question now is upon the passage of these sections as engrossed.

Mr. OWEN. I would inquire of the Chair, whether, by the rule, these sections are not to be engrossed and passed separately?

The PRESIDENT. The Chair would remind the gentleman and the Convention, that, if they intend to pass the sections separately, they should have so determined before this demand for the previous question was made. [Cries of “read,” “read”].

The PRESIDENT. The sections have already been read two or three times, and it is not in order to read them again.

Mr. WALPOLE. I hope, sir, that the sections will be read again. There are several

members who do not know precisely how they stand.

The PRESIDENT. The reading is not in order.

Mr. WALPOLE. Is the section relating to negroes included in these sections which it is now proposed to pass?

The PRESIDENT. It is not.

The yeas and nays being demanded on the final passage of the sections, they were ordered and taken, with the following result—yeas 91, nays 26:

Those voting in the affirmative were,

Messrs. Alexander, Anthony, Bascom, Beach, Beard, Berry, Biddle, Blythe, Bourne, Bracken, Brookbank, Carr, Chapman, Clark of Tippecanoe, Coats, Colfax, Cookerly, Crawford, Crumbacker, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, &c., Duzan, Edmonston, Farrow, Fisher, Foster, Garvin, Gibson, Gootee, Graham of Miami, Graham of War- rick, Haddon, Helmer, Hendricks, Hitt, Hogin, Holman, Hovey, Huff, Johnson, Jones, Kent, Kendall of Wabash, Kendall of White, Lockhart, Logan, Maguire, May, McClelland, McFarland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Moore, Morrison of Marion, Morrison of Wash- ington, Mowrer, Nave, Nofsinger, Owen, Pep- per of Ohio, Pepper of Crawford, Pettit, Read of Clark, Read of Monroe, Robinson, Schoon- over, Shannon, Sherrod, Sims, Smiley, Snook, Smith of Scott, Spann, Steele, Stevenson, Tague, Todd, Trimble, Wheeler, Wolfe, Work, Wunderlich, Zenor, and Mr. President—91.

Those voting in the negative were,

Messrs. Badger, Balingall, Barbour, Borden, Bowers, Clark of Hamilton, Foley, Frisbie, Gordon, Hall, Hawkins, Helm, Howe, Kilgore, Kinley, March, Milligan, Morgan, Murray, New- man, Niles, Rariden, Smith of Ripley, Taylor, Walpole, and Watts—26.

So the 1st, 2d, and 3d sections of No. 2 were passed, and referred to the committee on revision, arrangement, and phraseology.

Mr. PETTIT. I move now to refer these sections to the committee on revision, arrange- ment, and phraseology.

The PRESIDENT. We have already a resolution which carries them there without any action.

NEGRO IMMIGRATION AND RIGHTS.

Mr. BORDEN. Would it not be in order now, to take up the consideration of the next section in the report, connected with the bill of rights?

The PRESIDENT. The next subject in order is the consideration of a section with refer- ence to the bill of rights, being the last section reported on the 26th of October, from the com- mittee on the rights and privileges of the inhab- itants of this State. The Secretary will read the section.

The section was then read, and it is as fol- lows.

SECTION.—The General Assembly, at its first session under the amended Constitution, shall pass laws prohibiting negroes and mulat- toes from coming into, or settling in, this State; and prohibiting any negro or mulatto from pur- chasing or otherwise acquiring real estate, here- after.

The pending amendment, by Mr. Hall, was also read, as follows:

Add to the section these words: "Provided, that nothing herein shall be so construed as to prevent any negro or mulatto now residing in this State, from holding real estate."

Mr. GIBSON, having proposed to amend the amendment, by inserting after the word "hold- ing" the words, "or purchasing;" and the same being read,

Mr. HALL said, I accept that amendment, sir.

Mr. GIBSON. I prefer that the vote should be taken, Mr. President; for I had intended to vote against my own amendment.

A VOICE. "You can't help it now."

Mr. GIBSON. I ask if it is in order to with- draw my amendment?

The PRESIDENT. It is not. [Laughter.]

Mr. HALL'S amendment, as amended, was now read by the Secretary.

Mr. KENT said,

Mr. President, I have but few remarks to make upon the question before the Convention, notwithstanding I look upon it as one of more vital importance to the people of Indiana, than any other that will likely engage the delibera- tions of this body.

It will be recollected by the Convention, that subsequent to the report of the section under discussion by the committee on the rights and privileges of the inhabitants of the State, the same committee reported a section that there shall be an annual appropriation, not exceeding ten thousand dollars, set apart by law for the gradual colonization of so many of the negroes and mulattoes now in this State, as shall de- sire to leave it, and shall not have the means to do so.

Now I think it must be apparent to all, that when we reach this section by the regular order of business, this whole subject will again come up for discussion, however much and long we may now debate the section before us. If I am correct in this, would it not save time to postpone the further discussion of the question, until we reach the section last reported?

But there is another consideration why this subject should be postponed, and, perhaps, re- ferred to a select committee. I am aware that the Convention has decided that the question of negro suffrage should not be submitted to the people, as a distinct proposition. With this decision I am content. But the question of prohibiting negroes and mulattoes from coming

into the State, is one of deep interest and vast moment to us and to ours, to the present, as well as future generations. It is one of the greatest questions that ever engaged the attention of any deliberative body in this State; and connected with the appropriation of ten thousand dollars annually for colonization purposes, it lays sure the foundation of ultimately excluding from the State the entire negro population, thereby securing a homogeneous race in the great and growing State of Indiana. And is not the attainment of this object desirable? Can the friends even those who profess to be the exclusive friends, of this unfortunate and degraded race, devise a more feasible plan of ultimately bettering their condition? Can gentlemen for one moment doubt but that the object of these sections is to secure the greatest good and highest interest of the two races?

Gentlemen greatly mistake American character and American feeling and sentiment upon this question, if they think that opposition to the provisions of these sections will receive the approbation of the people. The tendency, strong and irresistible, of the American mind, is finally to accomplish a separation of the two races.

At the last session of Congress the Naval Committee made a report, recommending the Government to establish a line of mail steamships to the Western coast of Africa, for the purpose of suppressing the African slave trade, and of promoting the colonization of free persons of color from the United States to Liberia. In this report the committee recommend the Government to build three steamships, to be of not less than four thousand tons burden each, and the three to cost not to exceed the sum of two millions seven hundred thousand dollars. It is estimated that these vessels will transport to Liberia eighteen thousand passengers annually, at a cost of not to exceed ten dollars for each emigrant over twelve years of age, and five for each one under that age. These sums also include the transportation of baggage, and the daily supply of rations.

The committee then proceed to remark, that it is chiefly for the great and beneficent objects of removing the free persons of color from this country to the coast of Africa, and of suppressing the slave trade, that they are disposed to recommend the adoption of the proposed measure. The latter of these has been the subject of treaties by our Government with other nations, with whom we have engaged to maintain a large naval force on the coast of Africa, to assist in suppressing the inhuman traffic; while the emigration of the free blacks has long been an object of great interest in all parts of the country.

"In no part of the Union do the free blacks enjoy an equality of political and social privileges; and in all the States their presence is neither agreeable to the whites, nor is their con-

dition advantageous to themselves. In some of the slave States stringent prohibitions have been adopted, and unpleasant controversies with free States have been thereby engendered. The emigration of this entire population beyond the limits of our country is the only effectual mode of curing these evils, and of removing one cause of dangerous irritation between the different sections of the Union."

This report contains much valuable information respecting the climate, soil, production, and the character of the population of Liberia; and also a most interesting statistical account of the progress of the Colonization Society, and the great benefits contemplated by establishing these mail steamships.

Viewing then this question as one of vital interest to the country, and desiring that it may be separated from the amended Constitution, and submitted as a distinct proposition to the people, I move to refer this section to a committee of one from each Congressional district, with instructions to inquire into the best means of ultimately separating the white and colored races in Indiana; and also into the expediency of incorporating in one article all Constitutional provisions relative to negroes and mulattoes, and submitting the same separately to the people.

THE PRESIDENT. The question now is upon referring the section as proposed by the gentleman from Floyd.

Mr. CRUMBACKER said—

Mr. PRESIDENT: Before the question is taken I desire to make a few remarks; although I know very well I shall be running some risk of doing myself an injury. But I cannot consent, conscientiously, to see a subject of so much importance as this disposed of, without setting myself right before the Convention and my constituents with reference to the whole matter.

It would probably be well enough for me to say, in the commencement of my remarks, that I do not expect to throw any light upon the subject that will have a tendency to change the mind of a single individual member of the Convention; but, inasmuch as we have come here for the purpose of freely exchanging our views with reference to every important matter presented for the action of this body, I shall avail myself of the privilege of expressing the sentiments which I hold with regard to this (in my estimation) very important question.

I am opposed to the section as originally reported by the committee. What, sir, are we proposing to do? What is proposed, in this section, to be done with that important part of the human race, known amongst us as Africans?

I hold, sir, that it is the province of legislation to elevate all the subjects of law to as high a point of civil and social condition as their ability for improvement will permit them to rise. I hold that it is the proper province of every deliberative body like this, about to arrange the

organic law, for the purpose of governing a large portion of the people of this Union, to take care that the future legislation and laws of the State shall have for their tendency the elevation of the condition of all the subjects of law.

Now, sir, is it not a mistaken principle, so to legislate, that the laws we enact with reference to any class of the inhabitants of this State, instead of elevating, shall depress and degrade them? If we legislate for them as brutes, we shall make brutes of them. If we legislate for them as men, we shall make men of them. Our laws will then have a tendency to stimulate them to exert all their powers of native improbability, and enable them to rise to the highest point of civilization which it is possible for them to attain. If we legislate for them as for human beings capable of improvement, there will doubtless be found a corresponding improvement on their part.

Gentlemen tell us that the negroes are a degraded race. Well, I admit it. But what has degraded them? Again we are told, that, when they were brought from Africa, they were in a very degraded condition; and that, being brought into this land of—shall we call it liberty or slavery—of liberty to us—to them, slavery—their condition has been elevated and improved. This, also, is true to a certain extent. It is certainly true that their condition has been elevated; but who has sought to elevate them? What, I ask, has legislation done for them in the United States? What has been done, in this way, for the purpose of elevating and ameliorating their condition? I affirm, sir, that the only elevation of character they have attained by being brought to this country, has been brought about in them by the mere force of circumstances, and against all the legislation and all social combinations of the country; the tendencies of which have been to trample them down and keep them in the dust, as low as we found them in their native land. Does not this prove that there is a degree of improbability about the negro race, and that, by pursuing a proper course towards them, they might be elevated far above the position they now occupy? It is true that the whole course of legislation, in regard to this subject, has been designed, and has had a tendency, to keep them in darkness, and in a state of degradation suitable for slaves. It has been the policy of certain States of this confederacy to strive, by their legislation, as far as possible, to shut out light and knowledge from the African race, and keep them in total ignorance, by excluding them from the enjoyment of all those rights and privileges which are dear to the human heart, and which would not have a tendency to diminish their value as slaves. And yet, (still more to approve this national injustice,) the cry is raised in this free State, that we should exclude them from our borders, lest they might attain to some

of the rights and privileges which we enjoy in this boasted land of freedom!

I am opposed to this section as originally reported by the committee, because I look upon it to be a right, that we should extend to the negro race all the privileges that can be accorded to them in this State, which will not have a direct tendency to infringe upon our own rights. Many of them—in fact, all the free negroes in our country—were born in this land. The United States is the land of their nativity; they were born and raised here, and here they are surrounded with all the associations of life which are dear to them—having a strong tendency to attach them to this, their home. Should it, then, be one of the objects of this Convention to endeavor to deprive these people of those privileges which ought always to belong to all the inhabitants of the State. Sir, it is going too far to exclude any portion of the human race, who may desire to immigrate to our State, by prescribing, in the fundamental law, that they shall have no right to hold property amongst us.

Sir, how does this course of action, with regard to these people, correspond with the sentiments which, as a nation, we have always held forth to the world? We have caused the boast to go abroad for more than half a century, that this country affords an asylum for the oppressed of all nations—a home for the protection of the refugees of every people, and especially for the protection of the down-trodden victims of tyranny. All have been invited to this happy land, where they may be sure of the enjoyment of equal rights—where the unfortunate Hungarian, the exiled Poles, the serfs of Russia, and all the degraded victims of despotism, from every country of Europe, are invited to come to our borders. We not only open our doors, but our hearts, also, and with open arms embrace them. We take them to our bosoms, and give them everything in our power which may be necessary to support and comfort them in their exile from their native land. But, sir, when these individuals, who have been born in the United States, but who have been so fortunate as to rise above the injustice and oppression which, at first, bound them down to slavery, present themselves at the door of our State, we reject them with scorn; we will have nothing to do with them. Because they are clothed with a dark skin, we will tread them down to the earth.

Sir, we ask for the black race nothing more than what we are willing to accord to all persons coming from foreign countries. We ask for those born in this land only what we, as a people, have always most cheerfully, and willingly, and heartily accorded to those who are born in foreign and distant lands, where the laws and forms of government under which they have lived, have, perhaps, degraded them to a level with the negroes themselves. We care not how ignorant these latter may be, we re-

ceive them and give them a cordial welcome. But when the negro comes to our borders, we meet him with an interdiction of his rights; we reject him with scorn and contempt.

It will be out of my power to proceed, in my remarks, with reference to this subject, as I could wish; and I shall, therefore, notice a few things which were said during the discussion of the subject last week. The gentleman from Clark (Mr. —) remarked, with reference to this subject, that the conduct of the Kentucky Convention, with reference to free negroes was a most infamous stain upon the character of that body. I think I cannot be mistaken, for I took down the gentleman's language at the time. Now I would ask you, sir, if the conduct of the Kentucky Convention, in ejecting the free negroes from that Commonwealth, or in other words, making provision that all negroes hereafter set free in that State, and remaining there a certain length of time, shall be sold again into bondage, which is virtually declaring that they shall leave the State; if such conduct was an infamous stain upon that Convention, I ask, in what light we should view our own conduct if we were to adopt a similar provision? Can two wrongs ever make a right? If the Kentucky Convention has done wrong in this matter, I would like to know whether our action corresponding with theirs, can make their wrong right? I think not, sir. It must be regarded as a glaring wrong. Such a course would have no tendency to right the wrong already committed, but it would only double the weight of oppression which it has cast upon that unfortunate and degraded race.

But the same gentleman remarked that the Africans had been civilized and christianized by being brought to our country. I have already spoken with reference to this matter, and I have only now to say that if they have been elevated in their moral condition, if they have been civilized and christianized, they owe no thanks to us. For has it ever been the primary intention, or the tendency of the legislation of this country, to elevate the black race? I answer, no. But, on the contrary, the tendency of the legislation of nearly every State in this Union has always been to oppress and keep them in a condition little superior to the brute. If they have been civilized, and christianized, and elevated in their character, it has been in spite of legislation, and every circumstance in their social condition, which have combined to crush them down to the very dust. And the fact, that in this country, they have been elevated in the scale of civilization, as I have before remarked, is the best evidence in the world of their improbability. If their condition has been improved in spite of the course of oppression and wrong which has been hitherto constantly pursued towards them, does it not prove that if we adopt a more liberal course, we might elevate them to a condition greatly su-

prior to anything which it has been supposed they were capable of attaining.

The gentleman from Monroe, (Mr. Foster,) if I mistake not, spoke of the black race as a kind of connecting link between the monkey and the human being. I do not suppose the gentleman was serious in the remark which he made, and therefore I shall not reply to it further than to say that however proper it may be to indulge a good joke at a proper time, it seems to me that upon such an occasion as this, when human rights are at stake, the remark of that gentleman was entirely out of place.

Mr. FOSTER (interposing, and Mr. C. giving way,) said: I was speaking of the theory of Lord Monboddoo, which is not merely applicable to the negro alone, but to the whole human race.

Mr. CRUMBACKER (continuing.) There was also a remark made by the same gentleman with reference to the theory of Professor Agasiz. The theory of this learned Professor may be very ingenious indeed, but I think that when we come to examine the subject in the light which physiologists have afforded us, with reference to the unity of the human race, this ingenious theory must fall to the ground. If we are willing to take the doctrine of Holy Writ in preference to the teachings of a vain philosophy, we must come to the conclusion that however dark the skin, and however degraded the condition, and however ignorant and uninformed the mind of the African, and whatever difference in his formation from that of the Anglo-Saxon race, originally they sprung all from the same stock. For of one flesh and one blood were created all the inhabitants of the earth. And I would remark, further, that if we were to take the most favored families of the white race from the present position which they occupy, and place them at once in the condition of the African slaves, and keep them in the possession of masters for generation after generation, and age after age; if they were to have no covering to protect their heads from the scorching sun, think you that their hair would not crisp even more than some of ours? and if their feet were never made to feel the wholesome restraint of shoes, I would like to know whether their heels might not be expected to run back; and by wading in the rice swamps for years, their feet would become broad and flat! Think you that this change of condition would not make a corresponding change in their complexion and form, and that the consequent moral degradation would not bring them down at least to a level with the African race themselves?

It is true that in the course of ages, however elevated we may now appear to be, however fine the form and symmetry we may now possess, by a course like this we would eventually be brought down to a level with the African in his

most degraded position. Sir, there is no kind of doubt of it.

Now, sir, permit me to say a few words in reference to the theory advanced by the gentleman from Floyd (Mr. Kent). He remarked that the tendency of the American mind is to separate the races. I believe, myself, that this is the only true policy. I believe that it is the only policy that will ever succeed, or that will result in the complete elevation of the African race to the highest position which they can attain. I like the theory well enough; but, until it is carried into practical effect, until some means are devised by which the theory can be carried into practice, I must forever raise my voice against the provision reported in the original section which is now under consideration by this body. Until this theory—the complete separation of the races—can be accomplished; until it is introduced into practical effect; until some means are devised by which money may be appropriated, and means made use of, to bring about this desirable end, I say let us, as far as we possibly can by legislation, and by our conduct in every respect, give to the negro race something to stimulate and elevate them—something that will elevate their character and make them better than they are now.

But, by the way, I am not done with the remarks of the gentleman from Monroe (Mr. Foster). He said in reference to the African race, whether they are a separate and distinct race from the white man or not, that he does know they are under the ban of Heaven; that a curse was pronounced upon them by the Almighty, and that it still remains upon them. I should very much like that the gentleman would quote the language of Holy Writ by which that declaration can be sustained. We may go back to the time when Noah's son received the malediction of his father—that he and his children should be the servants of servants. I say I should like any gentleman to prove to me whether the African race are the regular lineal descendants of Noah's son. I should like to have it proved whether, at this distant day, the genealogy of the African race can be traced back to the unfortunate son of Noah. I think gentlemen who undertake to establish the fact will undertake a hopeless task, or to prove that they are yet under the ban of Heaven and the curse of the Almighty.

Mr. President, there are many things that crowd upon my mind in connection with this subject to which I would like to give utterance on the present occasion, but I do not feel that I have strength sufficient to make further remarks now. My health has been feeble for some length of time, and I find that my strength has failed me sooner than I anticipated. For the present, therefore, I must desist—thanking the Convention for the attention with which they have heard me.

Mr. PEPPER of Crawford said—

MR. PRESIDENT: Without wishing to detain the Convention with a set speech, I desire to give, in brief, the reasons that will influence my vote upon the question now pending. It is not merely an abstract question of right or wrong to the negro, not now an inhabitant of our soil, but one of a practical character, that should address itself to the candid consideration of every mind—what is best in the premises to be done, Shall Indiana continue to remain a free and prosperous State, uncontaminated by the further and continued influx of free negroes? Or shall we quietly leave open our doors and thereby suffer the State to become a great almshouse of pauperism, and consequently of vice. These are the true questions we have boldly to meet, and at once, call them by whatsoever name you please.

Gentlemen may talk eloquently about the rights of man; they may point to the blood-bought stripes and stars of their country's ensign; they may depict in glowing terms the piteous condition of the whole Ethiopian race, and appeal to the philanthropy of the human heart—yet all this will not change the true issue. The question still is, what is best for the free-men of this State, now and for the future.

Sir, to my mind the path of duty is clearly marked; that great principle that underlies all other rights—*self-defense—self-preservation*—requires that we should act wisely in adjusting this very difficult matter.

It is very clear that by the emigration of free blacks among us, we will not be in any wise benefited—the State none the gainer.

It would be conceded that if, by admitting the colored population into our social compact, they would be benefited and we in no wise injured, it would be altogether proper to suffer them to come.

But, sir, I hold that such would not be the result. On the contrary, it is clear to my mind that the worst of consequences would follow. As has been remarked, histories, both sacred and profane, teach that distinct races, if entitled to equal privileges, cannot dwell together prosperously and happy any great length of time. It is further demonstrated by experience in this and sister States, that the whites and free colored persons cannot live together in harmony. The latter universally have a sneering contempt for those they please to term "poor white folks;" jealousy, hatred, and malice usually exist between them, and not unfrequently terminates in a war of extermination of one or the other combatants.

This may be, and doubtless is, to some extent, owing to the want of proper training and education on the part of the blacks; but shall we be called upon to bear the infliction of those grievances until a new mind and heart are given this unfortunate race by a still further draw upon our benevolence by educating them in our proper schools? This would be taxing our

good nature rather much. I will offer another reason, which, to me, is of paramount importance, why I oppose their immigration and settlement here. It should be our true policy to encourage and foster the labor of this country; in this single item, more than in all others, depends our prosperity as a State and as a nation; it should be respected everywhere and by every person; nothing should be allowed or suffered that would lower or degrade it.

Now, I would ask gentlemen, if we flood the State with free negroes, bring them into competition with white male and female labor, if it will not degrade it? It certainly will. Nor will this be all. It will not only degrade white labor, but it will drive white competition away. Sir, no man here more heartily pities the unfortunate African than myself; no man would be more rejoiced to see their condition ameliorated; nay, more, to see them free and independent, in the full enjoyment of all the rights that appertain to freemen; but I want them to enjoy those rights as a separate colony or nation, not as tenants in common with the Anglo-Saxon family.

These rights can only exist to the extent named when thus separated from the whites.

Believing, therefore, that the interest of the State, the lasting prosperity and happiness thereof, as well as the true happiness of the blacks, demand that the two races should be separated, I go for shutting them out; for raising, if necessary, a wall high as Heaven between them and us.

As to the question said to be involved in the second section of the fourth article of the Constitution of the United States, it is quite clear to my mind that we have the right to make any sort of restriction we please. That section reads as follows:

"The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States."

As was remarked, when the Constitution of the United States was adopted, free negroes were not regarded as citizens in any of the States, and had not, prior thereto, been so regarded in the colonies.

And at this time they are not regarded as citizens "entitled to all the privileges and immunities" in any of the States of this Union, and therefore the section above referred to is not binding upon the action of this Convention.

Mr. President, while I am anxious to establish the most stringent measures to effectually bar the further immigration of negroes into this State, I deem it, nevertheless, to be the duty of this body to guard the vested rights of these who now have their settlement here; we should take no step which would have the effect of making them worthless, vicious, and idle, by depriving them of the right of holding and enjoying property.

While inhabitants of the State, they are entitled to the protection of the law; their right to acquire and enjoy property should not be denied; they should have the right to pursue their own substantial happiness in every lawful way.

From the argument of gentlemen on the other side, particularly the gentleman from Jefferson, (Mr. Gregg,) one would think that if this restriction is placed on the Constitution it will be rejected by the people by an overwhelming vote, and will, moreover, add oil to the flame of discord that now burns in the various sections of the Union, if, indeed, it would not prove the cause of its dissolution.

This is an important question to Indiana, but surely the destinies of the Union do not hang upon it.

Sir, it is true that now and then an angry cloud obscures the bright effulgence of the political sky, but I have an abiding confidence in the perpetuity of this Union; it is not made of a rope of sand—it is indissoluble.

All the negro factions, North and South, are not able to subvert it. Twenty millions of freemen, armed with stout hearts and brawny arms, will stand by the Constitution of their country in the hour of peril, come when that hour may. The colors that were borne aloft triumphantly in the revolutionary struggle, will never be disgraced while liberty is appreciated or the rights of man respected.

But, sir, if dissolution must come, if the sisterhood of States is to be broken, if those bright luminaries that give life and light to the great federal ark, are to be extinguished and rudely torn asunder, if a second independence is to be achieved, greater will be the necessity for the citizens of Indiana to be of one heart, one mind, one purpose.

In that dread hour we shall want men of tried valor and patriotism; not negroes nor mulattoes, but men bound to the interest of their country "by hooks of steel."

Mr. ROBINSON. Situated as I am upon this question, and occupying the position which I do, I feel it to be my duty before I give the vote which I expect to give upon the question now under consideration, to place myself right before the people whom I represent, as well as before the community at large, upon the broad principles of justice on which I think every member of this Convention ought to stand. It is a failing that attaches to legislators and perhaps to all men, that we are too apt, upon exciting questions, to run into extremes. When we attempt to do what we think is right, we are too apt to allow our feelings to carry us beyond the proper point. I look upon this discussion and upon this question as a great one; and I am the last man that would trifle with it or treat it with levity. It is a question involving the rights of human beings—a part of the community whom God has made for

a noble purpose; and in the eyes of the great Creator of the Universe they are as good as we are. But, sir, we are now called upon to do that which will materially affect their rights, not only for the present but perhaps for all coming time. I look upon it, therefore, as a question of serious import, as one that should not be trifled with by any man who possesses proper feelings. Because I am free, and enjoy all the blessings of liberty, I cannot conscientiously stand here and see legislators trifle with the rights of those who are more unfortunate than myself.

Upon the subject of prohibiting these unfortunate beings from coming into the State, I shall, at all times, cast my vote in favor of it. And I shall do so, not so much as an act of justice, but as an act of right; for I believe that the American citizen, who is enjoying the blessings of liberty and free government here, is the last that should raise his voice, either to speak in terms of degradation in regard to these creatures, or to circumscribe their rights. God made them, and he made them a country. Whether that country was adapted to their happiness or their well-being or not, placed there they were enjoying it, even if it was according to their heathen custom; and, sir, if the hand of fate, or rather I should say the hand of the white man had been kept off them, this question that is engrossing the attention of every American statesman, and threatening to shake the foundations of our blessed Union, is a question with which we would not have been troubled at this day. But, sir, they are here, and an important question is, how did they come here? If they had voluntarily obtruded themselves upon us, and attempted to acquire a settlement among us as a part of the body politic, by their own act and deed, then might gentlemen stand up and talk here about the line of separation, and about their being brutes and below the level of civilization. But, sir, when it is recollected that we are the aggressors, when it is remembered that we are the pirates, that we have torn them from their families and chained them here in servitude, I do think that it comes with an ill grace from any member of this Convention, to talk about a distinction which God himself does not recognize. But, sir, as I remarked before, as a matter of necessity—and there is such a thing as necessity and the laws of necessity—as a matter of necessity, and from the course pursued in the sister States which hold these creatures in abject slavery—and as I have spoken at home among my own people, so shall I speak here—as a matter of necessity for the promotion and preservation of peace and harmony, not only in our own State but throughout the Union, and for the promotion of the ends of justice, I think we ought to say to the State of Kentucky, my native State, and to the sister States who hold the colored man in slavery, “when you have got from these creatures everything you can possi-

bly get, when you have compelled them to serve you until they are worn down by age, the land in which their labors have been expended is the land in which they ought to end their days; and after you have made them serve you thus long you shall be compelled to maintain them during the remainder of their declining years. It would only be an act of justice to the State of Indiana, enjoying as she does the blessings of freedom unconnected with the curse of slavery, to prevent the people of a State who have aggrandized themselves by the labors of that unfortunate race till they are able to labor no longer, from throwing off their old negroes upon us, and making us an asylum for pauperism in its worst forms. I have upon all occasions, and I will upon all occasions vote for the prohibition, for shutting the doors against them in all time to come. But when I am asked to vote upon this question, when I am asked to do an act which I regard as morally wrong, and religiously wrong, when I am asked to forbear to exercise mercy and to do an act of cruelty and injustice, I must pause and consider before I cast that vote; I must place myself in the position in which I would wish to be placed before my people.

Mr. President, an important question presents itself here to my mind. And what is it? It is this: How did these unfortunate creatures that are now settled in little detached settlements in our own State come among us? They came among us at the time when that declaration of rights—that record that speaks the pure sentiments of the patriot and the statesman—had widely thrown open our doors to their admission. They came to a State that was proclaiming in the broad terms of the bill of rights that “all men are born free and equal,” that they have certain “inherent and inalienable rights, among which the right to acquire, possess, and enjoy property.” Under that bill of rights we threw open our doors to them. If the State of Indiana had barred her door against them and shut them out when her first organic law was framed, and if they had afterwards obtruded themselves upon us by stealth or otherwise, I would go with the gentleman who has just taken his seat, to remove them from the State even now. But we held out to them the olive branch; we told them “here is the land of liberty and freedom,” and under that invitation they found their way into the State and settled among us and have honestly acquired property. And now, sir, the question is presented to me as a member of this grave, and I believe honest, body, to cast my vote to take—yea, to steal from them that property, which they have justly and honestly acquired. I will go as far as any man in furnishing means to colonize them and send them off to a country of their own. I believe with many gentlemen on this floor that the two races can never live together; and I hope they can never mix or amalgamate; but, sir, the isolated question pre-

sents itself—not whether we will in future colonize them, not whether we will try to better their condition, not whether we will treat them as men, and aid them in seeking a home and a retreat from the hand of the aggressor, but whether we will take from them that right which will give the lie to the bill of rights and that bold charter of our liberties, which every American citizen holds in his hand. Sir, for one I cannot, will not do it, let the consequences to me be what they may. I hope, therefore, that the amendment will prevail. It is not quite so satisfactory as I would wish it, but with that amendment we secure one thing—that those who now have property may hold it. I am willing to go that far; I am willing to say to the African that resides in a slave State, that if you at any future period procure your emancipation papers, and come to purchase property in the State of Indiana, you shall not transmit it either by descent or in any other way. But it would be an act of injustice and inhumanity—an act wholly beneath a Christian people, to say to that man who has acquired property by honest means, who has paid his money into the treasury of the government for his land, and into the treasury of this State in the shape of taxes, who has gone into the forest and felled the trees and cleared the land and improved the country—I say it would be unjust, and contrary to every principle of moral honesty and humanity and sound policy, to say to that people, “we will now take from you these rights.” Sir, I think we ought to get along with as many of this class of people as we have now got, in the best way we can. We must enact laws in future, if necessary, to prevent this flood of immigration of these people. But, sir, they are here; and I can see no way, no law that we can adopt in justice, by which we can take away from those that are here, those rights which they have acquired under the laws of the State. When they came here and settled and purchased property, the laws of the State entered into every part of that contract. When they paid their money into the land office of the Federal Government, they did so under the laws of the State of Indiana, and the contract became a contract between them and the people of the State. When they paid every year their taxes according to their assessment, or when they improved the country under our laws, it was a part of the obligation resting upon us, both politically and religiously, to permit them to enjoy the fruits of their labor. There can be but one sensible way about it; but one way that is just; but one way that is right, and that is to do the best we can with the evil that now exists, and permit them to do what would not be denied to any other men, and what cannot be denied under the spirit of that bill of rights, to prohibit them to possess that property, to transmit it to their posterity, or to sell and dispose of it by deed. Thus far I go upon this subject.

Had I not felt it to be my duty to make these remarks, had I not felt that I stood in a peculiar attitude here, had I not felt that my people are strongly divided upon this question; did I not feel impelled by a sense of moral justice—a sense of honesty and Christian obligation, to make these few broken and disconnected remarks, I should not at this time have imposed myself upon the attention of the Convention. I shall vote in favor of the amendment; and if it is not adopted, if the naked question is put to me and I am called upon as a delegate in this Convention, coming here with an open honest purpose to do right, if it should come to that, that the isolated question is put to me, and I must vote to take from those individuals already here the rights to dispose of their property, let the consequences be what they may, whether they may operate for me or against me hereafter, until I can lay my hand on my heart and say “I am doing right,” my vote shall be recorded against it and shall stand there upon the journals of this Convention and go down in after-time as at least an evidence that I had independence enough to do what I believed to be morally right upon this great question, involving the rights and liberties and privileges of life and property to a certain class of God’s creatures who, unfortunate as they may be, are now amongst us.

Mr. CLARK of Tippecanoe. I rise simply for the purpose, Mr. President, of stating very briefly, the reasons for the votes which I shall give upon this question. I stand here, sir, pledged to my constituents, to vote to preserve the Constitution of the State, so far as it relates to the rights of negroes, precisely as it now exists. And, sir, allow me to say, that I am not thus pledged because of any purpose to secure votes during the canvass. But, on the contrary, I hazarded my election, and, perhaps, came near being beaten by maintaining the ground which I expect to maintain here. I say then, Mr. President, I stand pledged before my constituents to sustain, so far as I have ability, the great and fundamental principles of liberty embodied in the first section of the bill of rights in our present Constitution, which declares that all men have certain natural, inherent, and unalienable rights among which are, the enjoying and defending *life*, and *liberty*, and of acquiring and protecting property, and pursuing, and obtaining happiness and safety.

I am pledged, sir, to recognize by law, the negro, as a man, and not to deny to him, the great and essential rights of humanity. The right to life, liberty and the right to acquire the means of subsistence. The right of suffrage, the right to hold office, are not declared in our bill of rights to be natural and inalienable; these may be denied. But the right to life, the right of liberty, the right of acquiring the means of subsistence, must be granted, else, as I conceive, the elementary prin-

ples on which our government is based, are wrong. I may, sir, feel constrained to vote against the reference of this subject to a committee. I would prefer to vote directly on the proposition submitted by the gentleman from Jefferson. I would prefer to vote directly to strike out the section reported by the committee, and insert the first clause of the bill of rights as contained in the old Constitution. Here we have the two opposing propositions directly before us; we can choose this one or the other.

I understand, sir, that according to the theory of our government, the sovereignty, the sovereign authority of governing resides in the white male citizens of the State. This is a mere conventional agreement, and I think very properly placed in their hands. But sir, these sovereigns are not invested with this high and solemn trust to be exercised without restraint. Sir, in their hands is deposited this sovereign authority, not merely that they may work out their own will without reference to the interests or necessities of others. They may not consult their prejudices—they are bound to execute justice, if not to be merciful. They are, sir, to govern according to the great and elementary laws, laid down in the words of this amendment now pending, proposed by the gentleman from Jefferson. It is also declared in the great charter of human liberty, the Declaration of Independence, that governments are instituted to protect the natural and inalienable rights of men. So that, by our theory of government, wherever the sovereignty may belong, it must be exercised with a reference to these principles, and executed in such a manner as to carry out the design of its institution.

Nothing could appear more strange to me, an American born, the voice of liberty sounding in my ears from my earliest infancy, reared among the simple inhabitants on the frontiers of our country, than that an assemblage of American statesmen should refuse to affirm the principles of the Declaration of Independence, those great principles inscribed on all our banners, streaming every where before the world. There they are before us, written in letters of living light! Sir, they cannot be obliterated from our memory, nor be blotted out from the hearts of men. Humanity has adopted them as its watchword—the whole human race has seized upon them as their hope for deliverance from oppression.

Our fathers, sir, proclaimed them to the world. In their vindication, they hazarded their lives their fortunes, and their sacred honor. They upheld them triumphantly in presence of the whole world. But what do we propose to do—to deny these sacred principles—to refuse them a place in our government and laws—because our prejudice against the poor degraded negro will not allow us to grant to him protection in his life, liberty, and property?

Sir, the committee on rights and privileges, which reported these sections, might be far more appropriately called the committee on the restrictions and exclusions. For in the face of these sections they have not ventured to report any clause for the new Constitution, recognizing and affirming the great and elementary principles of all free governments. Yet so essential are these principles in determining all questions involving human rights, that the chairman of that committee, (Mr. Owen,) the other day, in his speech on another question of rights, based his argument on these very principles. Sir, the legislators in the enactment of laws, the courts in their decisions, the lawyer, the citizen, all constantly refer to these great principles. They are the sources whence all power derives its warrant of authority. They are the test by which all things are tried in a free government.

Mr. OWEN. Will the gentleman from Tippecanoe allow me to interrupt him for a moment?

Mr. CLARK of Tippecanoe. Certainly.

Mr. OWEN. As the gentleman has referred to the committee on rights and privileges in regard to this subject, it is proper that I should explain that there was no vote taken upon reporting or offering to report the first section of the first article of the Constitution; but it was agreed that for the present, it should not be reported until the subject of negro exclusion, or negro rights generally, was disposed of by the Convention.

Mr. CLARK. The gentleman from Posey is right, no doubt, in his explanation—for as I have already stated, that the gentleman's mind was too logical not to perceive the absurdity of reporting the bill of rights, including all the rights of citizens under the government of the State of Indiana, while at the same time excluding the rights of negroes. Applying this principle if we admit the negro as a human being, we must admit that he is entitled to protection in his life, liberty, and property.

I said, Mr. President, that it was a Conventional arrangement, that the sovereignty should reside in the male citizens, and not an essential principle. But it is an essential principle—elementary and unavoidably pertaining to the very nature of a free government—that this sovereignty be restrained within certain and defined limits. That is, that certain rights of individuals be regarded as sacred, unalienable, and beyond the power of the sovereignty itself. These rights are described in our bill of rights. Now, sir, if this sovereignty be without restraint, how does it differ from a despotism, except that a majority of the people decide, without restraint, in what manner they may choose to exercise their authority. I am ready to grant that they are far more likely to exercise this power justly, than a single individual; nevertheless, such a government is a despotism. But happily, sir,

for us, ours is no such government; we have the double security that the citizen sovereigns administer the power of the government, and that they are restrained by Constitutional limitations.

Let us remember too, sir, that it is demanded of those who govern, that reason and intelligence are to be their guide, and that passion and prejudice are to be laid aside. In all human affairs wisdom and prudence are necessary to men, whether acting as individuals or as societies under organized governments.

I said, sir, that I had staked my election on this question, for I had promised, when nominated as a candidate, that whatever I found to be true, *that I* would advocate, fearless of the consequence to myself. I said to my constituents, if you invest me with this high and solemn trust of determining on your own rights and the rights of others, I will seek after what is just and true, and that I will maintain. And, sir, having been born an American, and taught to admit the great principles of liberty and of free government, as proclaimed in our Constitution, to be true, I was unavoidably forced to the conclusion that the negro, that all men, have a right to be protected in their lives, liberty, and property. I found it impossible to arrive at any other conclusion without denying the premises; without discarding the principles which may be said to be inborn in every American heart. I was compelled, sir, to say to my friends, as well as to those who opposed me, these are my principles—these are the conclusions to which my mind necessarily leads me—if they are obnoxious to you vote against me. Humble as my name is, I will not record it in opposition to the great principles of human liberty. I will not support a measure which I think to be contrary to justice and humanity.

And, sir, when it was proposed to me to vote that a separate proposition be submitted to the people of the State, granting to negroes the right of suffrage, I refused to support such a proposition. I would not vote for it as an individual citizen, and I would not advocate it as a public servant; I did not regard it as promising any advantage either to the black or to the white man, for, as I before observed, according to my theory of our government, it is not stipulated that every man shall be a sovereign, but that every man's natural rights shall be protected. So, sir, in reference to the proposition before us. I will not vote for it as an individual citizen, neither as a Delegate in this Convention, for I believe it to be radically wrong, and utterly inconsistent with, and opposed to, the principles of our government.

I have, sir, such an abiding faith in the truth, in the principles of justice and equity, that I am satisfied when we find out what these principles are we may safely commit ourselves to their guidance. I believe, sir, the prosperity of individuals and of nations to be inseparably, in-

evitably connected with, and resulting from, obedience to truth and the practice of justice. And, sir, when we have discerned what these command us to do, we have found what is true policy with reference to human affairs.

What is called policy, in contra-distinction to truth and justice, is always short-sighted; it does not look forward to remote consequences. Oftentimes, sir, what it prescribes as a remedy is of itself a fatal disease. But the things which are right in themselves conform to the laws of truth, of justice, of religion, which proclaim the laws of Deity. And if we even deny the existence of such a Being, the laws which we ascribe to Him are such as our reason receives as rules which a benevolent and omniscient Being might prescribe for the government of men. I say, therefore, admitting these to be general laws for the regulation of human conduct, perceived (or invented) by the wisdom of men, still they are our safest guides in those matters, the ultimate ends of which we are unable to discern, and their ways the safest paths to pursue. I say then, Mr. President, I have such an abiding faith in the truth that if I can know it, and find it, I will fearlessly commit myself to its guidance, however dark the cloud may appear which hides from my vision the future. I am satisfied that it will carry us forward in the right path, and bring us to the right end.

Let us be admonished by past events; this very evil which now besets us—for which we find no satisfactory remedy—originated in the violation of, and disregard of, the natural rights of man. If these rights had been held sacred these people would not now be here. If the great principle of our government had been obeyed then this evil had not befallen us now. Sir, can we be encouraged to regard another outrage against humanity and our land, as a wise measure—as a remedy for an evil. Sir, this same violation of human liberty has planted the seeds of dissension between us and our brethren of our own race and color; and even now we are threatening to engage with each other in deadly conflict, to butcher one another!

And, sir, I fear that in the heat of our anger towards each other, this helpless race—the involuntary cause of this strife—will be immolated as victims in the vain hope to remedy wrongs of which they are not the authors, but the chief sufferers. Injustice and inhumanity will lead to evil as certainly as that truth and justice will guide us to prosperity.

But waiving these considerations, let us look at this measure as a measure of human policy merely. Let us consider it calmly, and without prejudice. Let us trace out this proposition if we can, into actual practical operation.

I have said, sir, we are invested with the sovereignty of government, which should be exercised as if we were intelligent beings endowed with a sense of justice. We are not to exercise it rashly, and as if there were no re-

sponsibility resting on us as to the consequences. We are not to act arbitrarily and without reason; we are not even to destroy enemies without a justifying necessity. This sovereignty has been committed to us by an Almighty Being, in the ways of his providence to be exerted, wisely, justly, mercifully, for the good of those under our dominion.

Now, sir, let us see what it is we are proposing to do. Why, sir, to prohibit by a Constitutional declaration, or decree, any black man from entering into our territory hereafter, and driving those away who are now here.

And I would respectfully ask gentlemen how this can be done. If such a Constitutional provision is adopted and made effectual, must we not provide guards of soldiers on all the frontiers of the State, so that the blacks will absolutely be driven from our borders? If the blacks are driven by the Kentuckians across the Ohio river, will they, fleeing for their lives, stop to consider whether or not our laws prohibit their entering into the State? The law of necessity, of self-preservation will compel the man to flee from his pursuers. And if the fugitive be a free black will Kentucky or Illinois, or Ohio, receive him? No sir, we are told they will not. They will come here, and we cannot send them away, for there is no place to which he can be driven. We must then either butcher him, or imprison him as has been proposed; or recognize him as a human being, and extend to him such protection as justice or necessity may require.

Now, sir, some gentlemen in this discussion have remarked that those who have opposed this measure, have, without any reasonable or justifiable excuse, uttered hypocritical and canting lamentations, over the imaginary wrongs and hardships of the negro. Why, they say it is impossible that the two races can live together, one or the other must perish, must be destroyed. But *they* are humane, and will not cut off the negro by the sword; they will do him no wrong; they simply require him to leave our country, and go to his own, to his native land. What business hath he here? What a mockery is this? Let him go to his native land? How will he traverse the vast ocean which separates him from his country? How can he reach that far distant home without the means of transporting himself thither. Sir, when did we allow him to raise revenue to build ships; or to accumulate property to take himself there. Sir, we demand of him to leave our soil on pain of being sold into slavery. We declare it to be a crime that he will not go, and yet his going is to him an impossibility. Sir, hypocritical sympathy is better than such humanity as this.

Why, sir, the expatriation of the Irish by Cromwell, who took them by force and sent them away from their native country, was an act of mercy and kindness, in comparison with

this proposed extradition of the African race. We want them to leave our territory without the slightest possible means of getting away. Is not this an impracticable idea? Can any gentleman, looking at the question practically, come to any other conclusion than that this proposition is an absurd and an impracticable one? I grant that we are entitled to defend ourselves, and even to destroy the blacks if necessary for that end. I grant that whenever it becomes necessary to defend ourselves against this people we have a right to take them away; we have a right to do as Cromwell did with the Irish. But until that occasion arrives, I maintain that by every law of justice and humanity, we are bound to treat them as men, to treat them with justice and kindness. I maintain this principle, not only as a matter of justice to the negro, but as a matter essential to the preservation of our own rights. If we admit that the sovereign power of the government, through the action of the majority, may be put in practise against the black man, and that he may be deprived of life, liberty, and property. Why may not a democratic or a whig majority, executing its peculiar prejudices, say that either of these parties that may be in the minority, shall not enjoy personal freedom, and that they shall not be protected in their inherent and inalienable rights. What is there to prevent such a result, if we strike out of our Constitution the great and essential principles of free government, by which liberty is secured?

And will gentlemen allow their prejudices against the poor down-trodden African to so mislead their judgment, and excite their angry passions that they will trample upon the institutions of our forefathers, and rend in twain the very citadel of liberty?

Mr President, I did not design making a speech upon this question, for I know that any thing said in opposition to our prejudices is listened to with impatience. I know that it is with difficulty that any one can be heard on this subject; I found this difficulty existing in the canvass before my constituents. But I appealed to their reason, and their judgment; I knew that their prejudices were excited, but that their justice and humanity would triumph over their prejudice. So, sir, I believe of all the people of the State. Politically I have always advocated and maintained the necessity of obedience to law, Constitutional or otherwise, although I think the governmental law ought to conform to what is called the higher law, and if possible, in harmony with it. Yet I believe it would defeat all the ends of government, if we were not to submit to the human, or governmental law. If we were allowed to resist law, under the pretence of a higher and more binding allegiance than that which we owe to the government, there could be no human government at all. But we have the inalienable right to show

the makers of the law, if we can, that the law itself may be wrong. And, sir, being persuaded that the provision we are discussing is wrong in principle, and nugatory and impracticable, for the end proposed to be accomplished. I shall vote against it in every shape and form in which it may be presented to the Convention.

CORRECTION.

Mr. OWEN. If I am in order, sir, I will ask that a correction be made of a vote of mine, which I noticed a few minutes since, as given in this morning's Daily Journal. It is the vote on the motion to lay on the table an amendment moved last Wednesday, by the gentleman from Gibson (Mr. Hall). I voted, or at all events, I intended to vote, for the amendment, and against the motion to lay on the table.

The Clerk informed the Chair that the correction was already made, and that the name of Mr. Owen stood recorded in the negative.

Mr. WALLACE said that he desired also to make a correction of the vote he had given on the same proposition. He wished to show the position he occupied on the question by his vote; and he had understood that that position could be evidenced as well by voting to lay the amendment of the gentleman from Gibson on the table, as by giving a direct vote upon the original section itself. He did not know how the mistake had occurred, but he had been recorded as voting in the affirmative, and he desired to have his vote corrected and changed to the negative on the journal.

The correction was accordingly made.

Mr. RARIDEN. I desire, sir, to make a few remarks upon this section relating to negroes, and as it is now twelve o'clock, I will postpone them until the afternoon session, and move that the Convention now adjourn.

So, pending the question,

The Convention adjourned until two o'clock P. M.

AFTERNOON SESSION.

The Convention resumed its sitting.

Mr. LOCKHART rose and said, that with the permission of the gentleman from Wayne, who was entitled to the floor, he would offer the following amendment to the amendment:

"And that the committee also inquire into the expediency of striking out the entire section, as provided by the committee, and insert the following:

"The General Assembly shall pass laws with as little delay as possible, prohibiting negroes or mulattoes from coming into or settling in this State, and prohibiting all negroes and mulattoes who have come into this State since the 10th day of February, 1831, and who have not complied with the provisions of the General Assembly of this State entitled, 'An act concerning free negroes and mulattoes, servants and

slaves,' approved February 10th, 1831, from purchasing real estate, or any interest therein, hereafter."

Mr. RARIDEN. I will, before proceeding to the remarks I have to offer, repeat to the Convention the proposition which is now under consideration, lest the Convention should have forgotten it. [Mr. R. here read the section under discussion.] He proceeded to say: Mr. President, I do not entertain the idea that there is much difference in the feelings of humanity which influence gentlemen in this House towards that poor, unfortunate, down-trodden race. I suppose it is the main object of gentlemen here, to act in a manner which will best contribute to the interest both of the white and the black race, keeping humanity always in view.

It seems to be a generally admitted fact, that the two races cannot live together upon terms of equality, and both prosper. Experience has demonstrated that they mutually act upon each other for the worst. I know of no neighborhood—and let me say here, that if I was a politician I would be speaking under more responsibility on this subject than perhaps any man in this House, for in my county the feeling on this subject is very strong—but, as I was saying, I have never known a neighborhood of colored persons that has not had a visible effect upon the white population in their immediate vicinity. They pull down the white population more than the white population raises them up. They mutually injure each other. From that fact, and from considerations of a similar character, I take it for granted that there is a settled conviction in the popular mind that the two races cannot get along together to the advantage of both; and so far as the attempt of the Convention may go to separate the two races, I am satisfied that no member of the Convention has any unkind feeling towards the colored race. I am sure that nothing but feelings of humanity can influence any gentleman in acting upon this great principle. We may be mistaken in our notions of humanity; but I am sure that no other feeling of the human heart can be concerned, or should be concerned, except that of keeping in view the true interests of the white race, as well as the true interests of the black race.

I am aware, Mr. President, that this crisis has been hastened upon the public mind by the delusions of a portion of the people, by cultivating those feelings and doctrines which they call abolitionism, to the exclusion of all others, assuming to monopolize all the benevolence and all the humanity towards the black race which pervades the whole country, denouncing every body in the most gross and bitter terms, who does not see the interests of the black race just in the same light in which it appears to them. This has done the colored race more injury than everything else besides, and thus we see that

those ameliorations of their condition which were first proposed upon principle, have gone on until they have ended in fanaticism. These, sir, are my sentiments upon that subject—

A MEMBER. And they are about right.

Mr. RARIDEN. A gentleman near me says these sentiments are about right, and a response of that sort is by no means unwelcome. Well, sir, how are we to get along? Because in this matter I say there is a "higher law"—and I address myself to men of age and experience—I say there is a higher law in the community, in regard to the negro population, than the Constitutional law; a feeling of pride that elevates the white man above the black man. Let me mention one thing as an evidence of this, which undoubtedly has occurred in the neighborhood of every gentleman on this floor. There was a time when the colored man had a right to participate in the benefits of township schools. They were provided by the beneficent legislation of Congress for the children of the owners of the soil of the townships. Negroes were as capable of becoming owners of the soil as white men, and, to my knowledge, in many townships they did become owners of the soil, and had thereby all the rights to participate in the advantages of the school system, and to send their children to these schools as the white man; but could they do it? Certainly not; for the whites rose *en-masse*, and said, your children shall not go to school with our children, and they were consequently expelled. Thus, then, we see that in this respect, there is a higher law than the Constitutional law. The whites stand by each other. Now, some of the abolitionists tell us that this prejudice, or whatever else you may choose to call it, is not on account of color, but originates in the want of courage in the black man; and that there is a natural disposition in all men to insult each other.

I am inclined to think adversely with them on that point. The white man does not insult the white man for a very good reason—the white man wont let him. They sympathize with each other, but there is no such strong sympathy with the black man. That is an instance, then, in which you will perceive that there is a "higher law" which actuates the white man. I am not going to discuss whether it is right or wrong, because it is not in the power of this Convention, or any other deliberative body, by any laws they may pass, to do away with this feeling. Then, as long as there is an equality, as long as there exists that marked distinction between the two races, the one will be degraded in his own estimation, and in the estimation of every body else. You must make them perfectly equal; and that, I say, it is not within the power of this Convention to do; nor is it in the power of any legislative body that ever did or ever will assemble. Thus, then, we have an instance of the recog-

nition and of the authority and the power of a "higher law."

Now, what are we to do? I can tell you what is my opinion, and that is predicated upon what would be best for the benefit of the black race. I agree with the gentleman from Decatur, (Mr. Robinson,) and with the gentleman from Tippecanoe, (Mr. Clark,) so far as feelings of humanity are concerned; but I say, that, whatever we shall attempt to do, it will be to carry out that theory which they have been advocating, namely: the mutual benefit of both races. I go with no party of men whose object may be to act with feelings of bitterness towards the black race. But I feel a little for the white race, too; because my sympathies have been a thousand times roused up for that race. Then what shall we do? We cannot live with them; that is clear.

There is another consideration, and that consideration goes to the principle of slavery itself. I freely admit here that I am hostile to negro slavery, and that I regard it as a great curse to our country. I believe now, and I fear that it will ever be so hereafter, that negro slavery has done the white race much more harm than it will ever do the black race. For this very thing of negro slavery has a tendency to degrade the white man; for I hold, that, whatever provides for the means of indolence and luxury, has a tendency to effeminate the white man, and consequently to do him harm. Negro slavery does this; and, therefore, negro slavery does harm to the white man.

A MEMBER. That is good logic.

Mr. RARIDEN. Now, in regard to this matter, I would almost go beyond my own convictions of right, and even of humanity, because the circumstances in which the surrounding States are placed have almost forced me into this position. Here is the State of Kentucky, and, indeed, all the slave States in our vicinity, expelling from their borders all the black population that are free. Illinois refuses to receive them; Ohio will undoubtedly do the same; and the whole mass of them, unless we make some stringent provision on the subject, will be driven here, and our State will be inundated with them. Broken-down negroes, and even the young negro population who are free, will be hurried into Indiana; and if we leave the question open, we must receive them on the score of humanity.

Now look at the matter in another point of view—and it is a very important one—one that well deserves the consideration of gentlemen who have so much to say in favor of the negro on the score of humanity, and who are strong in their abolition notions. Let me ask, then, what effect has all this on slavery itself? Do not gentlemen see, that, if the slaveholder can in this way rid himself of his broken-down negroes, and of the troublesome free colored population, that you give value, and interest, and energy to the institution of slavery? Do you

not increase the value of the healthy slave to his owner? To leave the question open, and to give him a chance of sending off the worthless negroes, gives additional value to the slaves which are left behind; and thus, while you are seeking to ameliorate the condition of the slave, you are only riveting his chains tenfold faster. It is giving the slave owner an advantage which, no other course of policy could possibly give to him. It is, in fact, almost doubling the value of the slave who can work, because he is getting rid of the expense of maintaining those that yield him no profit. [Cries of "Hear! hear!" and "That's true."]

Well, what other considerations are there? I leave all this fulsome talk about the Anglo-Saxon race and its institutions; and whether I would agree with a government that recognized the right to hold these people in slavery or not, I will not now discuss. I do not believe, however, that many men who denounce slavery now, would have acted much differently if they had had a share in the making of the Constitution of the United States.

When I have heard these outpourings upon the members of this Convention who support this Constitution of the United States, and the bitter denunciations of that instrument itself, I cannot but ask those gentlemen: "What would you have done, if you had been there?" and "what a pity it is for the cause of humanity that you were not there." I am not certain, however, that they would have bettered it much if they had been there.

I am, then, opposed to the immigration of negroes into this State, because it would greatly tend to the interest of the slave owner and tend to rivet still faster the chains which bind the negro; and I am still further opposed to their coming here, because their presence will inevitably create disquiet amongst us. Let gentlemen look around and see what is being done. Let them look even at my own county, and witness the meetings which are there being held, and the treasonable speeches and resolutions which are being made and passed—more treasonable, perhaps, than were ever made and passed with impunity in any country—denouncing the action of Congress in what they call this "nigger catching law." I say nothing about it, right or wrong; but I ask if it is good policy to encourage a population to come into our State which creates such a state of feeling, and which divides and unsettles public sentiment in such a manner? Is it good policy, I ask, to encourage a population whose existence amongst us causes such dissention? I do not know whether it would be inhuman or not; but if this state of feeling is to be the result—if we are to be divided, one against another, and our brightest prospects of the future blasted by the introduction amongst us of these beings—I would say—and I say it in all sincerity, and without any hard feelings towards them—that

it would be better to kill them off at once, if there is no other way to get rid of them. We have not come to that point yet with the blacks, but we know how the Puritans did with the Indians, who were infinitely more magnanimous and less impudent than this colored race. Are we, then, to encourage a population which has produced and will continue to produce this state of feeling amongst us? Supposing men to be honest in their sympathies; supposing it be true that they have cultivated this one idea—this one feeling of "humanity"—until it has become, as it were, a disease of the mind, and that they can see nothing else, and hear nothing else, and feel nothing else, and talk of nothing else, and even dream of nothing else, but the oppression and cruelty perpetrated upon this poor, down-trodden, black race. Supposing all this to be perfectly honest, are we to give way to this monomania, to our own ruin and ultimate degradation? I hope not. I know that there are a great many men who make their living by that sort of thing—who go round the country exciting people's sympathies, and telling how much they have suffered for the cause of humanity. They know well the impressibility of the human heart, and the tender spots in human character; and they tell their stories about being ducked in a pond, and tarred and feathered, and "rode upon a rail," [laughter] and all that kind of thing, by which they make the people open both their hearts and their purses. Still, all this could not induce me to act with inhumanity towards the black race. On the contrary, my object is to act towards them with all humanity; and I shall be prepared, on all occasions, to show to these men who profess to monopolize all the humanity of the country, that my views will result in more humanity to the black race than theirs. Why, sir, if they have the feelings of men at all, I say it is inhuman to keep them in the continued presence of their superiors. It is inhuman to keep continually before their eyes their degraded condition. No spirit can ever rise up and be respectable and respected under such circumstances. Now, sir, what are we to do with them? Why, the population that come here from the slave States I would roll back again, every one of them—free and slave—until the masters themselves would get so tired of them that they would run away from them themselves. Sir, I have no hesitation in saying, that, if there had been no new territory acquired since the original thirteen States formed a confederacy, the master would long ago have run away from the slave. That is the only process to which I look for our own protection. Send them all back. Increase the number to be supported by the master, and thus diminish his profits upon their labor. This will do more towards the ultimate abolition of slavery than, perhaps, anything else; for no man would be troubled with slaves unless they can be made profitable.

What are we to do then? I think that we should not act rightly were we to leave this entirely as a subject of future legislation—conferring, merely, by an organic law, all the necessary powers upon the General Assembly to act in the premises. In my section of country, it is true, these poor blacks live a hard and exposed life. They have a thousand hardships to endure, of which the white man knows nothing. Many of them have run away from their masters, and are in constant dread of being apprehended and taken back to slavery. It is impossible, sir, for men to live long under such a state of feeling, and hence we find that, in proportion to their numbers, they die three times as fast as white men. If, then, you arrest the tide of immigration, I do not know that any inconvenience would be experienced by permitting those of them who are now amongst us, to end their days here. Then, as to the few of them who have acquired property,—why, there is not one in a hundred of them that has got property. They are all as poor as Lazarus, and I think we might safely leave the question of property to the future action of the Legislature, and to popular sentiment; and that, I think, would work out the thing in the right way, and without great inhumanity to the black race. But, I would cut off their immigration now; I would not suffer one to be added to the number of those who are already amongst us. I know that, make what laws you will, there are still fanatics who will encourage them to come. They are constantly representing to the negro the danger of going to Liberia—constantly working up his feelings, so as to make him hostile to the white race. Yes, sir, there are fanatics who make it a matter of boast that they can thwart the laws of the whites, and provide means for the immigration of this population. No matter how stringent you make penal enactments, they will still endeavor to bring them into the State, and then they will look you in the face and say, "It is too bad to punish these poor creatures, merely because they are seeking their liberty;" and they calculate upon that as a powerful lever by which to act upon the popular mind.

I will tell you what I would do in such case. If they persisted in coming and remaining amongst us, I would give to the Legislature the power to prescribe by law, that they should be sold or apprenticed, till the amount of their wages should be sufficient to send them to Liberia. That would put a stop to these agitations. Whenever the arm of the law would sanction such a course, this kind of benevolence would soon go down. It would soon wear out, whenever it should be brought to bear upon the pockets of the agitators. I have seen men of this class, who would get more applause in one night, for a bitter denunciatory speech against the "dough-faces," than a decent man would get for everything he might say in all his life; and is not this good pay and pay enough, if it were all

these men would ever get? But it would not be right, perhaps, to cherish any feeling of envy against these men.

I am opposed to negro immigration, because it weakens our strength, by dividing us amongst ourselves, where nothing but kindness and benevolence should exist. It divides communities which otherwise would be united and happy—and upon what account? Because one man has more kind feeling toward the blacks than another—because one man thinks his neighbor more tardy in his efforts to deliver the blacks from slavery, and to infold them in the arms of his benevolence.

Allow me to say, sir, that, although I have had a high degree of respect for the benevolence of this feeling,—and these men, in the beginning, I have not much confidence in them now, since their benevolence has become a business. I do not say this in the way of ridicule at all, but I want to show the world how I regard these men; amongst whom I am obliged to class the individual who represents my district in the Congress of the United States. Not long ago, he was published in the city of Boston as solemnly asseverating, in the name of God, and in the presence of angels, (of course,) that he would take delight in tramping that infamous law, (the fugitive slave bill,) under his feet. His speech might have been very good rhetoric, but was it right? I ask this question of all his benevolent and kind-hearted friends and neighbors. What was the necessity that brought forth that law? I am not going to discuss the subject; I am going to leave the question to the decision of common sense and common honesty. For myself, I go so far as to say that I know of nothing which that law requires, so far as masters are concerned, which it was not our duty to yield to them before it was passed. The masters had the consent of the Convention which formed the Federal Government, that they should hold their slaves—that they might recognize them as property; and, if their slaves escaped from service, and come into the free States, it was agreed that the masters should have the right to pursue them, and take them back. This was one of the considerations in that national compact, which has contributed to make us a happy and united people, and which enabled us to triumph in the grandest struggle for independence which the world ever saw.

But, as to this matter, it is in opposition to a higher law; it is contrary to the law of God, to admit the negro race amongst us. I am opposed to such a thing, because it is against the dictates of humanity. I am opposed to it, because it is the product of a fanaticism with which I have no sympathy, and which I can never speak of in any terms of respect. However I may commiserate the condition of the blacks, or however well I may think of the elementary principles which have been wrested and forced into the support of this fanaticism; yet, when I see those

men put on the harness, and go into the fight against all men, who do not happen to entertain the same feelings and views with themselves—

The PRESIDENT. The Chair is obliged to remind the gentleman that his half-hour is out. [Cries of "go on," "go on,"]

Mr. RARIDEN. Well, sir, I move to strike out the last clause of the resolution.

The PRESIDENT. The question is upon the adoption of instructions.

Mr. RARIDEN. Then I move to amend the instructions.

A VOICE. Does the half-hour rule take effect to-day?

The PRESIDENT. So the Chair is informed by the Secretary.

A DELEGATE (to Mr. Rariden). And you are the first martyr. [A laugh.]

Several VOICES. Go on, go on.

Mr. BORDEN. I would inquire of the Chair, whether the rule may not be suspended?

The PRESIDENT read the rule.

Mr. RARIDEN. I will move this amendment—

The PRESIDENT. The gentleman's time is out, and he must stop, unless the Convention will change the rule. The question is on the amendment to the instructions proposed by the gentleman from Vanderburgh.

Mr. HOWE. If the Convention will permit me, I will proceed. I have already spoken once upon this question, and I do not know but that it is trespassing upon the patience of the House to offer to speak again. [Cries of "go on."] It is my design, in what I have to say, to confine myself to what I regard as a Constitutional barrier against the validity of this section.

The debate, sir, has assumed a very wide range, since this question has been agitated here, and the discussion seems to me, really, to have very little to do with the merits of the question.

Although I coincide cheerfully, in many respects, with the opinions of the gentleman from Wayne, (Mr. Rariden,) yet I must say that the question whether the abolitionists, with reference to their political course, are actuated by good or bad motives, or whether their opinions and sentiments have had a good or bad effect, can have but very little weight upon my mind; and, as I think, also, these questions can have but a very remote relation to the merits of the question now before us.

And I confess myself surprised at the statements of some other gentlemen, getting so far aside from the Constitutional and legal merits of the question.

The gentleman from Tippecanoe, (Mr. Pettit,) in the course of a short speech which he made the other day, alluded to an analogy which strikes me with very little force. He affirmed that where one race of people came in conflict with another, as it is impossible for

them to remain together upon terms of equality, the stronger will always oppress and overcome, and eventually exterminate, the weaker, and that this principle is right and according to the law of God. What the laws of God are, in this matter, cannot be known, nor is it material that we should know. It behooves us to do right and live conscientiously toward God and toward men; and this is especially incumbent upon us, who understand the force of moral obligations. The gentleman's allusion, unfortunately, has no analogy to the question before the Convention. He alluded to the overthrow of the ancient Canaanites. All that can be made out of this fact is, that this conquest was brought about by the command of God for a particular and special purpose. There is, however, an analogy in some sort, which is to be found in the history of modern times, and which the gentleman did not refer to. I allude to the condition of the unfortunate Irish people in the times of Cromwell. It has been said that if the Protector had lived, the Irish would have been exterminated, and the Anglo-Saxon race transplanted upon their Island. This was a leading policy with the Protector; and that furnishes a slight parallel to the case now before us; but there is no other instance, in ancient or modern times, which can furnish such a parallel.

The gentleman from Monroe, on my right, (Mr. Foster,) is entitled, I think, to some credit for his firmness and boldness in proposing that we should adopt a measure which is the very next thing to the adoption of slavery itself. It is, that if the blacks immigrate to this State, contrary to law, they should be sold to the highest bidder—something like the act of 1831. I consider the gentleman entitled to much credit for his boldness and independence. For his proposition is, to make a decree at once, and not command our servants of the Legislature to carry it out for us. If we are to do this thing, why not perfect it ourselves—perfect it here?

Other gentlemen seem to think that Constitutions are to embody whatever suits the will of the majority; but if my reflections have been of any service to me, a Constitution is made for the benefit of the minority—to protect the rights of the minority against the aggressions and the power of a triumphant majority. Of what use and validity is a Constitution unless the object be to protect the weak? The object of a Constitution should be to guarantee important rights; but a Constitution, it seems, is to be supreme over everything except the passions and head-strong will of a majority. I, sir, have never imbibed that sentiment, and so long as I continue to be friendly to republican government, I never shall.

I proceed now to the discussion of the legal and constitutional questions involved in this case, and I will say, sir, in advance, that I do not deny the power of any State to pass any

constitutional law for her own preservation. I shall not dispute the power of the State to pass laws against the immigration or importation of paupers from adjoining States, no matter to what nation they may belong. A discussion of these questions is not necessary to the present issue. I know that a good cause may be ruined or materially injured by a bad argument. And if any argument of mine should be of this class, I hope that there will be found candor enough here to separate the good from the bad. The gentleman from Monroe and Brown (Mr. Read) has very ably discussed the other side of the question, and has urged every available ground.

I shall proceed in answer, to lay down certain fundamental principles, which I think cannot be set aside by any ingenuity or specious argumentation.

I lay down these propositions: there are two distinct rights of domicile—social and political. And there are two kinds of political domicile—the *first* is that possessed by the citizen of a State, with all the rights and privileges of a citizen of the United States: and under this head. *Second*, that of a citizen of a State with qualified rights as a citizen of the United States—in other words, a citizen *sub modo*. *Third*, the Constitution of the United States, declaring that the citizens of each State shall have all the privileges and immunities of citizens in the several States—refers to social and not political rights. *Fourth*, this section ought to receive, not a *strict*, but a *liberal* construction. *Fifth*, the right of political domicile includes the right of social domicile. *Sixth*, negroes and mulattoes may acquire political and social rights of domicile in the States of New York and Massachusetts; and may therefore become citizens of those States; and under the Constitution of the United States, cannot be debarred of the privilege of entering into any other State of the Union, or of the right of acquiring and holding property there. *Seventh*, the naturalization laws of the United States confer the right of political domicile as citizens of the United States, and the political capacity, of acquiring a domicile in any of the States for all purposes. *Eighth*, every citizen of a State is so far a citizen of the United States as to owe it allegiance, and is entitled to its protection, and in this sense every citizen of a State is a citizen of the United States.

These are the fundamental principles which I lay down, and which, I think, cannot be moved either by argument or authority. I do not rely upon any peculiar powers of my own to support these principles, but I rely simply upon the force of truth and conclusions which must be recognized and admitted by all.

And, *first*: there are two kinds of domicile; social and political. I believe this admits of no dispute. The civilians refer to only one kind of domicile in the time of the Roman Empire, when the Civil Law attained its perfection, be-

cause all were citizens, without political rights, having merely rights of domicile. This principle was: that after a man has acquired one domicile, he retains it until he has acquired another. But under our Constitutions there are political as well as social rights, and there are social rights without political rights. As a matter of course then, there must be two kinds of domicile, for example: a man who immigrates to this State, and has not been here one year, has a social domicile. When he first enters the State, as a citizen of another State or the United States, the State is bound to protect him in his person, and in his right to acquire and hold property, and the State must deal with the citizens of other States as with her own. That is the nature of social domicile. But when the individual has resided in the State a year, he acquires a political domicile; and the political right of domicile always includes the social right of domicile; although the social right may exist without the political right.

I remark, upon the next proposition, that there are two kinds of citizenship; there is a citizen of a State with all the rights and privileges of a citizen of the United States: and then *secondly*, under this head, there is the right of a citizen of a State with qualified rights as a citizen of the United States. This, I think, can be demonstrated with very little difficulty; and *first*, of the right of domicile as a citizen of the United States. In proof of this proposition, I refer first to the Constitution of the United States:

This Constitution evidently refers to two classes of citizens.

1. Citizens of the United States.
2. Citizens of each State.

Article 2, section 1 requires the President to be a citizen of the United States, or native born.

Article 1 Section 3 requires every Senator to have been a citizen of the United States nine years.

Article 4, Section 2 uses the term "citizens of each State." These expressions, "citizens of the United States," and "citizens of each State," are certainly not convertible terms, otherwise in *such* an instrument but one of them would have been used. Each term was used in a different sense from the other, as I will endeavor to show.

SEC. 2 ART. 4 uses the term citizens of each State, and why? The Constitution of the United States, is an instrument of government, an irrevocable delegation of power and a solemn league between the original States, binding on those States, which have subsequently entered it, like the Achaean or any other league.

The original States had, at the adoption of this league, and ever since have had, the exclusive right of declaring who might be citizens within their own boundaries, with only one exception—

the right of naturalizing aliens—which was conferred on the General Government.

The States contracted this league, as sovereigns, and for the benefit of their respective citizens, without regard to, and without the consideration of, their rights and duties, which might accrue, by the adoption of the Constitution of the United States, and manifestly with full knowledge, that each State with the above exception, possessed and would continue to exercise the exclusive right of declaring who might become its own citizens. It is no answer to say, that the members of the Convention could not have contemplated the contingency of making negroes citizens of a State. The flat answer is that they knew, that the States all and singly retained the power of doing so, whether they should exercise it or not. There are then two kinds of citizenships in the United States, that of citizen of the United States and that of citizen of a State. Let me endeavor further to show their peculiar characteristics.

A citizen of a State in a political sense has the right of voting for all the officers of that State. As for instance, look at the practice existing in the States of New York and Massachusetts, on the subject, as to negroes and mulattoes. But they have not the political capacity of becoming citizens of the United States, in a full and complete sense, or citizens of every other State. To be sure, to a qualified extent and in a social capacity, they may become citizens of every other State, but no further. It is manifest then, that there is and must be a distinction between these species of citizenships, and that is evident not only from the nature and propriety of the difference but from the fact that two kinds of citizenship are, as I have already stated, referred to in the Constitution of the United States.

I now pass, sir, to the consideration of my third proposition in reference to the section declaring that citizens of each State shall be entitled to all privileges and immunities of citizens in the several States, which is that this section is entitled to a liberal and not a strict construction. My proposition, I would say, has reference to the rights of social domicile, and not to political character or privileges. I will refer to some authorities.

I quote from Sergeant's Constitutional law, page 293, where it is said, that Judges Chase and Duval, in a case decided in Maryland in 1797, held that this section meant, that the citizens of all the States should have the peculiar advantage of acquiring and holding real as well as personal property in each State, and that such property should be protected and secured in like manner with the property of citizens of the State where it is located, and that it secures and protects personal rights. Judge Chase was a very able man, and this opinion is entitled to the greater weight from being deliv-

ered so soon after the adoption of the Constitution. Mr. Justice Story—Constitutional law p. 674, § 1800—says, "it is obvious that if the citizens of each State were to be deemed aliens to each other, they could not take or hold real estate, or other privileges except as other aliens. The intention of this clause was to confer on them, if one may so say, a general citizenship; and to communicate all the privileges and immunities which the citizens of the State would be entitled to under like circumstances."

He refers to the cases of *Crawford vs. Corryell*, 4th Wash. Cir. R. 371, and *Livingston vs. Van Ingen*, 9 John R. 507.

This section then cannot refer to political rights. It manifestly does not mean that a citizen of one State may exercise political rights—vote for instance—in every other State. But within its scope it is entitled to a liberal construction, because it is a covenant designed for the protection of all social rights—all the great objects for which human society is desirable—and is in opposition to the exercise of tyranny and arbitrary power. The States contracted as equals, and the construction must be as favorable for one as the other, and liberal for all. Moreover, by the principles of every system of judicature founded on natural equity, the construction of every grant is most strong against him who grants, and how much rather then, when the grant embraces social rights to the constituent parts of members of the same confederacy, and is favorable to civilization and humanity.

This is one of the "*leges legum*," to which the gentleman from Posey (Mr. Owen) referred the other day, in an argument upon another question with so much force.

The States have no right to put their own construction on this clause.

All the writers on public law sustain this position.

The first general maxim of interpretation is, that it is not permitted to interpret what has no need of interpretation. When an act is conceived in clear and precise terms, when the sense is manifest, and leads to nothing absurd, there can be no reason to refuse the sense which a treaty naturally presents. To go elsewhere in search of conjectures in order to restrain or extinguish it, is to endeavor to elude it. If this dangerous method be once admitted, there will be no act which it will not render useless. Let the brightest light shine on all the parts of the piece, let it be expressed in terms the most clear and determinate; all this will be of no use, if it be allowed to search for foreign reasons in order to maintain what can not be found in the sense it naturally presents. The cavilers who dispute the sense of a clear and determinate article, are accustomed to draw their vain subterfuges from the pretended intention and views of the author of

the article Vattel, § 263, p. 303-9. Grotius *de jure belli ac pacis* vol. 2, chapter 16.

Is it necessary, Vattel asks, in an enlightened age, to say that mental reservations cannot be admitted in treaties? Every interpretation, he says, that leads to an absurdity ought to be rejected.

All the things, he states too, which, without too much burthening any one person in particular, are useful and salutary to human society, ought to be reckoned among the favorable things.

The States which have come into the Union since the adoption of the Constitution, have come into the league upon the same footing as did the original thirteen States; and they adopt all the articles of the league.

Mr. READ of Monroe. I would inquire of the gentleman whether there is not an exception where the State is the grantor?

Mr. HOWE. I suppose that the gentleman from Monroe has referenceto the case of the king at common law, and I know that in his case the construction was always in favor of the king who had his chancellors, by whom—except occasionally by the king himself—patents under the great seal issued, and as a necessary principle or very convenient maxim of State, these were always construed most liberally for the king. This league is precisely upon the same footing as a league or covenant between individuals, because the parties are all equals. Here are parties who contract mutually with each other upon certain fixed principles of natural equity, and they are bound by them. I might cite other authorities, but I have not time now to present them. I would merely remark further in this connection that there is the authority of Rawle on Const. ch. 9, p. 87 to 100, in which he holds that a citizen of a State is *ipso facto*, a citizen of the United States; this has nothing to do with the merits of the controversy, but if it has, it strengthens my position. I take the position, sir, that a “citizen of a State” and a “citizen of the United States” are to some extent, but not altogether, convertible terms. If gentlemen think proper to contend that a negro, if he could become in the sense of the Constitution of the United States, a citizen of New York, must thereby become a citizen of the United States with full rights, I have no objection, although the fact is he is only such under disabilities; but every negro, native born and free, is in a still more general sense a citizen of the United States; but I will refer to this again hereafter.

There is another proposition in regard to the political domicil in a State—that it includes the social domicil. This proposition, however, I will not consider, as its truth necessarily follows from what has been said.

I pass now to the sixth proposition, that negroes and mulattoes who acquire a political and social domicil in New York and Massachusetts

have the right as individuals, to pass our boundaries and purchase, and hold real estate, and cannot be debarred from coming into, or going out of the State. The point cannot be disputed, that the States of New York and Massachusetts, may admit negroes, and mulattoes, and Indians if they please, to the rights of citizenship and so far as the gift of this right is concerned, they are to all intents independent and sovereign. In this principle there is established the right of saying who of their native-born citizens, and under what restrictions, shall be entitled to all political rights.

The negro and mulatto are entitled to those rights in these States, and consequently may acquire real estate and a social domicil there, as all citizens may here. It follows then sir, that the negro who has secured a political domicil in New York and Massachusetts has the right to come into this State and acquire, and enjoy property in it.

The gentleman from Monroe and Brown, brought forward as an authority the case of an information against Prudence Crandall, a colored woman, for teaching black children in Connecticut, where it was held by Chief Justice Dagget, that negroes are not citizens within the meaning of this clause in the Constitution of the U. States. But what of this? This decision—if it has any application—simply means that a negro is not presumptively a citizen, that is a citizen of another State with political rights, and as a free negro is in general not entitled to political privileges. I shall not discuss the merits of the decision, because it has no important bearing on the merits of my propositions. Chancellor Kent, with better reason takes different ground, and sums up the discussion of this clause with the opinion, that a negro who has been manumitted, or discharged, or born free, is a citizen, that is a citizen of the United States, under disabilities. He evidently refers to negroes, who are free, but have not acquired any political rights. William Jay, Esq., in a treatise on the character of the American colonization and anti-slavery societies maintains substantially the same doctrine.

This is undoubtedly the weight of authority and reason. But I have only proposed to prove that a citizen of any State, whether black, white, or indian, who enjoys the political as well as social rights appertaining to that character, is entitled to the social rights of a citizen in any other State—the enjoyment of liberty, the acquisition of and complete dominion over property, subject only to the inherent and eminent right of the State.

I have seen proper to undertake to show the truth of this proposition only, because it is directly sustained by many authorities, and so far as I know is contradicted by none, and is moreover fortified by many sound reasons. Definitions of words, although entitled to no great consideration in political questions, have some

weight in the scale. Webster in his folio dictionary says that the term "citizen" means "in the United States, a person, native or naturalized, who has the privilege of exercising the elective franchise, or the qualifications, which enable him to vote for rulers, and to purchase and hold real estate." Richardson's definition is broader than this, but is not applicable here, as he applies the term only to its original import—an inhabitant or citizen of a city.

Webster's definition—assuming as before that the exercise of any political right is requisite to the character of a citizen in this country—is correct, as can be readily shown. No other elements than those he states are requisite, for if otherwise, a naturalized foreigner could not be a citizen. If, for instance, to make a citizen it were requisite that he should have the political capacity to hold *all* offices, the foreigner could not become a citizen, because he can never be a President of the United States. A foreigner then is a citizen of the United States under political disabilities. There is no other element in the political character of a citizen, and therefore Webster's definition is correct. The negro then in New York or Massachusetts who has acquired property and is in possession of all the rights included in the above definition, is a *citizen* of one of those States, unless we deny to those States the power of conferring upon him that character. He is then to all intents a *citizen*. Is he such in the meaning of the clause in the Constitution of the United States already referred to? Two, and only two, reasons can be urged to sustain a negative answer:

1. That all free blacks and mulattoes were intended to be excluded.

2. That the term "citizen of a State" means, or rather necessarily includes "citizens of the United States."

No evidence or sound argument can be adduced to sustain the first of these propositions. It amounts to nothing to urge that negroes and indians are distinct races, and not as *classes* or *races* looked upon as citizens; for granting this proposition, a State may still admit *individuals* of the race, or those portions of it within its own borders, to the rights of citizenship, and this manifest right must have been known to the Convention which framed the Constitution of the United States, although negroes, as a *class*, might be beyond the pale of citizenship.

The second proposition can have no force unless it be also conceded—assuming the proposition as true—that a negro can not be a citizen of the United States. Every person in this country must be either alien, citizen, or slave. Every citizen of a State who has a right to vote for officers of the General Government, owes it allegiance, and is therefore entitled to its protection, and this right and duty are correlative. If these elements do not, in a general sense, constitute citizenship of the United States, pray what do?

A free negro in New York then, who is a voter there, is a citizen of the United States, in a general sense; but whether he be so or not, is not a material question. In a general sense all persons not slaves, born within our territory, are citizens of a State, and of the United States. I have only undertaken, however, to establish that a citizen of New York, or Massachusetts, black or white, invested with full political rights in one of those States, is entitled to all the privileges and immunities of our own citizens within our own boundaries.

I have thus endeavored to show that there are two kinds of domicile—social, and political; that there are two kinds of political domicile:

1st. That of citizens of the United States in the highest sense.

2d. That of citizens of a State.

3d. That the section referred to in the Constitution of the United States refers to social rights only.

4th. That this section is entitled to a liberal construction; and lastly, that a negro or mulatto, who has acquired a political domicile in New York or Massachusetts, may of right pass our boundaries, and purchase and hold property among us. It was a fixed rule with the civililians, and may be considered as incorporated into our law, that a man who has acquired one domicile retains it until he has acquired a new one. How, then without violating a solemn league, to which she is a party can this State meet a citizen of New York or Massachusetts, at her boundaries, declare his stepping over them a crime, confiscate his property, and incarcerate, or otherwise punish him for the exercise of a guaranteed right.

Suppose the citizen of Massachusetts to have acquired a tract of land within your boundaries, by what process will you obtain a lawful seizin and title to it? But it is argued that the State may keep out paupers and all classes of dangerous and disorderly persons. The use of so bad an argument betrays the infirmity of the cause. Granting, for argument's sake, that you may exclude paupers and any disorderly or dangerous persons, who would endanger the public tranquility, you have no right to exclude the *individuals* of a whole *class*, merely because they belong to a *class*. This principle, if carried to its legitimate consequences, would enable you to exclude all the citizens of a particular State, and thus to set at defiance all law and right. Oppression and tyranny, move with regular steps. The most important element in the consideration of this question is that which regards our own liberties, and that of our posterity. A sacred regard to Constitutional rights in the smallest particular, is the only safeguard against the assaults of faction and revolutionary violence. He who violates the rights of others, violates his own. I have been somewhat desultory, perhaps confused, in my arguments, owing to a want of time, and perhaps a

confusion of ideas; but I believe the very nature of the case before us is such that any man in arguing it even adversely to me, must bring forward authorities and admit facts, which will palpably condemn him. In other words it is impossible to argue against so clear a truth in such a manner as not to be involved in contradictions and absurdities.

Let it be remembered that all I have undertaken to show is, that a free negro of Massachusetts or New York, who is in a political as well as social sense, a citizen of one of those States, is entitled, within our boundaries, to those very privileges which, by this section, we deny. This proposition is susceptible of almost mathematical demonstration, whether I have succeeded in proving it or not. I leave to others to sustain the proposition, the truth of which ought to be clear to every rational and unprejudiced mind, that the term "citizens of each State" means as well those who have not political franchises as those who have, and includes all who have a social domicile within its boundaries, owe it allegiance, and are entitled to its protection.

In some States a property qualification is requisite to the enjoyment of the elective franchise.

Can you exclude from the benefits of this league the man who had not the requisite qualifications as a voter in Virginia or South Carolina? Can you exclude women and young men under twenty-one years of age? Thus absurdity follows absurdity, and tyranny and injustice follow close after, from the propositions of gentlemen of the majority. They are demonstrating the truth of John Randolph's remark, that "no Constitution ever accomplished the object of its founders." They are aiding, unconsciously, to bring about the truth of that awful prophecy made more than sixty years ago by our enemies, that slavery would ultimately dismember our country and prostrate our liberties. They are fulfilling the unhappy truth, that written Constitutions are only made to be violated, and in the hands of a triumphant majority are but as the flaxen cord in the hands of a giant.

We ourselves have assembled in Convention without regard to the provisions of that Constitution which gave birth to the State, under, as I believe, a mistaken idea of right, the just inference from that heresy broached some years since, that a majority, without regard to Constitutions, can alter them at pleasure. The next legitimate step is to dispense with Constitutions, and to issue edicts and send forth codes fresh from conventions of the people.

Parties in this country now occupy false positions. There are really but two parties; the radical and the conservative. Now is the time for every true friend of liberty to take the conservative side. It is a certain truth, that the same spirit which would prompt the friends of liberty in Russia, to aid every measure which

would bring about liberal principles, or constitutional government in a despotism, will induce them, in a democracy, to stand in the way of despotic majorities, and the tyranny of unbridled popular license. But no more of this.

Have gentlemen, indeed, reflected on the manifest *impropriety* of placing such a section in our Constitution, aside from all other considerations? If such a measure is demanded by the people, and it is to be brought about in defiance of all other considerations, leave it for the General Assembly, and, if it pass there, it can be quietly repealed, after the popular blast shall have blown by; but, if you place it in your Constitution, there it will remain long after the supposed exigency which called it forth, shall have passed away—a monument of infamy more durable than brass to the character of the State?

But, by what rule will you determine the character of a part of the persons who come within the provisions of the clause? It is a vexed question in some States, and in others it is only ascertained by judicial decision or positive law, what degree of taint, by negro blood, shall make a mulatto. But you have left this matter undetermined. Complete your decree, and leave none of its details unfinished.

But the whole subject is surrounded with difficulties. The measure is certainly tyrannical—probably impracticable; and if the latter, you will reap all the fruits of tyranny, which will be your only reward.

MR. OWEN. I would inquire of the Chair whether the resolution adopted on Saturday, restricting members to half an hour in debate, is not a simple resolution of the Convention, which may be rescinded at any time by a vote of the majority?

THE PRESIDENT. If the gentleman from Posey wishes the rule rescinded, he can give one day's previous notice of a motion to that effect.

MR. READ of Monroe. As the gentleman from Lagrange is in the midst of a legal argument, as able as it is interesting, might not the rule be suspended in order to allow him to finish?

Objection being made, the motion was not pressed.

MR. FARROW then rose and addressed the Convention, but his first remarks were in so low a tone as to be inaudible at the reporter's desk. When heard, he was understood to speak as follows:

I have hitherto, Mr. President, been a silent member of this body, and I have no desire to make any lengthened remarks at this time, but will offer a few thoughts, and trust that the reporter will write out a good speech for me.

[The reports of the debates of this Convention are published literally as they are taken down from the lips of the speaker, with but slight verbal alterations. The sentiments are

never, and the words very rarely, changed. No speeches are ever "written out" by the reporters, except from the words of the speaker as used on the floor.—REPORTER.]

I understand the gentleman who preceded me to ask, whether it will be policy, or the best policy, for the people of Indiana to suffer the further immigration of free people of color into the State? Connected with this there is a proposition not to interfere with the rights and privileges of the blacks now in the State.

It does seem to me, Mr. President, that those who are willing to allow the immigration of the negroes of other States within our borders, take upon themselves a greater sympathy for a population out of the State, a class that has not yet arrived within our borders, than is called for. They appear to be disposed to invite them to come over, rather than otherwise. I confess, sir, that I can see no good reason for the exercise of so much sympathy over a population over which we have no control. I do not, for my part, desire to hold this language to the negroes of other States; I do not desire to say to them, "we have a sympathy for you that is so strong that when you fail to receive the sympathies of your masters, when you fail to receive kindness, support, and protection from those who have had your labor, come to us, come to Indiana, and place yourselves under our control and protection." I can see no necessity or good reason for extending our sympathies so far in this direction.

Many of the people of this State immigrated here from the slave States, and have friends there who would like also to remove to this State and live by us. They say to us, we like the soil and climate of your State, and we should like to come and live by you; now, if you will allow us to bring our property in negroes with us, if you will permit us to bring our slaves with us to cut down the forests and improve the tracts of wild land we should be disposed to buy, we will gladly come, and we cannot come without this privilege. But, sir, we say to our friends: no, you cannot come and bring your slaves with you. We have sympathy for the negroes of your State, for whom we will make provision, and will protect in certain rights and privileges, but cannot extend that sympathy to you. Now I cannot account for this. I think that humanity, of which so much has been said, requires of us that we should protect ourselves; that we should take care of ourselves first, and that we should have an eye directed to a class of population already among us, who demand our sympathies far more than those who are beyond the State.

Sir, I pity the negro; I pity the race. They are degraded, and it is not altogether their fault that they are so. And because they are degraded, I am not disposed to aid in passing measures that are stringent and that will oppress them still more. Therefore, I am dis-

posed to support the proposition to prohibit, by a provision in the new Constitution, those not among us now, those residing in other States, from hereafter immigrating into and taking up their residence in this State. I am disposed to shut down the gate upon them. At the same time, I would exercise all the benevolence and mercy possible towards those already here.

I am astonished to hear gentlemen discuss the provisions of the Constitution of the United States as they do. I make no pretensions to legal learning, nor should I presume to endeavor to make a Constitutional argument; but, sir, I must say, that I do not think the Constitution of the United States will bear the construction put upon it by gentlemen who have taken ground against this section of the report of the committee on the bill of rights. The construction that I allude to is upon that clause which speaks of the rights of citizens of one State going into another State. What is the general government except the powers delegated by the several States, and delegated for specific purposes? Read the preamble to the Constitution of the United States and you will see what those specific purposes were:

"We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."

We see that the first purpose was to form a more perfect union; and the second object to be secured by this Constitution was to secure domestic tranquility; another, to promote the general welfare, &c.; and the last is, "to secure the blessings of liberty to ourselves and our posterity."

In delegating powers to the general government, it will be remembered that that government has also granted certain powers to the States. Among the powers which the States have relinquished, is the right to coin money, to make war, or conclude peace as individual States, all these rights have been relinquished by the several States to the general government. The general government, acting upon this power thus conferred, say, "no State shall coin money, levy war, or conclude a peace." The Constitution also says, in the second section of the fourth article: "The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States." What other construction can be given to that section than this: if a citizen of Kentucky, if he comes here and submits himself to the laws of Indiana, or if a citizen of this State should go to Kentucky, the Indianian would be entitled to all the privileges and rights of the citizen of Kentucky, and so would it be with the Kentuckian coming into this State. But I be-

lieve the gentleman who has just taken his seat is mistaken in thinking his construction will apply to the extent he supposes. He might, with much plausibility, claim that a black man in New York who is a citizen there, who has risen so high in the social and political scale as to exercise the right of suffrage there, may come here and acquire and possess property, yet my friend would not go so far as to say that the negro could vote here with us. But suppose for a moment, that the entire rights and privileges of citizenship could be extended to him here in Indiana, I would like to see him go to Kentucky, Virginia, or North Carolina, and attempt to vote with the people there, under this construction of the second section of the fourth article of the Constitution!

Mr. HOWE. I did not assume that the negro who was a citizen and entitled to vote under the laws of Massachusetts and New York, would be entitled to exercise the right of suffrage in another State.

Mr. FARROW. I now understand his position.

It does seem to me that the principle of self defence and self protection requires that we should look first to our own interests and the interests of our posterity in regard to the free immigration of the negroes of other States. The principle of humanity dictates that we should deal as kindly as possible with those already in the State, and I should be opposed to depriving them of any of the few rights they now enjoy. For that reason I shall deem it right to vote for a proposition to prohibit the future immigrations of blacks in the State, while at the same time I could not support a proposition to deprive those now here of their rights of property and their privileges as inhabitants of the State.

Believing this would be right, I shall vote accordingly, when the question comes upon the adoption of the section. I have no doubt of the Constitutional right to prohibit the immigration of negroes and mulattoes, and I am satisfied that it is both right and a matter of policy.

Mr. KINDLEY. Mr. PRESIDENT: In a large body, constituted as this is, of men chosen from every part of the State, it is to be expected that, not only every interest will be represented here, but that every opinion will have its advocate. If I, on one subject, entertain opinions at variance with those of a majority, I do nothing more than is done, by every other gentleman here, on some other subject, and I claim, for myself, what I cheerfully concede to him, even the most ultra, the freedom of debate. The half hour rule, under which we act, must not only cut speeches short, but, under the terrorism of the rule, the attention is necessarily drawn away from the subject, to the dial plate over the President's chair, so it will not only be impossible to notice the subject in all its bearings, but it will be difficult to preserve that logical connec-

tion, which all are desirous should characterize their speeches.

Before entering on the discussion of the main question, I propose to notice some of the positions of the gentlemen on the other side.

The gentleman from Monroe (Mr. Foster) tells us, that our State will be overrun by free negroes, unless we adopt a constitutional provision like the one provided in the section under consideration. As that gentleman refutes his own positions much more successful than I can, I shall read from his own speeches, so that the force of his argument may be manifest. In his printed speech of last Tuesday, I find the following:

"Now, speaking of the organic law of Kentucky, what would be the effect of that law were it enforced? Our State would be inundated with free negroes and mulattoes. The State of Illinois has forbidden them to enter her borders. Ohio will unquestionably do the same; and, unless we protect ourselves, the result will be, that Indiana will be the great refuge of all the worthless, the halt, the maimed, and the blind negroes that are to be found in the Southern States."

This, sir, is his strong position. He argues, that inasmuch as Illinois has forbidden the free negroes to come within her limits, therefore Indiana will become the receptacle of all the free negroes and mulattoes of the country. Or, in the forcible language of the gentleman from Clark—"become the Liberia of the Southern States."

Now mark how he refutes his own position:

"If the matter is left in that way, you may rely upon it, that there never will be any law passed at all upon the subject, and this section reported by the committee, will be as nugatory in its operations as the law of the State of Illinois. The chairman of that committee, I believe, told me that this section was an exact transcript of the section provided in the Constitution of the State of Illinois. That provision of the Constitution was referred to the people, and they rejected it. And why did they reject it? Simply because it was not sufficiently stringent."

Here we have an admission that this law is inoperative in Illinois. With one breath, he tells us that Indiana will be inundated with negroes, *because* they are driven out of Illinois; with the next, that the Constitution of that State is inoperative on the subject. But I am not done with him. In another place, he calls the negroes "*vermin*," "*descendants of monkeys*," &c. Hear him:

"Indeed, sir, I have seen the negro race in such low stages of development, with such inferior mental and physical organizations, that I have been tempted to give credence to the theory of Lord Monbodo, that man originated from a monkey [laughter]. I do not know but that man is the highest order of a species originating

from the Ape, and connected therewith by a regular gradation of races. It may not generally be known that a celebrated philosopher, Professor Agassiz, has promulgated a theory, which, though new, is attracting much attention. He thinks that the negro does not belong to the same race with ourselves. Be that as it may, I do know from Holy Writ that the negro race, whether they belong to the same race we do or to a higher order of animals, are under the ban of Heaven—a curse that was pronounced upon them by Almighty God still remains upon them. The race was cursed, and it was declared that they should be the servants of servants. That curse has never been removed. We cannot, therefore, be charged with inhumanity in preventing our State from being overrun with these vermin—for I say they are vermin, and I know it."

Without commenting on this singular language, I will read a part of the closing remarks of the same speech:

"There is no scheme of philanthropy, no project better adapted to the amelioration of the condition of the African race, than African colonization. In Liberia they can enjoy equal rights and privileges, and live free from the depressing influences of a national prejudice. The climate and the soil is that naturally adapted to them by nature, and there they may yet rise to be a powerful and a civilized nation."

What a glorious nation of Baboons!

What exalted conceptions of civilization; I think I can follow out the soaring imagination of the gentleman, and contemplate this brilliant republic of Monkeys, in the full tide of successful operation, as an independent and certainly as a *distinct* government!

When these human monkeys get to be the great and powerful nation he has described, I sincerely trust they may not be vindictive and revengeful enough to invade our weaker country, and visit upon us a terrible, and, what they may consider, a just retribution for the outrages committed upon their ancestors!

Mr. President, I have quoted from this singular speech, not so much for the purpose of refuting his argument, (for the simple statement of it refutes itself,) as to establish this other position, *that error is always inconsistent.*

The constitutionality of this provision is too important to be overlooked.

Article 4, section 2, of the Constitution of the U. S., says:

"The citizens of each State shall be entitled to all the rights and privileges of the citizens of the several States."

Sir, I am no constitutional lawyer. I claim no peculiar ability to discuss constitutional questions. But I do profess to know something of the meaning of my mother tongue; and here the meaning is so unmistakably plain, that "the way-faring man, tho' but a fool, may understand."

This article of the Constitution, is a repetition of a similar provision, in the original articles of confederation. In article 4 of the articles of confederation, we find this language:

"The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice, excepted, shall be entitled to all the privileges and immunities of free citizens in the several States, and the people of each State shall have free ingress and egress, to and from any other State."

Although the articles of confederation are not binding upon us now, the fact of this provision occurring in both instruments, gives it an authority which gentlemen should not disregard. So sacred has this right of citizenship been regarded, that on two different times, have the patriots and statesmen, representing the several States of this confederacy, declared the principle, and as often, have several States ratified their decisions.

If the argument of the gentlemen on the other side prove anything, it is that the article in the Constitution of the U. S., to which I have alluded, means *nothing at all*. That, if it is competent for this State to exclude the colored citizens of other States, it may also exclude Dutchmen, Quakers, Methodists, or any other class of people.

What is a citizen? The gentleman from Posey, in his able speech on the rights of woman, in which he characterizes her according to the theory of our law, as a slave, calls her, and I think justly, a citizen. "One half the citizens of the State," says he, alluding to the women.

But, if you say they must possess all the rights and privileges of the white people, to constitute them citizens, go to Massachusetts, and you will find them in precisely this situation. Are they not citizens? But, gentlemen say they are not citizens of the U. S. That is not the reading of the Constitution. It says, the citizens of each *State*.

But, if you say they must have all the privileges of citizens of the U. S., in order to constitute them citizens; then where are you. I mean no disrespect to the honorable chairman of this committee. But there are certain privileges, to which, under our Constitution, he cannot aspire. He cannot be President of the U. S.; yet does any gentleman say that he is not a citizen of Indiana? or, that the State of Kentucky or Ohio could exclude him from coming within her borders? Yet, sir, he possesses no privileges, under our Constitution and laws, which a negro in Massachusetts does not possess under hers.

But, suppose you succeed in engraving into the amended Constitution the provisions of this section, and that a colored citizen of Massachusetts, or New York, should come to reside in Indiana, which shall prevail; the spirit and letter

of the Constitution of the U. S., or our own organic law, plainly contravening both?

In the States of Massachusetts and New York, the negro is a citizen, and so recognized by their laws. How then, under the Constitution of the nation, can you prohibit him, from coming here and acquiring and holding property? Let the question go before our own courts, and if I had a legal reputation to hazard, I should not fear to stake it, on the result.

When South Carolina kidnapped and imprisoned the colored seamen of Massachusetts, this latter State claiming the protection of her citizens under the Constitution, sent Hon. Samuel Hoar, to contest the legality of the proceedings, in the courts of South Carolina. But, sir, South Carolina, not daring to submit the question to their own tribunals, appealed to the higher law mentioned by the gentleman from Clark, (Mr. Gibson,) raised a mob and drove the agent of Massachusetts, from her borders.

I cannot follow out this view of the subject as I should like to have done. I can only ask the serious attention of gentlemen to this view of the subject.

Gentlemen exclaim, "why, sir, will you put us on a level with the darkey?" That is not proposed. But, sir, we may degrade ourselves by perpetrating this unconstitutional outrage on a poor, and defenceless class.

Every act of justice, elevates the true dignity of its author. Every act of injustice, degrades it. This proposition applies as well to sovereign States, as to individuals, and Indiana furnishes no exception to the principle.

Sir, in old Massachusetts, that land consecrated in the memories of the world, for its achievements in every field of glorious enterprise; that land at once the child and mother of civilization; that land where human rights are best defined and best protected; the negro possesses every privilege, civil, political, and religious, with the white man. And if gentlemen, by a simple act of justice, should degrade themselves to the level of such men as Webster, Everett, Winthrop, Mann, Adams, and Channing, I hope the sympathies of mankind will be a sufficient compensation! There, sir, the negro helps to make the law which protects him. But did it ever occur to gentlemen, that for this triumph of knowledge over ignorance, of reason over prejudice, of right over wrong, that this old Commonwealth is degraded? The civilized world has passed a very different verdict.

But if gentlemen fear being degraded to an equality with the negro, are they not satisfied with the vast distance which the law already places between him and them? While the law protects neither his life nor his property, while it refuses to educate his children, or to guard the honor of his wife, or his daughter, can not gentlemen find enough in this circum-

stance, seeing the negro, in the eye of the law so far below them, to satisfy every feeling of self gratulation? "Righteousness exalteth a nation; but sin is a reproach to any people." I repeat again we must have an eye to justice. We must watch, that in our efforts to degrade lower and lower the negro race, we do not degrade ourselves.

One of the ministers of the Gospel in this place, proposed that there should be a clause in the amended Constitution, recognizing the existence of a God. If I had known at the time that it would be seriously proposed to legislate out of existence all his divine attributes, and to set at nought his providences, I should have received the proposition with more favor.

Sir, there is a certain old book, which children read at their Sabbath Schools, and some old fashioned matrons, around their firesides, which teaches some antiquated notions concerning our duties to our fellow beings. And as we learn many things in our childhood, which, if remembered, might be of use to us, I hope to be excused for recurring to this book. If gentlemen should doubt the correctness of my quotations, and should wish to see the book itself, they may find it in the hands of some of the children of this city as they attend Sabbath School. The children may also be of use to them, in finding the passage, to which I allude. The book is entitled *The Bible*, and the passage runs in this wise: "In all things, whatsoever ye would that men should do unto you, do ye even so unto them."

Now, sir, it strikes me, that there is a great deal of sense in this; that it is one of those self-evident truths, which require no argument to prove. But is any man so mad as to believe, if his case were reversed, he would desire the treatment he is about to inflict? Sir, if I did not see it seriously proposed to be carried into effect, I could not believe myself in earnest, in trying to convince gentlemen that it is wrong to rob, wrong to enslave.

But gentlemen tell us it is policy; it is self-defence. Policy! That varying shadow of a shade! That *ignis-fatuus* light that has so often lighted nations to their ruin! Has the word so much magic about it, as to silence every sense of justice, and lead us, spell bound, wherever prejudice, caprice, or self-interest, shall dictate?

It was the policy of Julius Cesar that overthrew the liberties of Rome. And if America follows in the wake, some future Volney, meditating among the "ruins of a mighty empire," will exclaim: "Her sentiments of justice, were subservient to her notions of policy, and she fell."

Sir, I have no confidence in any policy, but that of immutable justice. Every departure from this is shortsightedness. It may subserve a temporary purpose, but certain disaster will follow. History, that "philosophy which teaches by example," furnishes a continual ex-

emphlication of this truth, that *justice is the true policy of nations*. Sir, shall we pander to a paltry prejudice, a temporary excitement, produced by a nugatory law of a sister State, when we know the sober second thought of the people will spurn the idea? We are framing *organic law*. The next year cannot undo what we do now amiss. Let us not then, inflict a lasting stain on the character of the State, nor insult its sense of justice.

Self defence! against whom? The old and worn out slave! You already have a law against paupers; enforce it. This you may legally, constitutionally, and with justice, do. But in doing a justifiable act for one purpose, you should not violate the laws of God, and the rights of man, for another.

If it was infamous in Kentucky, to pass the law which has been alluded to with such bitter epithets, if it is a "stain upon her otherwise fair character," as was asserted by the gentleman from Clark, (Mr. Gibson,) are we quite sure that we are entirely excusable in affirming the report of the committee? Kentucky is a slave State; and it is said that free negroes are dangerous to the stability of her "peculiar institution." She had some shadow of a pretext for her law. To this, it may be added, the constant practice of wrong necessarily blunts the sense of justice. Having always had slaves in her midst, she cannot appreciate the value of liberty, nor feel sufficiently the unmitigated sin of reducing a freeman into slavery. But, sir, we of Indiana, can plead none of these excuses. The reason for it does not exist. It is a cold calculating policy, unsupported by a single argument. A policy which, if adopted, will bring down upon this Convention, an odium, which no time can remove, no ablution wash away.

One gentleman urges, in defense, the dignity of labor. The gentleman from Wayne (Mr. Rariden) thinks every man is a natural tyrant. Though I cannot consent to the proposition in such general terms, I know, and regret, that it applies to individual cases. But, sir, that spirit which would crush the negro because he is *degraded*, would oppress the degraded white man. Hence we should legislate for man as *man*, not as a *caste*. Sir, it is the *condition* of labor that is aimed at, and is ultimately to be degraded by the tendency of this doctrine.

Mr. President, I was passing the street the other evening, and heard a moaning which I supposed proceeded from some drunken man, and did not stop to inquire. Feeling some misgivings about it, however, I returned, and found a man in severe convulsions of *delirium tremens*. If, sir, instead of carrying that man into the house and procuring him medical aid, I had carried him further from the street, where his complaints could not be heard, I should have acted on a parity with the provisions you propose to insert in the Constitution.

Instead of encouraging the man to rise, you lay heavier burdens upon him, and then insult him because he is degraded.

Sir, I may be an enthusiast. As "a candid confession is said to be good for the soul," I believe that I am. I know, indeed, that I love what I believe to be right, and to follow out my own convictions. And no circumstances, over which I have control, can make me shrink from the discharge of my duty.

I have no hope that anything that I have said, or can say, will change the action of this Convention on a subject, on which, a majority, seem already determined. If gentlemen are determined that the provisions of this report shall be the law of the land, let them not shuffle the responsibility. The Convention of Illinois enjoined the next succeeding Legislature, to enact such a law as is here proposed. But that Legislature, believing it more commendable to obey God, than the State Constitution, refused to enact the law. The result is, that the clause, like our own Black Laws, is not only a disgrace on the book, but a dead letter in fact. I repeat, then, if gentlemen have the courage, in contravention of the Constitution of the nation, to say to the citizens of other States, they shall not settle in this State, and to those here, that they shall be divested of the property which they have acquired according to law, say it here, and on their own responsibility. Sir, this very dodging of the question, this shrinking from the responsibility, evinces some misgivings on this subject; that somewhere in the corners of the soul, there is a feeling, which even politics cannot entirely smother, which tells them all is not right.

Sir, I love my native State, and am willing to make any sacrifice for her advancement, but I cannot perpetrate this wrong. I beg gentlemen to deliberate well before they act.

In the name of that justice you trample under foot; in the name of the Constitution you have sworn to defend; in the name of the people of Indiana, whose morals you corrupt; in the name of the State, whose reputation you tarnish; in the name of humanity, whose sentiments you outrage; in the name of the living God, in whose presence you act, I protest against this barbarism, this flagrant violation of the rights of man.

Mr. NAVE. Mr. PRESIDENT: It might be supposed that the speech of the gentleman who has just taken his seat, would deter any member of the Convention from taking the floor to sustain the proposition of the section in debate. The gentleman (Mr. Kinley) has denounced all who support this proposition as recreant to the principles of justice and humanity; but, sir, denunciation proves nothing—it satisfies no one of the error of the position assumed by those who are denounced.

Mr. President, I take the position, in debating this question, that this Convention has the con-

stitutional power to prevent, by a provision in the organic law of the State, the immigration of negroes and mulattoes into and from settling within the State, and also to prevent them from acquiring or possessing real estate.

I also take the ground that it is consistent with right and justice, and that it is a good policy for the blacks as well as the whites, that such a constitutional provision should be adopted.

I have listened attentively and patiently to the gentleman from Lagrange, (Mr. Howe,) in his argument to prove that it is inconsistent with the provision of the Constitution of the United States to adopt the proposition of this section, and I will say that he has exhibited a signal ability in the advocacy of his position, and considerable skill in the construction of his argument. But, in my opinion, he has placed the constitutional question upon a false issue. He has endeavored to sustain his position by the strength of abstract questions, settled by the courts of the United States.

At the time of the formation of the Constitution of the United States, the framers of that instrument were surrounded by circumstances which it would be well for us to take into consideration. When the framers spoke of the rights of citizens of one State migrating to another, they unquestionably meant something. In the fourth article and second section of the Constitution, we find the following:

"The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

Did our fathers, when they penned this language, mean that it should bear any construction by which the slaves—for, sir, all the negroes of this country, with hardly an exception, were at that time slaves, and recognized only as slaves—did they mean that the slaves of the several States should have the privileges of a citizen of the United States? I take the position that they meant no such thing; and the gentleman from Lagrange is mistaken in his construction of that language. But how do I arrive at that conclusion? By reading this clause of the second section of the first article:

"Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons."

What was meant by the term "including those bound to service for a term of years?" It refers to foreigners, who, in order to emigrate to this country, had sold themselves or bound themselves to service for a term of years to pay their passage across the Atlantic. When they speak of "three-fifths of all other persons" not enumerated by name in the Constitution, they

meant the negroes of the country, who were then slaves. This shows that negroes were not then considered as citizens of this confederacy, for any purposes whatever, but were only regarded as slaves.

The gentleman from Lagrange quotes the opinion of courts, that any person who has the rights of citizenship in one State, has the rights and privileges of citizens of any other State. Let us examine the reasoning of this *dictum*. If the laws of Massachusetts confer upon a negro all the rights and immunities of a citizen of that commonwealth, that negro has the right, under the Constitution of the United States, to remove to Indiana and here possess and enjoy all the rights of a citizen of this State. He can give testimony here, he can vote here—

Mr. HOWE. The gentleman misunderstands my position. I say that any person recognized as a citizen, with all the rights and privileges thereunto appertaining, by the Constitution and laws of New York, is entitled to the rights of *social domicil* in this or any other State of the Union.

Mr. NAVE. Well, then, if a negro lives in the State of Massachusetts, where he enjoys all the rights of any other citizen of the commonwealth, except the single one of being eligible to the office of Governor of the State, he has the right to remove to Indiana, to acquire and possess property, and that any law of ours, in contravention of that right, is unconstitutional.

Now, I take the ground that we have the constitutional right to interdict negroes and mulattoes from coming into or settling within this State from any other part of the world—from any of the States, whether he is or is not a citizen in those States. And for this reason; it is not denied that we have the constitutional right to exclude the emigration of idiots and paupers into the State; and for the same reason, and on the same ground, we may prohibit the emigration of negroes.

I ask gentlemen, by what process of reasoning they make a citizen out of persons who were not recognized as citizens at the time of the adoption of the federal Constitution? No act of Congress has ever been passed conferring upon negroes or upon Indians the right of citizenship. No States, except those of New York and Massachusetts, have given to free colored persons the rights and privileges of citizens—the right to vote, and to be eligible to public offices. And are we in Indiana to be controlled or affected by the unconstitutional acts of those two States? I call them unconstitutional acts, because, as will be seen by a careful examination of the section I have read, the Constitution of the United States does not recognize negroes, mulattoes, and Indians as citizens, under any circumstances whatever. Because they have gone beyond the intentions and express declarations of the framers of that instrument, to which we all owe allegiance and

strict observance, shall we also transgress on the one hand, or shrink from vindicating our rights, because of the transgression of organic law by other States?

Mr. President, on account of the restriction in debate to half an hour, I cannot carry out this view of the case at the length and with the clearness that I should otherwise endeavor to; but I venture to say that what I have stated is good law, and in conformity with the spirit of the Constitution of the United States.

The gentleman says that a contract is always to be construed most strongly against the contracting party. This may be true as to individuals, but it is not true when applied to the case of a sovereign power; when a government is formed the people surrender certain individual rights which naturally belong to them for the sake of the security and protection afforded by the combined strength of that government. And when the people assembled by their representatives adopt a rule of action in the shape of a Constitution, that Constitution is not to be construed most strongly against the government.

Mr. President, for one moment let us regard this question in a different light, and in regard to its policy and practicability. I have no desire farther to oppress or punish the negroes of this country—they are most unfortunate, morally, intellectually, socially, and physically. On the contrary, there is no man on this floor or among the people who will go farther than I will in practicable efforts for the amelioration of their condition, and the bettering of their prospects as a class, for the future. I do most sincerely commiserate their position of political and social degradation in the States of this Union, surrounded by a more powerful, as well as a more intellectual, race; and it is for that very reason that I would aid in efforts to colonize them, where they could all be equal, one negro with another, and enjoy all the rights and privileges of a distinct community. I do not believe it is possible for them ever to be a happy or a prosperous class in this country; and believing this, I am in favor of colonizing them in the Republic of Liberia, on the shores of their native continent, where the climate and the soil are by nature adapted to them, and where, withdrawn from the presence of a superior race who would naturally absorb their rights and privileges, they may grow up into a civilized and prosperous nation, respected, it may be, among the nations of the earth. And there is no man of equal means who would pay more for the purpose of thus colonizing the free negroes of this country than myself. But when I look to the interests of Indiana, future and present, I see and am convinced that it is not well for him to stay among us. A large and respectable portion of the people of this State emigrated from the slave States, and for the express purpose of getting rid of the cursing and blighting influences

of slavery. They have contributed to the growth of the State, and are among the most useful of its citizens, and now I ask, if after they have moved out from a slave State to rid themselves of the influences and results of slavery, if this State, by allowing the unchecked emigration of all the worn out, aged, and pauper slaves of the Southern States, they and we are still to suffer all the real evils of slavery with none of its benefits. The slaveholders of Kentucky get the services of the negro during youth and manhood, and when he is worked out and worn down so that he is only an object of sympathy instead of profit, they drive him from the State, and we oppose no barriers—no obstacles to his coming here. It is only an act of self-protection to exclude negro emigration and to say to Kentucky and other slaveholding States, "if you will keep slaves, if you are convinced that it is a blessing and a good, keep all its blessings and all its benefits—if you will work a slave in youth and manhood, support him when worn out in your service, take care of him—we will not in this free State." And yet, sir, for advocating this act of self-defense, we are denounced as uncharitable and inhuman, and called upon in the name of God and humanity to abandon every proposition of this kind.

I admire the sympathy of the gentleman who has just spoken, (Mr. Kinley,) but they will do neither him or the negroes any good—they will serve no valuable purpose—will have no practical effect in benefitting the class whose degraded and unfortunate condition he can deplore no more deeply than myself. As was well remarked by the gentleman from Tippecanoe, (Mr. Pettit,) the two races can never live together; they must either be separated in the best and most humane manner possible, or one must be annihilated. This, sir, is the plain state of the question and there is no avoiding it. The Anglo-Saxon race will never live on terms of equality with another race in the domestic and political relations of life. Look, sir, at the history of the indian tribes of this country in proof of my position. They are gradually being exterminated from the face of the earth; another century and they will be known only in history. The same thing will be true of the negroes if they and their professed friends contend for their remaining among the whites. Therefore, as a real friend to the negro, I desire to see him colonized in his native country for his own good as well as of the people of this country.

I am satisfied that it is a bad policy for this State to encourage the immigration of negroes and mulattoes within her borders. Here we are standing passively by when Kentucky is driving her worn out negroes by hundreds across the Ohio to fill our jails and poor houses, and to become a permanent burden upon our people. The Constitution which has just been adopted in Kentucky provides that any emancipated slave, or any free negro coming into the State

and remaining thirty days, shall be guilty of a misdemeanor, and liable to confinement in the State's Prison. Shall Kentucky openly pass such a law—shall South Carolina notify us that she will send Northward her surplus population of negroes—shall the whole South be allowed to import their worn out slaves to our State with impunity, with no act of self-protection on our part? For my own part, I believe that I am justified in seeking to protect myself and my posterity against this growing and alarming evil by the support of the proposition before the Convention. I will do no act of oppression to those now in the State; I will not interfere with their rights of property, or any of the privileges they now possess; my only object is to prevent the future emigration into the State of this class. I believe that their interest is to migrate to Liberia, but I will never endeavor to drive them out of the State by a Constitutional provision.

Mr. HELM. I have no intention, Mr. President, to enter at any length upon the discussion of this question, but it is a subject in which the people which I have the honor to represent upon this floor, take a great interest, and a question, the decision of which they look for with much anxiety, and for this reason I feel called upon to express my views and what I believe to be their sentiments upon a subject which is regarded as so important. The section in debate proposes that:

"The General Assembly at its first session under the amended Constitution, shall pass laws prohibiting negroes and mulattoes from coming into or settling in this State; and prohibiting any negro or mulatto from purchasing or otherwise acquiring real estate hereafter."

This, sir, is a proposition which interests every voter of our common State. It deeply concerns the whites as well as the blacks who are within our borders. The section prohibits the emigration of the latter class into the State, and that feature of the provision interests negroes and mulattoes in other States who may desire to come into this.

I conceive, sir, that the section before us embodies a compound question, a portion of which, if the question were separated into two distinct propositions, I should be willing to support, but there is another portion to which I am directly and most decidedly opposed. We acted this morning upon a compound question, or upon two propositions embodied in one section. In giving my vote this forenoon upon the adoption of the following section of the bill of rights:

"No man's services shall be demanded without just compensation."

So far, Mr. President, I was willing to support the section. But it goes on to provide that:

"No man's property shall be taken by law without just compensation first assessed by a jury of freeholders, and tendered, together with

the expense of the proceeding, to the owner by the person to be benefited. But such tender if rejected, shall not bar the right of appeal."

Now, sir, to this latter part I could not give my vote, and the question being taken upon both propositions, I was obliged to vote against the whole section, while I should have been glad to support the first clause. And I voted against some other sections because, while I was in favor of one principle contained in them, there was another that I could not support, and being obliged to vote upon the sections as a whole, I voted against them; and, sir, if this section comes up on its final passage in such a shape that I shall be obliged to vote upon it as a whole, to vote upon the two distinct propositions which I contend it contains, I shall most assuredly vote against the whole section. But if it is divided, I shall support one proposition and vote against the other.

I am in favor of the first clause of this section:

The General Assembly at its first session under the amended Constitution shall pass laws prohibiting negroes and mulattoes from coming into or settling in this State.

So far, sir, I am in favor of the section and shall vote for it. I conceive that we have the right to provide in the new Constitution that the Legislature shall pass laws prohibiting negroes and mulattoes from immigrating into the State, and that by so doing we are not materially infringing upon their rights or violating any important principle. Perhaps the slave States have adopted such severe measures to force their free negroes and emancipated slaves to emigrate to the free States, that we are justified in passing stringent laws to prevent the influx of thousands of their slaves, emancipated because they are old and worthless and only a public burthen.

I shall therefore, vote for the first part of this section. But there is another clause which follows, which I cannot and will not vote for, it reads:

"And (the General Assembly shall pass laws) prohibiting any negro or mulatto from purchasing or otherwise acquiring real estate hereafter."

Mr. President, this I conceive to be nothing more nor less than a species of robbery upon one portion of the people of this State; they may be and they doubtless are a very small portion, and a weak and inferior class, but notwithstanding this they are human beings, they have settled in this State in contravention of no laws or Constitutional prohibition, and they have rights in which they should be protected. They have, I know, but few rights and fewer privileges, but I can never lend my aid, however much I may be opposed to the future immigration of the surplus black population of the slave holding States, into this State, and I will never lend it to deprive them of those few rights now allowed them. They have settled in this State under the laws thereof, they have acquired property, many of them are industrious and in-

telligent, and have purchased land and built themselves permanent homes. This latter clause of the section proposes ultimately to rob them of this property, or perhaps as I should say, to use a milder term and one more agreeable to the friends of this section, it proposes to "divest" them of the result of years of honest labor.

As I remarked when I rose, I have no disposition to consume time in a lengthy discussion, I desired only to state my position and briefly to give the reasons which actuate me to the course which I deem it my duty, under all the circumstances, to pursue.

I wish my position to be distinctly understood. I am in favor of the first portion of the section which I have read, and directly opposed to the latter clause, which I have separated from the rest of the section.

If I am called upon to vote for the section as it now stands, as a whole, I shall record my vote against it, but if a vote can be taken on the first clause separately, I shall vote for it and against the other.

Mr. CHAPMAN. Mr. President, I shall not attempt to discuss this matter at all with relation to its legal bearings or its Constitutional points: I shall leave that to other gentlemen who are learned in the law, who are thoroughly conversant with those features of the case, and are able to argue it with reference to those features.

It is upon the question as a practical matter alone, that I propose to say a few words, before the question is taken upon the amendment of the gentleman from Gibson (Mr. Hall) and I shall endeavor not to trespass against the rule of limitations adopted on Saturday.

I am aware, sir, that the section as it came originally from the committee wears a harsh appearance. As one member of that committee, I was willing it should do so. I was not only willing, but desirous, to present a practical remedy for the evil complained of.

I am sorry, that the force and effect of the committee's proposition, was more than half neutralized by the amendment, proposed by the honorable gentleman from Floyd, (Mr. Thornton,) and adopted without hesitation by the Convention.

I honor to the fullest extent, the motives by which that gentleman was influenced. But you could not fail to perceive from his remarks in favor of his amendment, that he was governed by views, *partial* in stead of general, in their application. Hence flows nearly all the evils of legislation, and of all government.

I am fully sensible, sir, of the great difficulty of establishing general rules, without exception as to their application to individuals under all circumstances. In this, I apprehend, consists the chief difficulty in the formation of Constitutional laws.

But it must be plain to every reflecting man, that if we adopt a Constitutional rule at all, it must be general, unexceptional, and unequivocal, to be effective.

The section, as amended upon the motion of the gentleman from Floyd, (Mr. Thornton,) is partial. It creates *classes* among negroes, and is therefore wrong. No man would think of applying a similar rule to white men. There can be no good reason for adopting a different rule in relation to blacks, from that which would be applicable to any class of whites or indians, under similar circumstances.

I know that strong objections have been made to the latter clause of the section, but sir, allow me to say, without it, I would not give a "pinch of snuff" for the provision. It has been charged by the opponents of this latter clause, that it proposes nothing more nor less than to steal the property of the negroes now resident in the State. The whole section under consideration reads:

"The General Assembly at its first session under the amended Constitution, shall pass laws prohibiting negroes and mulattoes from coming into or settling in the State."

And now sir, comes the latter clause which was characterized by the gentleman who proposed the first amendment as a proposition to steal the property of negroes.

"And prohibiting any negro or mulatto from purchasing or otherwise acquiring real estate hereafter."

It must be obvious that it does not touch negroes now in the State and owning property. It does not affect that property until after the death of the negro possessing it at the time of the adoption of this new Constitution. And here allow me to read the proposition which I at first offered in Committee for adoption in place of the section reported from that committee. It is as follows:

Resolved, That the following provisions, in substance and effect, shall be incorporated in the Constitution of this State, to wit:

"From and after one year after the ratification of this Constitution by the people, no negro shall ever be privileged to own or possess real estate in this State, either in his own right, or in trust for any other person whatever.

"In all cases in which negroes are now the owners or possessors of real estate, upon their decease, the real estate of which they may have been the owners or possessors shall escheat to and become vested in the State: Provided, however, that the General Assembly shall make provision by law, for the equitable payment of the cash value of the same in money, (to be fixed by impartial appraisers,) to any negro claiming real estate rights under existing laws or to their heirs or legal representatives."

I may be permitted to say that upon that proposition the latter part of the reported section was based.

I consider that the whole virtue of the section before the Convention, lies in the latter clause in the simple sentence prohibiting negroes from acquiring or possessing real estate in Indiana. Suppose we should reject this latter clause and adopt only the first part of the section, what laws will the Legislature pass to prohibit the emigration of negroes into the State? Will gentlemen take the proposition of the gentleman from Monroe, (Mr. Foster) arrest and imprison them, or sell them out for a limited period of time, the proceeds to be donated to the colonization society in trust for the purpose of assisting them to colonize in Liberia? [laughter] Such a law would be more unpopular and a thousand times more difficult to enforce than the fugitive slave law.

There is, Mr. President, but one way to prevent the emigration into the State of this class of persons, and that is, to divest them of the right of acquiring and possessing property—no other effective scheme can be devised. So long as you tolerate the enjoyment of those rights by negroes, so long will the emigration of blacks from other States continue, because those who enjoy the rights of citizenship here, will afford protection and facilities to those who desire to come, and you cannot keep them out. And I repeat that the only practical and effective course to pursue in the matter is to divest the negro population of this State, individually of all social and political rights; then, and not till then, will those here see that it is to their interest to leave, and others be prevented from coming.

I was willing, as one member of the committee, in this matter to give "the hot end of the poker," to the Convention. I am sick—sick to death of seeing men run for office—every office in the State, from Constable to Congressman, upon the backs of negroes. [Great laughter.] I believe candidates should have some other qualifications to recommend them for Congress—some other mode of getting there than by kicking "a nigger" all the way to Washington! [renewed merriment.]

I have another idea relative to the policy of taking the responsibility of settling this question ourselves. By so doing I believe we shall make the pressure so strong upon Congress, that they will have no alternative, but will be forced to the settlement of the whole question of the negro population. Talk about *Liberia*, with regard to the settlement of this question! It is utterly impracticable; in the first place, for the very good reason that negroes won't go there. I would not go there myself if I was a black. But we may force the General Government to adopt a policy of colonizing them on some part of this continent, and thereby gradually relieve the States from the evil of the two races living or attempting to live together. The same policy may be pursued toward the African race in this country, that was

pursued towards the Indians. That is the only practical scheme of colonization—the only effectual way to rid ourselves of this evil. Liberia has been tried for thirty years and with what result? You may get up a line of naval steamships from New York to the African coast at an expense, perhaps, of ten millions of dollars annually, with a view to transport the colored people of this country to Liberia, at the national expense, and yet the negroes will never go there. Personally I should not be injured by the establishment of such a line of national steamers, for I have a son in the Navy, who may be prepared to officer one of those national ships, but upon principle I deprecate the whole scheme as monstrously expensive and utterly ineffective for the accomplishment of the end proposed.

But, sir, a more practicable plan, in my opinion, would be to procure and give them a country of their own, perhaps in the neighborhood of Mexico, where they will be superior to, and will aid in civilizing the Mexicans. [A laugh.] Yucatan might be a favorable part of the continent in which to locate them. This will be comparatively humane, and would prove to be far superior to the almost exploded notion of African colonization.

Mr. President, I am speaking with all the trepidation and haste natural to a man who in his last moments, momentarily expects to fall under the speakers hammer, announcing the expiration of "the half hour;" but I will make one other remark, and take my seat, although, there are many things pressing for utterance—many points to which I should be glad to call attention.

As to this sympathy which is manifest for the negroes of this State. On the one hand, I cannot share in this excessive but false sympathy of some, while on the other, I do not admire the habit which many politicians feel bound to cultivate, of going out of their way—in public, to kick "a nigger." [Laughter.] I neither wish to sleep with a negro, nor to cowhide him continually—but I wish to treat him as a white man ought to treat a negro. [Applause.]

I am convinced that the only practical plan of ridding the State of a population of negroes and mulattoes is presented in the section before the Convention. The adoption of the first clause of that section alone, or any thing short of its last provision, is only mischief making, and so you will find by experiment.

Gentlemen who make such an outcry against the clause of the section proposing, in the future, to divest the negroes in Indiana, of the right to acquire and possess property and who have expressed their sympathy in such strong terms upon this floor, are inconsistent in the course they are pursuing. Negroes are already divested of other rights of which nothing is said—they are taxed without being represented, they are deprived of the right to testify in

our courts, they have extended to them none of the privileges and advantages of public schools, they cannot exercise the elective franchise, they are ineligible to the pettiest office; we deprive them now, of all rights but the one of acquiring and possessing property.

If, upon the principle of the gentleman from Tippecanoe (Mr. Pettit) we should grant them some rights, why not grant them *all*?

MR. PETTIT. It is for our own protection, it is for our own interest, to allow them the rights of which I spoke.

MR. CHAPMAN. Would they not, by a parity of reasoning, have more cause to protect us against injury, if we granted them all the rights and privileges of citizens?

MR. President, in conclusion, let me say that if the motion to commit this section and pending amendments to a committee, should prevail, I trust that the Convention will re-consider the vote by which the amendment of the gentleman from Floyd (Mr. Thornton), was adopted and by which, I conceive that the virtue of the section was neutralized. That amendment was adopted in great haste, under the influence of a generous, but mistaken notion.

I trust that the Convention will do nothing at all in this matter, or else make the action it proposes, practical and effectual, by instructing the committee to re-insert the words stricken out from the last clause of the section. Let the Legislature, when it comes to the passage of specific laws on the subject, act with all the humanity and generosity towards the unfortunate negro that the magnanimity of a kind hearted people will most assuredly approve of; but, sir, in this matter, let us not dodge responsibility, let us have the virtue and power of the section as originally reported, or let us do nothing at all.

On motion, the Convention adjourned until nine o'clock to-morrow morning.

REMARKS OF MR. GREGG, of Jefferson,

MADE IN CONVENTION NOVEMBER 11, 1850.

The following proposition, reported by the committee on rights and privileges, was before the Convention, to-wit:

"The General Assembly, at its first session under the amended Constitution, shall pass laws prohibiting free negroes and mulattoes from coming into or settling in this State, and prohibiting any negro or mulatto from purchasing or otherwise acquiring real estate hereafter."

MR. GREGG said: I offer the following amendment to the section now under consideration:

"Strike out all after the word "section," and insert—

"That the general, great, and essential principles of liberty and free government may be recognized, and unalterably established: We

DECLARE, That all men are born equally free and independent, and have certain natural, inherent, and unalienable rights: among which are, the enjoying and defending life and liberty, and of acquiring, possessing, and protecting property, and pursuing and obtaining happiness and safety."

MR. President, were I actuated on this occasion by prudential motives, I might, perhaps, be content with giving a silent vote upon the question now before the Convention. Or I might evade the responsibility of my position, by withdrawing to the lobby when the vote should be taken, as certain distinguished Senators have recently done, on a kindred subject in the Congress of the United States. But I desire to shrink from no responsibility upon this or any other subject that may be mooted in this body. Again, sir: were I disposed to pander to the popular prejudices of the day, that I might the more surely advance my own personal and political interests with the people, I might, perhaps, be inclined to fall in with what now appears to be the popular current here, and join in the popular clamor, against the rights and privileges, the peace and the happiness of the poor, oppressed, and down-trodden negro. But, sir, as I have no political aspirations now, and never expect to have, I may afford to brave public opinion in regard to this matter, if perchance it may be so; which, by the way, is very questionable, when the people come to take their sober, second thought upon the subject. Be this, however, as it may, I feel very much inclined at this time to cast aside all personal considerations, and make this question a matter of conscience, and act in the premises according to the honest impulses of the heart. I desire to impugn no man's motives; but upon this subject I would rather be right than politic.

And what do we propose to do? Why, sir, it is proposed by the committee on rights and privileges, of which the honorable gentleman from Posey (Mr. Owen) is chairman:

"That the General Assembly shall, at its first session under the amended Constitution, pass laws prohibiting negroes and mulattoes from coming into or settling in the State, and prohibiting any negro or mulatto from purchasing or otherwise acquiring real estate hereafter."

Now, sir, after such a report as this, emanating from so respectable and intelligent a source, I was prepared to find the chairman of that committee taking still one other step in the great work of radicalism, by striking from our bill of rights that section which declares "that all men are born equally free and independent, and have certain natural, inherent, and unalienable rights: among which are, the enjoying and defending life and liberty, and of acquiring, possessing, and protecting property, and pursuing and obtaining happiness and safety."

Yes, sir, I was prepared for such an innovation as this upon our sacred bill of rights, for I supposed the committee would seek to preserve some degree of consistency, at least, about the matter. Nor was I mistaken, as will be seen by reference to a subsequent report from the same committee, now upon our tables.

And is it possible, Mr. President, that this Convention is prepared to sanction the monstrous doctrine that all men have not the natural and inherent right of defending life and liberty, and of acquiring, possessing, and protecting property? For such we virtually do, if we sanction this innovation, not only upon the Declaration of Independence itself, but upon our good old Constitution, under which we have lived and prospered for so many years.

And why was it necessary to expunge this article from our bill of rights—an article which has stood in the fore-ground of the Constitution ever since we were a State, and which may be found in the Constitution of nearly every State in this Union, even in the slave-holding and slave-breeding Commonwealth of Old Virginia? Why, sir, it was absolutely necessary to expunge this article in order to enable them to incorporate a provision prohibiting persons of color from coming into the State, and prohibiting those already here, many of whom were to the manor born, from purchasing or otherwise acquiring real estate hereafter; the one so utterly repugnant to the other, that the two could not stand together in harmony in the same instrument. Yes, sir, it became necessary to over-ride the great doctrine of human rights, in order to introduce this provision, the like of which, to its full extent, I venture to say, cannot be found in the fundamental law of any civilized and Christian nation under the canopy of Heaven, and I trust in God it may never gain a foot-hold in ours. This doctrine may perhaps find favor in certain localities, and with men entertaining peculiar notions with regard to property. It may, for aught I know, be part and parcel of the social system; but to my mind it is so utterly at war with all the principles of refined and rational liberty, that I will not entertain the proposition for a moment; nor can I believe that it will find favor with a majority of this enlightened, humane, and philanthropic body.

Sir, I hold this to be the true American doctrine, on this subject, that all men, without regard to birth or color, have an inherent right to acquire and enjoy the possession of property, independent of any Constitutional sanction whatever; and that any Constitutional provision or statutory law which we may make, impairing that right, or attempting to do so, would be but a dead letter upon the Statute book. It is one of those rights which no man is called upon to surrender in entering into a state of society. It is one guaranteed to him by the Great Law-giver of the Universe, when he sent

him forth, and commanded him to occupy, to subdue, and to replenish the earth. It is true, sir, the rights of the weak may be trampled upon by the strong; he may be divested of his property by mere brute force; but the principle of immutable justice remains unchanged, and must ultimately vindicate itself. Yes, sir, I hold these truths to be self-evident, that all men, over whom the Constitution of our national government throws the broad mantle of its protection, whether he be Anglo-Saxon or African, whether he be Turk or Christian, whether he be Jew or Gentile, has a certain and indefeasable right to acquire property by all honest and legitimate means, and any attempt on our part to impair or abridge that right, would but subject ourselves to the merited ridicule of an enlightened world.

But suppose, Mr. President, that we had the right, that we had the power thus to immolate and crush to earth the rights and the privileges of the poor, degraded African, whose lot has been cast among us, would it be politic for us to do so? With due deference to the opinion of others, I am constrained to think otherwise.

You take away from any man, whether he be white or black, the power to acquire and possess property, and you destroy that principle which buoys, and animates, and sustains him, through all the busy and conflicting scenes and vicissitudes of life. You remove from him all hope of ever acquiring a little spot of earth that he can call his own, and upon which he can erect his hut, to protect his wife and his little ones from the peltings of the pitiless storm. I say you remove from him this hope which animates and impels him to labor and toil for their sustenance and comfort, and he sinks at once into utter despondency—becomes a perfect drone in society—and his wife and children paupers and pensioners upon public bounty. The necessary result of your policy would be to legislate the colored population among us into pauperism and crime, instead of making of them good and useful members of the community in which they live. For, I undertake to say, sir, that however the curse of the Almighty may be upon the colored man, he may become eminently useful in his proper sphere, if the proper degree of encouragement be given to him. Why, sir, in the city of Madison, where I reside, I know a great many of them, whose sober and industrious habits are worthy of all praise, whose moral characters stand above reproach, whose regard for truth and veracity might well serve as models for others in higher life. They are found actively engaged in the various pursuits of life—acquiring property by honest industry—building churches—erecting school houses, and contributing their mite to sustain many of the benevolent and charitable institutions of the day. And shall we paralyze the efforts of these men to do good? Shall we arrest them in their career of usefulness, by saying to them you shall not ac-

quire property hereafter, nor transmit that which you have now to your children? Sir, whatever others may do, I for one, will never consent to the perpetration of so great an act of injustice towards that weak and proscribed race, now lying at our feet, shorn and powerless, and looking up to us with imploring eyes, for justice and for mercy. In view of the manifest injustice of the project now in contemplation should it be consummated, I could well join in the sentiments of Thomas Jefferson and say, "that I tremble for my country when I reflect that God is just, and that his justice cannot sleep forever."

But, sir, not only are we called upon to divest the poor negro of the right to acquire and hold property, but he is also to be restrained from setting foot upon our soil, under the penalty of incarceration in the penitentiary—for the prohibition without such a penalty would be perfectly nugatory, as we have no power to carry him beyond the limits of our own State, and within the limits and jurisdiction of another.

And what are the reasons assigned for such stringent measures as those proposed by the committee? Why, it is said, that the late Kentucky Convention provided in their Constitution that any free negro or mulatto emigrating to that State, or any slave being emancipated and refusing to leave the State, shall be deemed guilty of a felony and confined in the penitentiary thereof; and that it is necessary for us to adopt like stringent measures as a matter of self-defense, to prevent our State from being flooded with the manumitted and broken down slaves of Kentucky, who would be driven thence to take shelter among us. Now I admit, sir, that this would be a great evil, and greatly to be deprecated; and I would regret to see this class of population multiplying among us, beyond the natural increase, as much as any gentleman upon this floor. But then I hold to the doctrine that two wrongs never make one right. It was wrong in the people of Kentucky to incorporate a provision in their Constitution fraught with so palpable inhumanity and manifest injustice, and it would be equally wrong in us to follow their pernicious example.

Why, sir, what would you think of that man, who, having a faithful old horse, that had served him for many years in raising bread for his family, would now turn him out upon the common to famish and die, because, forsooth, he had become old and unprofitable as a work-horse? You would say of such an one, that he was a man devoid of all the finer feelings of the heart, and was justly entitled to the execration of all his neighbors for his cruelty towards the noble beast. Well, sir, here is a reasoning creature, whom God has made, differing from us mainly in the color of his skin. The vigor of his youth, and the strength of his manhood, have been expended in pampering the pride and cupidity of his master. His toil and his sweat

have been freely dispensed for the benefit of that master and his family—in educating them, and raising them to circumstances of ease and affluence. And now, when his labor is found no longer profitable, and it is feared he may become a charge upon him who has hitherto been the recipient of his services, his manumission papers are made out and tendered to him, and he is mocked with the phantom—ah, sir, with the mere shadow of freedom, without the substance. And what is he required to do? Why, sir, he is told that he must leave the State where, perhaps, he was born, and to which he is attached by many endearing associations. He must tear himself away from a wife who is still in bondage—from the graves of his children—from all that is near and dear to him. For although his skin be dark, he has a heart that feels as others feel. He has tender affections that cluster around his heart, to rend which is painful to him as the pangs of death itself. But from all these tender associations he must fly—for the avenger is behind him, and the walls of the penitentiary are already frowning upon him.

Why, sir, this act of banishment on the part of Kentucky of the poor negro, is the very refinement of cruelty, and I blush for the honor of our noble sister, that she should have done so. Aye, sir, it is a foul blot upon the bright escutcheon of her otherwise untarnished fame, that time itself will scarcely ever obliterate. Would to Heaven, that the Recording Angel who keeps cognizance of our national sins, would drop a tear of pity upon that foul record of her infamy, and blot it out forever.

And are we prepared to follow in the footsteps of Kentucky in regard to this matter, by adopting the report of the committee now under consideration? For one, sir, I can say that the proposition is too repugnant to all my notions of humanity, to receive the sanction of my vote, and I shall be constrained to go against it now and always.

But there is another view of this question to which I will advert for a moment, and that is the unconstitutionality of the measure. Now, sir, I am not prepared to affirm, nor will I undertake to prove, that this section which I propose shall be stricken out, is in direct violation of the Constitution of the United States—but such at least is my opinion. And when I say that I will not undertake to prove this proposition, I mean not to say that it is unsusceptible of proof, but that I only distrust my own ability to do that justice to the subject which its great importance demands, and that I prefer to leave the discussion of this particular point with the gentlemen of the legal profession in this body. The elucidation of such nice questions of Constitutional law, are altogether without the range of my ability, and I would not dare to elaborate them, or attempt to do so, in the presence of so many learned judges and gentlemen of the bar.

But this much I may be permitted to say, without presumption, that to my mind the proposition is very clear, that if free negroes and mulattoes are citizens of the State—and if citizens of the State, are they not necessarily citizens of the United States? I say, sir, if they are esteemed citizens in the eye of the law, then this inhibitory clause must of necessity contravene the spirit, if not the very letter of the supreme fundamental law of the land.

And was not this question virtually settled in the case of the admission of Missouri into the Union, in 1821, at least so far as it is competent for Congress to settle any mere question of Constitutional law? It seems, sir, that the Convention which formed the Constitution of Missouri, had incorporated a provision similar to the one now proposed to be embodied in ours, prohibiting free negroes the right of immigration. But I will read the clause itself, for the better understanding of the Convention. I hold in my hand the Revised Statutes of Missouri, and I take this occasion to thank my honorable colleague (Mr. Bright) for bringing these documents into the Convention, hoping he may make a good use of them when he comes to argue the question on the other side, should he conceive it his duty to do so. The fourth clause of the twenty-sixth section of the third article of the Constitution of Missouri, reads as follows:

"It shall be the duty of the General Assembly, as soon as may be, to pass such laws as may be necessary, to prevent free negroes and mulattoes from coming to, and settling in this State, under any pretext whatsoever."

With such a clause as this in their Constitution, the people of Missouri applied to the Congress of the United States for admission into the Union. And what was the action of that body in regard to this particular question? And again I am indebted to the courtesy of my colleague for authorities on this subject. I hold in my hand the twentieth volume of Niles' Weekly Register, which I believe is recognised as good authority by all intelligent politicians, if not by constitutional conventions and courts of judicature. Under date of the 26th of February, 1821, I find the following Congressional proceedings reported, with reference to the admission of Missouri into the Union, and with special reference to this particular clause in her Constitution.

"Mr. Clay, from the joint committee appointed on the Missouri subject, reported the following resolution:

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Missouri shall be admitted into this Union on an equal footing with the original States in all respects whatever, upon the fundamental condition, that the fourth clause of the twenty-sixth section, of the third article of the Constitution, submitted on the

part of said State to Congress, shall never be construed to authorise the passage of any law, and that no law shall be passed in conformity thereto, by which any citizen of either of the States of this Union shall be excluded from the enjoyment of any of the privileges and immunities to which such citizen is entitled under the Constitution of the United States: *Provided*, That the Legislature of the said State, by a solemn public act, shall declare the assent of the said State to the said fundamental condition, and shall transmit to the President of the United States, on or before the fourth Monday in November next, an authentic copy of said act; upon receipt whereof the President, by proclamation, shall announce the fact; whereupon, and without any further proceeding on the part of Congress, the admission of the said State into this Union shall be considered as complete.

"The said resolution was twice read, and ordered to lie on the table, on motion of Mr. Clay, with the avowed intention of calling for its consideration in the course of this day."

The question afterwards coming up for consideration,

"Mr. Clay briefly explained the views of the committee, and the considerations that induced them to report the resolution. He considered this resolution as being the same in effect as that which had been previously reported by the former committee of thirteen members; and stated that the committee on the part of the Senate was unanimous, and that on the part of this House nearly so, in favor of this resolution.

"Mr. Allen of Massachusetts next obtained the floor, and delivered his sentiments with much earnestness. * * * He concluded by moving to amend the resolution by striking out the word *citizen* wherever it occurs in the resolution as above presented, and insert in lieu thereof, *free negro or mulatto*.

"Mr. R. Moore of Pennsylvania then required the *previous question*. Ninety-five members having risen to second this motion, and the yeas and nays having been required thereon by Mr. Randolph, there were,

For the previous question, - - 109

Against, - - - - - 50

"The main question was then accordingly put, viz.: *Shall the resolution be engrossed and read the third time?* and decided in the affirmative. Yeas 86, Nays 82.

"The final question was then taken on the resolution, and decided in the affirmative. Yeas 87, Nays 81."

Now, Mr. President, in these proceedings of Congress which I have just read, it is very clear to my mind, that they intended to affirm two things. First, that free negroes and mulattoes were citizens within the meaning of the second section of the fourth article of the Constitution of the United States, which is substantially re-

cited in the resolution reported by Mr. Clay, just read. And secondly, that being citizens of the United States, the Legislature of Missouri had no power or rightful authority to prohibit them from emigrating to, and settling within her jurisdiction. I say, sir, they intended to affirm the truth of these propositions, or I cannot understand the force and effect of the English language. The people of Missouri so understand it, for the General Assembly of that State, from that day to this, a period of near thirty years, have never dared to place upon their statute book, any law in conformity with that provision of their Constitution. Indeed it was made a *sine qua non* in her admission into the Union, that no such law should ever be enacted. And she was required, and did signify her assent to this fundamental condition, by a solemn act of her Legislature, before she was permitted to come in as one of the great family of States.

Yes, sir, the State of Missouri did assent to this fundamental condition imposed by Congress, before she was admitted, and here is the solemn public act of her Legislature, a copy of which was transmitted to President Monroe:

"Be it enacted and declared, by the General Assembly of the State of Missouri, and it is hereby solemnly and publicly enacted and declared, That this State has assented and does assent, that the fourth clause of the twenty-sixth section, of the third article of the Constitution of this State, shall never be construed to authorise the passage of any law, and that no law shall be passed in conformity thereto, by which any citizen of either of the United States shall be excluded from the enjoyment of any of the privileges and immunities, to which such citizens are entitled, under the Constitution of the United States.*"

I remarked, sir, that the Legislature of Missouri had never presumed to pass a law in compliance with that provision of her Constitution, prohibiting the immigration of free negroes to the State. It is true, however, that they went as far as they dared to go towards accomplishing this object. They passed a law providing that no free negro or mulatto should be permitted to reside within the State, without first obtaining a license permitting him to do so. And they further provided that such license should not be granted to any free negro or mulatto except in certain specified cases; and among these cases of exception were such free negroes and mulattoes as might produce a certificate of citizenship from some one of the United States.

Now, sir, under the operation of this statute of Missouri, I should like to know how they

would go about excluding any free negro or mulatto from acquiring a right of domicile in that State, provided he carried with him the proper vouchers. Suppose, for example, that one of the very respectable colored barbers of this city should take it into his head to remove to St. Louis, and should procure from the Clerk of the Circuit Court of Marion county, a certificate, setting forth that he was a free citizen of Indiana, and as such had demeaned himself as a good, orderly, and peaceable citizen; and he should carry this certificate with him to Missouri, and present it to the proper officer, demanding a license or permit to settle there. In such a case, I apprehend that the constituted authorities of Missouri would be bound to recognize him as a citizen of the United States, and as such entitled to remain within her sovereign jurisdiction, provided he gave the necessary security for his future good behavior.

But what are we to understand by the term "*citizen*," as used in the Constitution of the United States? And here, as I have already intimated, I am not going to hunt up legal authorities on this subject, preferring to leave this with the lawyers of this Convention.

Old Hezekiah Niles, who was confessedly one of the clearest-headed writers of his day, if not the most impartial and unprejudiced editor our country has ever known, says, in the volume from which I have quoted, that "free blacks and mulattoes are *citizens* in all the States east of the State of Delaware, as well as in the States North-West of the river Ohio; and they cannot be dispossessed of their right to locate themselves where they please."

Now, this opinion of Mr. Niles, I am aware, is not law; but it is common sense, and law is said to be founded upon the principles of common sense, or in other words, that law is the perfection of human reason.

But what says Chancellor Kent upon this subject?

He says that "*citizens*, under our Constitutions and laws, mean free inhabitants, born within the United States, or naturalized under the law of Congress. If a slave, born in the United States, be manumitted, or otherwise lawfully discharged from bondage; or if a black man be born within the United States, and born free he becomes a *citizen*, but under such disabilities as the laws of the States, respectively, may deem it expedient to prescribe to free persons of color." Enough, however, on this point.

But, sir, there is another clause in the Constitution of the United States, which declares that "excessive fines shall not be imposed, nor cruel and unusual punishments inflicted." The same provision may be found in the Constitution of this State, together with another, which declares that "penalties shall be proportioned to the nature of the offense."

Now, I ask you, sir, if the bare fact of a person of color coming into our State, and demean-

* This "solemn public act" of Missouri was referred to in debate, but not read. And it is introduced now in my remarks, because its existence was denied by the gentleman from Monroe (Mr. Foster) who followed me, and who refused to correct his error when publicly apprised of it.

ing himself in an orderly and peaceable manner, is an offense against society, of so heinous a character as to deserve confinement in the penitentiary, or in the county jail? Would not the punishment in such a case be altogether disproportioned to the nature of the offense? Considering the nature of the crime—if, indeed, it may be called a crime—the punishment proposed would be cruel and unusual, and as such, a manifest infraction of the fundamental law of the land.

Now, sir, if the poor negro, whose presence has all at once become so hateful to us, had migrated to this country of his own free will and accord, and if we still found him voluntarily forsaking his own foreign home, to seek an asylum in this boasted land of liberty and free government, we might with the more propriety close our doors against him, and bid him go back to the shores of Africa from whence he came. But, sir, in all the vast tide of foreign emigration that has been pouring into our country for the last half century, I venture to affirm that you never heard of an African emigrant landing upon our shores of his own volition. Such a case would be a perfect anomaly—such an instance was never known. And in this he differs from my friend from Posey—and I make this allusion in no offensive sense, and hope no offense will be taken—I say, in this particular he differs from the gentleman from Posey; for the one came as a matter of choice—the other as a matter of necessity. The one came voluntarily—the other came in chains. The one came in hope—the other in despair. And shall we mete out to the one all the blessings of civil, social, political, and religious liberty; while we deny to the other the enjoyment of any one of these? Sir, to the cupidity of that country, to which the gentleman from Posey first owed allegiance, as well as to the inordinate avarice of some of our puritanical slave dealers of New England, who now turn up their eyes with a sort of holy horror at the monstrous iniquity of slavery, are we indebted for the presence of the colored race among us, to a very great extent. And shall we now turn upon these wretched victims of their cupidity, and visit them with the utmost rigor of the law, by consigning them to the gloomy walls of a penitentiary, or perpetual banishment from the State, for daring to come into the presence of their superiors? In the name of justice and humanity, I answer, no! We brought them here against their will, by the strong arm of power, and we are bound by all the dictates of humanity, to afford them shelter and protection, or furnish the means to carry them back to their own native home in Africa. I speak, sir, of our duty as a nation, as well as individuals.

Now, Mr. President, let me not be misunderstood here. Let no one infer from my remarks that I desire to place the white and the colored emigrant upon the same degree of social and

political equality—that I would exclude the one as well as the other, or admit them both upon the same footing. No, sir, far from it; for had I the power, I would raise a wall as high as heaven, between this country and the shores of Africa; and I would punish with death, every American citizen who might be found engaged in the infernal slave traffic, by which these miserable creatures are forced from their native home, and sold into involuntary servitude in this country. Nor would I extend to those already here any political privileges from which they are now excluded by the laws of our country. In short, sir, I desire to leave them just where they are, in regard to all political rights, and without any addition or abatement as to their rights of property, their rights of domicile, and their rights of locomotion. Yes, sir, had I the power—and it is well, perhaps, I have not—I would raise a wall of fire between us and Africa, the more effectually to cut off all further influx of the colored race among us. While, on the other hand, I would throw open wide the portals of our country, and bid the oppressed and downtrodden of all the earth a hearty welcome. I would say to the honest German, come; to the open-hearted Irishman, come; to the burley Englishman and staid Scotchman, come; to the impulsive Frenchman and jealous Spaniard, come; of whatever name or nation, kindred, or tongue, upon the broad surface of God's footstool, let him come—come freely—nothing doubting—and enjoy with us all the blessings of civil and religious liberty. And when they shall have served out their day of probation, according to the true intent and meaning of the constitution and laws of our country with reference to aliens, I would elevate them all to the dignity of American citizens, and to the full enjoyment of all the rights and privileges of native born subjects. Such, sir, are my views in regard to the foreign population among us, without evasion or qualification; and let gentlemen make what they can of it.

But, Mr. President, there is another view of this question, that I deem worthy of particular notice. And that is this: If you incorporate a provision in the Constitution so utterly at war with every principle of philanthropy and christian benevolence, you will at once excite the indignation and arouse the opposition of a large portion of our fellow-citizens, and thereby greatly endanger the rejection of the Constitution by the people. And you will find, sir, that this feeling of opposition and just resentment is not confined alone to that portion of our citizens known as abolitionists; but that it pervades, more or less, the great body of the people, many of whom, like myself, have never fraternized with that, perhaps honest, but certainly misguided party. But this is not all. By adopting such harsh and restrictive measures, you virtually increase the power of the abolitionists to do evil. You strengthen their

cords, by driving men into their ranks, who have heretofore never entertained a feeling or sentiment in common with them. And instead of allaying you increase the excitement upon this question, ten-fold beyond what it is now, or ever has been. Shall we do this?—or shall we not rather pour oil upon the troubled waters, and endeavor to calm the raging elements? Surely, sir, there is enough of disquietude throughout the country connected with this dark and exciting subject of niggerology, without our unnecessarily increasing it by the passage of this act of expatriation, and confiscation.

Sir, as a nation we are now passing through a crisis, big with the future destiny of this Republic; and it behooves every true patriot to act with the utmost prudence—for one false step may plunge us into the yawning gulf that now opens at our feet. The time was, sir, and surely within the recollection of the oldest inhabitant here, when it was considered treasonable for any man to talk about a dissolution of the Union, even as a remote probability, or uncertain contingency. But now it is come to be talked about daily, as a fixed fact, unless this or that real or imaginary evil shall be speedily removed or abated. Why, sir, you can scarcely open a paper from Maine to Mississippi, but you will find them teeming with dark and ominous presages of impending evil, growing out of the action of the last session of Congress on the different phases of this negro question. The South are perfectly outraged at the admission of California as a free State, and the abolition of the slave trade in the District of Columbia, and threaten at once to withdraw from the Union. While the North is equally incensed at the passage of the Fugitive Slave bill, and swear by all that is sacred to resist the operations of the law, by all the means within their power.

But suffer me to trespass upon your patience for a few moments, while I read a few extracts which I have gathered up within the last day or two, and which I now present to you as a fair sample of that wild fanaticism pervading the country, on both sides of Mason and Dixon's line.

The Charleston (S. C.) Mercury, the leading Democratic paper of that State says:

"The Union cannot be saved. It is not worth the saving, though it could be done by turning on one's heel. It is a confederacy of sections, not of States,—their bonds of affection are all burnt away, and the passions that have swept on this consuming course, now form an impassable gulf between them. No earthly power can save this confederacy from dissolution."

At an enthusiastac Disunionist Demonstration at Abbeyville, Henry county, Alabama, resolutions were unanimously adopted declaring it the firm conviction of those there assembled,

"That a secession by the Southern States from the confederacy is the rightful and efficient remedy, unless our constitutional rights of equality in the Union are restored, and in future properly respected."

And the assembling of the next Nashville Convention was hailed as the first step towards the

"Withdrawal of their delegated authority and rights from the Union which has ceased to answer the ends for which it was established, and become an engine of robbery and oppression."

Mississippi.—The Free Trader published at Natchez, Miss., says, the people there are ready for secession—come what may. "Let a majority vote for us," the Editor exclaims, "and then we will see who will fight."

The Republican, a paper published at Woodville, Mississippi, says:

"We must and will secede from this Union. Either we must submit to *disgrace* and soon to Abolition, with all its horrors, or we must prevent it. There is but one way to prevent it, and that is by secession."

"The North have a magazine of combustibles among themselves. The Southern slaveholders have the torch. Fire the train. "Fight not HANNIBAL on the plains of Italy, but carry the war into Africa."

The Rev. Mr. Colquitt, of Georgia, recommends that the people of the South march "with coffins on their backs," up to the line of 36-30 and there resist, even unto death the further encroachments of Free-Soilism.

So much, Mr. President, for the Southern view of the picture. And now let us for a moment contemplate the other side:

"At Cleveland, Ohio, for instance, a large public meeting was held last week, at which three Rev'd Clergymen made speeches. One denounced the law in strong terms, and said that 'no force could ever compel him to obey it'—and another Rev'd Doctor of Divinity is reported as saying, that 'the sufferings complained of by the American colonies, of which 4th of July orators talked so much, were mint juleps, compared with this melted lead, which Congress now attempts to force down our throats. He would go to the stake sooner than to obey this law."

Among the resolutions, which this public meeting swallowed with the relish of 'mint juleps,' are the following:

Resolved, That 'resistance to Tyrants is obedience to God,' and that we will obey God by resisting, even unto prison and death if it need be, the operation of this latest born of despotism and tyranny, the infamous fugitive law. That we will not obey its mandates, because, 1st, they are unconstitutional, being not only unauthorized by that instrument, but a flagrant violation of all the privileges and immunities guaranteed to us by it: 2d, that law is unjust, wicked, and oppressive, and in violation of that

'higher law' which is above all human constitutions.

Resolved, That said law is the crowning act of infamy, and cannot be equalled by any previous legislation of our country, and we brand all those who had any agency in its passage, who shall assist in its execution, or who counsel obedience to its mandates, as traitors to God and humanity.

And finally it was unanimously

Resolved, That in case any fugitive Slaves should be captured in this city, that the alarm shall be given by cries in the streets and the ringing of the bells.

A large public meeting, called by the Free Soilers, was recently held at Faneuil Hall, in Boston, to denounce the Fugitive Law and those that support it. Violent and denunciatory speeches were made, and resolutions were adopted by acclamation, of which the following, the last of the series, is a fair specimen:

Resolved, That, law or no law, constitution or no constitution, no man, who once sets his foot on the sacred soil of Massachusetts, shall be carried away from it a slave."

And is it possible, sir, that such treasonable doctrines as this can emanate from Faneuil Hall, that time-honored cradle of liberty, to which we are wont to look for a noble and patriotic devotion to the honor and interests of our country.

But enough of this. I have not patience to read more—although I have plenty of the same sort left. Such manifestations of hostility to the existing laws and institutions of our country are hurtful in the extreme. They are disloyal in their character, and revolutionary in their tendency; and whether emanating from the North or the South, deserve alike our severest reprehension.

And now, Mr. President, in view of these conflicting and discordant elements, which seem to portend disaster to this Republic, what is our duty as patriots—as lovers of our country? Shall we not say to our brethren of the South, that we desire to cultivate with them the most friendly and amicable relations, instead of seeking to irritate existing sores by manifesting towards them a spirit of retaliation? Shall we not say to them that we will stand by the compromises of the Constitution, which guaranties to them the right of property in their slaves, wherever they may be found, and properly identified and proven? Shall we not say to them in our conventional capacity, that the integrity of this Union shall be maintained at all hazards? And, although there is much in the fugitive slave bill that is obnoxious to public censure, still, as good citizens, we will yield a cheerful obedience to all its requirements, and render all needful facilities to our southern friends, in reclaiming their property according to the forms and requisitions of the law. Let us do this, and much will be done to allay the present fe-

verish excitement at the South. On the other hand, let us deal kindly with the poor colored freeman, who may come among us for shelter and protection. Let us manifest to the world, that we are disposed to respect his rights, and to commiserate his wrongs—and much will be done to disarm the power of political abolitionism at the North, which is now threatening the integrity and peace of this Union, by a reckless opposition to the existing laws and institutions of our country.

Sir, I may be over solicitous in regard to this matter, but methinks I see in the signs of the times, much that is calculated to excite alarm. My fears may be the result of a morbid sensibility, but I verily believe that, unless something be done to arrest the evil, this eternal agitation of the slave question, North and South, will ultimately lead to a dissolution of the Union. It has already done, and is still doing more to disturb the fraternal and amicable relations subsisting between the different members of this confederacy, than all other questions which have from time to time agitated the public mind. I verily believe that it has more of the elements of dissolution in it than any other question which has ever been sprung upon the country. It has already gone far in alienating the affections and sympathies of the people of the two extremes—overturning and disrupting the church of God—poisoning the pure fountains of social intercourse, and sapping the very foundations of our glorious Republic. Sir, we are treading upon a volcano, and it behooves us to look well to our ways before we are overwhelmed with the burning lava. You may talk about the strength and the power of this mighty government of ours; but let one of those little sisters that now form the great family of States, secede from the Union, and the whole body politic will be convulsed to its very centre. Break but one link in the grand chain that now binds us together as a confederated government, and the whole will fall asunder, like a rope of sand. Remove but one of those beautiful Corinthian pillars that now sustain and uphold our grand Constitutional edifice, and the whole superstructure will tumble into ruin. Aye, sir, whenever the destroying angel shall take his pencil, dipped in blood, and strike from the bright emblazonry of our country's banner, one single star that now twinkles in the bright constellation, he will not cease from his work of desolation, until the whole shall be obliterated, and we have nothing left but the torn and tattered fragments of our once glorious ensign.

But what shall we say of that insidious miner, that may be found at work beneath the glorious fabric reared and embellished by our forefathers? What shall we say of that damned and double traitor; who could seek to circumvent and overthrow the noble work of their hands? I remarked awhile ago, sir, that it was one of the fundamental principles of our gov-

ernment, that punishment should be proportioned to the nature of the offense. In England it is high treason, and punishable with death, to imagine the death of the king. With us, to afford aid and comfort to the common enemy, is treason against the State, and punishable with death. But, what shall be the meed of punishment to that arch-traitor who could rudely lay his unholy hands upon the pillars of the Constitution, to tear it down? Who could wickedly seek to uproot the foundations of this government, and rend asunder the ligature that now binds us together as a free, a happy, and a prosperous nation? Sir, had he a thousand lives to lose, and a thousand deaths to suffer—and for each he should suffer as much as when a thousand giants die, the whole together would be a poor atonement, a miserable expiatory sacrifice, compared with the immeasurable turpitude of his crime. Ah! sir, a thousand deaths to him would be sheer mercy—and I would not thus seek to mitigate his sufferings. But rather would I let him suffer the fate of that unfortunate Jew, who was cursed with a perpetual existence. I would let him be a lone wanderer in the earth: always seeking death, but never finding it. I would have him driven out from the abode of civilization, by the indignant frowns of his countrymen—and should he seek to take refuge in the deep recesses of the forest, may he be driven thence by beasts of prey. Should he seek to bury himself in the dark caverns of the earth, may he be driven thence by the hissing of serpents. Should he seek to plunge himself beneath the bosom of the mighty deep, may his angry billow cast him back upon some barren and inhospitable shore. And when years and ages shall have rolled away, and he is still a lone wanderer in the earth, calling in vain upon the rocks and the mountains to fall upon and hide him—when the lightning of heaven shall continue to play around him, searing his eye-balls with its lurid glare, and yet consume him not—when the thunder-bolts shall break upon him, and crush him not—when the undying worm shall continue to prey upon his vitals, and yet he still lives on!—when the earth shall still refuse him a home—the sun his light—the dust a grave—and Heaven her God—then may he feel—then may he know, what it is to bear the bitter and undying curse due to his perfidy!

Mr. President, I dislike to leave this subject with the horrid drapery I have thrown around it, and fain would I present you with a more bright and cheerful picture of our country and her ultimate destiny. Would to Heaven that I could cast the horoscope of the future—that I could lift the veil, and looking down through the dim vista of coming time, present to your view this bright, "this smiling land, that freedom calls her own," teeming with its countless and happy millions, and still going on in her career of greatness and renown, like a giant

rejoicing to run his course.—Happy in all her associations, prosperous in all her relations, and free in all the essential elements of liberty. I would fain spread out before you the grand panorama of a country, swelling and expanding into one of the mightiest Republics that ever shook the earth; mighty in extent—mightier in numbers—but mightier far in the moral excellence and grandeur of her political and civil institutions. I would throw out in the perspective, her broad map, chequered with a thousand channels of intercommunication, tending to cement the different members of this grand confederacy, in a holy bond of brotherhood, that the malign spirit of faction might not be able to sever. I would present you with a view of her mighty commerce, extending to the ends of the earth—while her broad stripes and bright stars are honored and respected in every sea and on every continent. But superior to all, and infinitely above all, I would point you to the proud structure of a noble and beneficent Government, deriving its power from the will of the people, and seeking alone to promote their good—throwing the panoply of its protection over all the industrial interests of the country, and extending the arms of its benevolence to all its subjects; upholding, securing, and protecting, the rights and privileges of the weak, as well of the dusky sons of Africa, whose unhappy lot has been cast among us, as of the tawny savage who roams at will his native forest.

Such is the picture which I would fain present to your minds on this occasion. But it is not given to me to do so—for clouds and thick darkness still hover around our political horizon. But may I not hope, sir, in conclusion, that when you and I shall have numbered our days, and are about to penetrate the dark arcana of that unknown existence that lies beyond this narrow bound; when our eyes shall be turned for the last time to behold the setting sun, and our thoughts may be permitted to reach forward to the future destiny of our beloved country, O, then, may we be enabled to tear away the phantasy of disunion and desolation that now stamps its horrid impress on the brain, and dream alone of a future, glad with the sunlight of glory and of freedom.

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TUESDAY, Nov. 19, 1850.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. HULL.

The journal of yesterday was read and approved.

There being no reports from committees,

ORDERS OF THE DAY.

The PRESIDENT announced the first business in order to be the consideration of the section prohibiting negroes from coming into the State and holding property.



The pending question being upon the motion of the gentleman from Vanderburgh (Mr. Lockhart) to amend the instructions,

Mr. MAGUIRE. I desire to make a few remarks upon this subject, because it was one of considerable excitement during the last season in this county, as well as in other parts of the State. Early in the canvass it became a subject of debate among some of the candidates, and of considerable apparent interest to the people. It was a new question to me, and at first I declined saying anything about it, (my sentiments not being specially demanded,) desiring to consider it maturely. I finally, in my public addresses, took the ground that, as in my judgment the Legislature had as much power over the question as the Convention could have, it did not seem to be necessary to insert anything in the Constitution in relation to it. Among other reasons for this I stated, that, as there would undoubtedly be much opposition to the measure in many portions of the State, where the apprehended evil had not been felt, it would greatly increase the vote against the adoption of the new Constitution; and besides, that if the necessity of the measure was so urgent as was represented, the remedy could be applied much earlier by the Legislature, which would meet in December, than under a provision of the new Constitution, which would not be adopted until next summer, and under which, if biennial sessions should be established, measures might not be taken, probably, until the winter of 1852.

But, sir, I am so well satisfied that a large majority of the people of Marion county are opposed to the further immigration of free people of color, and desire a prohibitory clause in the Constitution, that I feel compelled to vote for that part of the proposition which has reference to their immigration. I was sent here to act for them, and I regard it my duty to act on all questions of policy as I suppose or know they would act if they were here. When I know their will, it is the same to me as if I had written instructions.

The excitement to which I have referred arose, in part, from the common report that a large company of colored men had just arrived from North Carolina, some of them said to be old and infirm, and that many more were expected from the same quarter; and apprehensions were entertained that the county was likely to be overrun by that class of people. About the same time, it became known that the State of Kentucky, in her new Constitution, just adopted, had inserted a provision absolutely forbidding the owner of a slave from setting him free unless he would send him without the borders of the State, and making it a penal offense for any free colored man to be found there. Of this act I purpose to speak further after a while. It also became known that a provision was inserted in the new Constitution of Illinois,

requiring the Legislature, at its first session, to pass such laws as would prevent them going there. It was moreover believed that the State of Ohio, whose Convention was then in session, would insert in her Constitution a similar provision.

On these accounts it became, in the estimation of the people, a necessary act of self-defense to adopt similar measures in the State of Indiana; and although it may seem to involve a degree of harshness which it were desirable if possible to avoid, yet the blame cannot justly rest upon us. Our people are opposed to slavery; they believe it in every respect an evil; they are opposed to its further extension; and they are in no wise responsible for any of the consequences growing out of it. They, however, demand that proper and efficient steps be taken to compel our sister States where slavery exists to take care of, and provide for, their own free colored people, in their own States, in Liberia, or somewhere else.

Sir, having said thus much in regard to the first clause of the section under consideration, which proposes to prohibit immigration, I desire now to say, that I cannot, unless my opinion shall change on the subject, support a clause to prevent the free people of color now among us from holding or acquiring property. I think we have not the power to do so, and that if we had, it would be alike impolitic, unjust, and inhumane to exercise it. It certainly cannot be sound policy to compel them to become paupers, by destroying all the incentives to industry. I cannot but think that the evils complained of by gentlemen, growing out of their residence amongst us, would be much enhanced by a measure of that sort. I have had no instructions from those whom I represent to go any further than is proposed in the first clause of the section, and, so far as I know their opinions, they concur with me that it would be unjust and impolitic to rob the negro of his property either directly or indirectly. Entertaining this opinion, I voted, a few days ago, against laying on the table a proposition made by the gentleman from Gibson, (Mr. Hall,) to amend the section so as not to interfere with the property of the negroes now in the State, and it is my purpose to vote for its adoption.

Mr. President, I have said that I would speak further in regard to the clause in relation to free negroes in the Constitution of Kentucky. Kentucky is the land of my birth and education—the land where reposes the dust of my ancestors, where almost all my near relations still reside, and the land of many early and fondly cherished recollections. I admire Kentucky as the adopted State of that illustrious Statesman, whose fame, co-extensive with the boundaries of civilization, and the knowledge of human freedom, will be as imperishable and undying as the love of liberty. I admire her as the native land of that other less distinguished but accomplished

Statesman whose public career has shed a lustre upon our country's history. I admire her as the land of Daviess, and Owen, and Allen, and Shelby, and Scott, and Hardin—as the land familiarly known as the “dark and bloody ground,” which, by the valor, self-denial, and suffering of Daniel Boone and his associates, was rescued from the savage, and has become the dwelling-place of a generous, hospitable, chivalric, and prosperous people. I admire her, sir, for all these and other things, but I am bound to say that in my opinion the act of her recent Convention, in relation to free negroes, places a deep stain upon her hitherto bright and glorious character, which nothing can wipe out except measures to provide, in some effectual way, for the comfort and support of that unfortunate race. Sir, what has she done? Why sir in the middle of the 19th century, in the year of our Lord one thousand eight hundred and forty-nine—when the whole country was looking to her with confidence that she would set an example of liberality and humanity worthy of imitation by her sister States of the south—when from her peculiar position the friends of humanity every where looked to her for the commencement of a gradual system of emancipation, coupled with provisions for colonization—that hitherto patriotic commonwealth inserts in her organic law, a law which cannot be altered or repealed without the calling of a Convention, the following section:

“The General Assembly shall pass laws providing that any free negro or mulatto hereafter immigrating to, or being emancipated in, and refusing to leave this State, or having left shall return and settle within this State, shall be deemed guilty of felony, and punished by confinement in the Penitentiary thereof.”

Sir, the State of Kentucky cannot enforce such a provision. Public sentiment will revolt at its execution, and it must remain forever a dead letter if the free States shut them up to the necessity of taking care of their own colored people. In what light would the enforcement of such a provision place them before the world? Can it be tolerated, that the people of that or any other State shall wear out the colored man in servitude, and then set him free when he is unable to make a living by labor, and compel him to leave the State, or be subjected to confinement in the Penitentiary? The object and intent of the provision was undoubtedly to compel the free colored man, when liberated from slavery, to take refuge in the free States; and hence arose the excitement in this State on the subject. Is it at all surprising then that some alarm should be felt under the prospect of an extensive immigration from Kentucky and other slave States of that kind of a population, and that some measures should be demanded for its remedy?

Virginia too, Mr. President, has been recently moving in this matter. Her State Conven-

tion recently adopted several resolutions of inquiry in relation to negroes and mulattoes, and among others the following:

*Resolved*, That a committee of — members be appointed to inquire into the expediency of inserting a clause in the constitution, declaring void all laws now in force, by which slaves who may hereafter be emancipated, and their descendants, may be permitted to remain within the limits of this Commonwealth—to restrain the legislative department of the government from passing any law granting permission to any such emancipated slave, or his or her descendants to remain within the Commonwealth—and to provide that it shall be competent to the Legislature to pass laws for the removal of free negroes and mulattoes beyond the limits of this Commonwealth, either with or without the consent of said free negroes or mulattoes.

This resolution was adopted by 100, to 20, and proposes, if carried out in the Constitution, most effectually to drive out the free people of color.

The gentleman from Lagrange, (Mr. Howe,) to whom I always listen with great pleasure, made an ingenious and able argument the other day, to show that we had not the constitutional power to prohibit such immigration into the State. His argument, however, if I understood him correctly, applied only to those States whose free colored people are recognized as citizens, and whom he contended we could not prohibit from settling among us without a violation of the Constitution of the U. S., which provides that “the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States.” I believe he did not contend that the power did not exist to prevent the emigration of those who are not recognized as citizens in the States from which they immigrate. If that be a correct distinction it makes but little difference practically, whether the argument be sound or not, as it is not probable that we shall be much troubled with immigrants of this description from those States where they have the immunities of citizenship. The main object, unquestionably, of those who drafted and reported the section under consideration was to have effect upon such as reside in slave States, and whom those States, by their stringently laws, are endeavoring to force upon us.

My view of the question under consideration then, Mr. President, is that we are justified, by the conduct of other States, both slave and free, in adopting proper and constitutional measures to protect ourselves against the influx of a colored population worn out in slavery, and if possible, to compel those who have had the benefit of their toil and labor, to take care of and provide for them, either at home or in Liberia; but that beyond this, I am not satisfied it would be proper to go in our organic law. Beyond this I believe no State has yet gone. I suppose it to be sound doctrine that the people, through



the Legislature, can exercise any power not forbidden by the State Constitution, and not in violation of the Constitution of the United States. If I am correct in this, the Legislature will have as much power as this Convention possesses to take such further steps in relation to this matter, as, in the calm and deliberate judgment of the people, may be demanded by further exigencies, and consistent with humanity and justice. If one Legislature should do wrong, the next or some subsequent one may remedy it, but whatever is placed in the Constitution is permanent and can only be changed by the call of a Convention.

Mr. President, permit me to say in conclusion, that it is certainly very desirable that this Convention, whose session will have been so long continued, whose labors will have been so arduous, and whose expenses will necessarily have been so considerable, should send forth a Constitution which shall be adopted by the people of Indiana. In order to this it is surely advisable not to crowd into that instrument questions of doubtful policy, over which the Legislature has complete control. There are various reforms called for by the people, in relation to some of which there is almost entire unanimity, and in reference to others there is but little difference of opinion. Among these are the election of Supreme and Circuit Judges, State officers, &c., by the people; the application of fines and forfeitures to common school education; biennial sessions of the Legislature; the prevention of special and hasty Legislation; a reform in the judicial system; a limitation in the length of terms of offices, &c. Shall the adoption of the new Constitution, and all these reforms be jeopardized by the insertion of provisions which are fit subjects of legislation, and which will compel large masses of the people to vote against it, when otherwise they would have been pleased to give it their support. I think, sir, that this suggestion is worthy of the deliberate consideration of the Convention.

Mr. MORRISON of Washington then rose and said—

Mr. PRESIDENT: If I could justify myself before my constituents and this Convention, I would not depart from the rule which I had prescribed for myself: that is, to cast a silent vote on all subjects; but it appears to me that the question now before us has assumed such a shape as to compel me, in this instance, to ask the indulgence of the Convention for a very few moments, while I give the reasons why I shall vote to exclude the negroes from further immigration into this State, and also to divest them of the right of acquiring real property hereafter.

We all profess to be the friends of humanity, yet we differ, honestly, I presume, as to the plan by which we would secure our title to this distinguished appellation. Those who favor the immigration of free persons of color to this

State, and contend for their right to hold real estate, seem to forget that the negro's home is in the land of his fathers, where he may enjoy all the rights and immunities of a free man, which he can never hope to attain in this country, unless the two races are permitted to amalgamate.

Sympathy is diverse. There is a sympathy of the head as well as a sympathy of the heart. The former is the dictate of reason and judgment; the latter, of feeling and passion. In all grave questions like the present, it behooves every man to determine for himself how far his judgment and his votes may be influenced by the one or by the other. For my own part, if I could persuade myself that it is the will of Heaven that the two races should amalgamate, then would I be willing to hold out every inducement to the blacks to sojourn amongst us. I would advocate their right, not only to political, but social equality. But I do not thus interpret the indications of Providence. Ethiopia is stretching out her arms, and Africa's sable sons are to be regenerated, and civilized, and Christianized, through the instrumentality of their oppressed and down-trodden brethren in this boasted land of freedom and independence. And so surely as the selling of Joseph by his brethren to Egyptian merchants, though intended for evil, was overruled for good, just so surely will the bondage and oppression of the African race in this country be overruled for the benefit of the entire race in their native country. Already a voice from Africa comes to us, and calls upon us for knowledge and civilization. The beacon lights are now seen all along the western coast, and the unutterable enormities of the inhuman slave trade stand unveiled before the whole civilized world.

Who that has paid any attention to the signs of the times, does not see that these United States are to be employed in the great work of diffusing the blessings of liberty and equal laws throughout the habitable globe? Can it be possible that the arm of the oppressor is never to be stayed? that the countless millions that inhabit Africa are forever to remain in ignorance and slavery, and idolatry? that the benign influences of Christianity are never, never to be felt in all the length and breadth of that dark and savage land?

Mr. President, for my part I can see in the determination of the questions before us, the mysterious workings of an overruling Providence.

Through the instrumentality and persevering efforts of the Colonization Society, organized more than thirty years ago, a flourishing colony of free blacks has been established in Liberia, and an independent government has been formed, which has been recognised by France, England, and Prussia. This colony has, at this very moment, not less than eighty thousand of the natives enrolled as citizens of the Republic,

and all this has been accomplished in the face of the most bitter opposition from the abolitionists, who claim to be the only true friends of the poor African in this country. You, sir, have not forgotten the lamentations which were uttered in certain quarters in behalf of the poor Indians, when this Government, a few years ago, recommended the policy of securing for them a permanent home west of the Mississippi, where they might be permitted to pursue the arts of peace, unmolested by the encroachments of the white man. And so it has been in the case of the negro. He has been urged to turn a deaf ear to the invitations to remove to the land from whence he was torn. He has been made to believe that certain death awaited him as soon as he set foot upon his native shores. He has been told that here he had a *right to stay*—that this was the land of freedom,—and that here and here only he might expect, one day, to be admitted to all the rights and immunities of a freeman. It is not contended, I believe, by those who take the opposite side of this question, that the negro can ever attain, in this country, to a social equality with the whites, though he may be invested with certain political rights, and yet there is no good reason you why should withhold from him the former if you confer upon him the latter. Then, sir, if you do not intend to admit them to full citizenship, why do you induce them to remain in your midst, when you have determined that they shall never be anything more than hewers of wood and drawers of water? Why deceive them by false promises which you do not intend to fulfil? Why not tell them the plain and naked truth, that the rights of citizenship will never be extended to them here, and if they conclude to remain, let them understand clearly the full extent of their disabilities; and whenever they incline to remove, be ready with the means to assist them in uniting with their brethren in the Republic of Liberia. Depend upon it, the people of this State, whenever called upon, will contribute cheerfully and liberally to restore them to their own native land.

Mr. President, I shall favor that proposition which tends to increase their disabilities, with the confident hope that the results will be most advantageous to themselves. When they discover that they never can be elevated to the rank of citizens amongst us, then, and not until then, will they feel that their own welfare, as well as the redemption of their race, are involved in accepting the proffered bounty of their friends. The Colonization Society, with an annual income which has seldom exceeded fifty thousand dollars, has enabled seven thousand free blacks to emigrate to Liberia, and has purchased from the natives a vast amount of territory extending along the coast not less than seven hundred miles, throughout which the slave trade has been arrested and well nigh destroyed. But if the General Government,

aided by the State Governments, should establish the line of steamships which has been recommended to the late Congress by the naval committee, an impulse would be given to the cause of colonization which will put to silence the croakings of those misguided friends of the negro who have, from the very beginning, avowed open hostility to all the plans of this benevolent institution, and thrown every obstacle in the way of its philanthropic operations. This effort of the friends of humanity should be seconded by every well-wisher of the African race—and if it meets with that favor which it certainly merits—the day is not far distant when the oppressed in this land shall be set free, and sent home to enjoy in their own country the blessings and privileges of freemen, and to unite with their brethren in establishing a free and independent government, under the benign protection of which they will be permitted to enjoy life, liberty, and the pursuit of happiness.

Mr. President, I will say in conclusion, lest I should be misunderstood, that I disclaim any intention on my part to compel the free negroes in this State to emigrate to Liberia. Far from it. If they are willing to go, I would aid and encourage them to go, but if they are determined to remain, I would have them understand distinctly that they can never be admitted to a political and social equality with the citizens of this State.

With a view to fortify these positions, I ask the further indulgence of the Convention to read a few short extracts from the report of the naval committee, made to the House of Representatives of the United States, August, 1850.

“The committee here beg leave to present some interesting facts which satisfy them that the territory of Liberia is eminently adapted to colored emigrants from the United States; that the establishment of this line of steamships by the Government will be a powerful stimulus to the cause of colonization, and will be the means of securing the emigration of great numbers of free blacks; that the slave trade will be substituted by a peaceful, legitimate, and valuable commerce, opening new sources of enterprise and wealth to our people; and that the civilization and christianization of the whole continent of Africa may be expected eventually to follow. The facts presented are collected chiefly from the publications of the Colonization Society.

“That portion of the western coast of Africa, called Liberia, embraces a tract of country included between the parallels of 4 deg. 21 min., and 7 deg. north latitude, extending about 400 miles along the coast. The first settlement was made by free negroes from the United States, under the auspices of the American Colonization Society, in the year 1820. The objects of that society were—



"1st. To rescue the free colored people of the United States from their political and social disadvantages.

"2d. To place them in a country where they may enjoy the benefits of a free government, with all the blessings which it brings in its train.

"3d. To spread civilization, sound morals, and true religion throughout the continent of Africa.

"4th. To arrest and destroy the slave trade.

"5th. To afford slave owners, who wish, or are willing, to liberate their slaves, an asylum for their reception."

"The funds of this society have seldom exceeded \$50,000 per year, but they have purchased territory, enabled nearly 7,000 free people of color to emigrate to Liberia, and have made provision, for such of them as required it, for six months after their arrival. In July, 1847, an independent government was formed, which has been recognised by France, England, and Prussia. Upwards of 80,000 of the natives have become civilized, and enrolled themselves as citizens of the Republic. The Liberians have a flourishing commerce. They have not only succeeded in suppressing the slave trade along their own coast, but have also made treaties with several tribes, numbering over 200,000 souls, for the discontinuance of the traffic. They have purchased their territory from time to time of the natives, and are gradually extending themselves up to the British settlement of Seirra Leone and down to the Gold Coast.

The interior settlements of the purchased tracts usually extend from about ten to thirty miles from the coast, and can easily be enlarged by purchase in that direction at a moderate amount. In no instance have the natives from whom the land was purchased been required to remove their residences. The land in the immediate vicinity of the ocean in Liberia is generally low, and in some places marshy; but there are some elevated spots.

The land generally becomes more elevated towards the interior; and in some places within fifty miles of the coast, it is quite mountainous. It is desirable for the colony to become possessed of this back country as it is much healthier than the coast, and when the emigration from the United States becomes extensive, the mountain region will soon be occupied. The natives are a fine, healthy, athletic race; and even the emigrants to the lands on the coast have enjoyed better health than the emigrants to some of our western States in the first few years of settlement.

Liberia is on the "grain coast," and is protected from the scorching winds of the north and east by ranges of mountains. The soil is fertile, and produces an abundance of Indian corn, yams, plantains, coffee, arrow-root, indigo, dyewoods, &c.

Every emigrant is welcomed to the colony and receives a grant of five acres of land, besides which he can purchase as much more as he pleases at one dollar per acre.

The climate is not suited to the whites. The President and all the officials are colored men. There are flourishing towns, churches, schools, and printing presses. According to the statement of the Rev. R. R. Gurley, who has recently visited the colony, the people are highly moral, well conducted, and prosperous; and the value of the exports of the Republic is at present \$500,000 per annum, and is increasing at the rate of fifty per cent annually.

Not only will the slave trade be abolished by the establishment of colonies of free colored people on the coast of Africa, but, as already intimated, these colonies will be the means, at no distant period, of disseminating civilization and Christianity throughout the whole of that continent. Already, a great many of the natives have placed themselves under the protection of the Liberians, whose knowledge of agriculture and the arts inspires confidence and respect.

As a missionary enterprise, therefore, the colonization of Africa by the descendants of Africans on this continent, deserves, and no doubt will receive, the countenance and support of the whole Christian world.

(2.) The establishment of prosperous colonies on the western coast of Africa will, doubtless, tend greatly, in the course of time, to the augmentation of the commerce of this country. It appears that British commerce with Africa amounts to no less than five millions sterling, or about \$25,000,000 per annum. The belief is now confidently entertained in Great Britain, that an immense commerce may be opened up with that continent, by putting an end to the slave trade, and stimulating the natives to the arts of peace.

The commerce of Africa is certainly capable of great extension, and it is worthy of observation, that the proposed steamers will open entirely new sources of trade.

On this subject, the committee beg leave to submit the following particulars, from which the future resources of this vast undeveloped region may be, to some extent, anticipated.

Palm oil is produced by the nut of the Palm tree, which grows in the greatest abundance throughout Western Africa. The demand for it, both in Europe and America, is daily increasing. The average import into Liverpool of palm oil for some years past has been at least 15,000 tons, valued at £400,000 sterling.

Gold is found at various points of the coast. It is obtained by the natives by washing the sand which is brought down by the rivers from the mountains. An exploration of the mountains will probably result in the discovery of large quantities of the metal. It is calculated that England has received, altogether, \$200,-

000,000 of gold from Africa. Liberia is adjacent to the "Gold Coast."

Ivory is procurable at all points, and constitutes an important staple of commerce.

Coffee, of a quality superior to the best Java or Mocha, is raised in Liberia, and can be cultivated with great ease to any extent. The coffee tree bears fruit from thirty to forty years; and yields an average of ten pounds to the shrub yearly.

Cam wood and other dye woods are found in great quantities in many parts of the country. About thirty miles east of Bassa Cove is the commencement of a region of unknown extent, where scarcely any tree is seen except the cam wood.

Gums of different kinds enter largely into commercial transactions.

Dyes of all shades and hues are abundant, and they have been proved to resist both acids and light.

Pepper, ginger, arrow root, indigo, tamarinds, oranges, lemons, limes, and many other articles which are brought from tropical countries to this, may be added to the list. Indeed, there is nothing in the fertile countries of the East or West Indies which may not be produced in equal excellence in Western Africa.

The soil is amazingly fertile. Two crops of corn, sweet potatoes, and several other vegetables, can be raised in a year. It yields a larger crop than the best soil in the United States. One acre of rich land well tilled, says Governor Ashman, will produce three hundred dollar's worth of indigo. Half an acre may be made to grow half a ton of arrow root.

"An immense market may be opened for the exchange and sale of the innumerable products of the skill and manufactures of our people. Africa is estimated to contain one hundred and sixty millions of inhabitants. Liberia enjoys a favorable geographical position. She is protected by the great Powers of Europe. The Liberians have constitutions adapted to the climate, and a similarity of color with the natives. They will penetrate the interior with safety, and prosecute their trade in the bays and rivers of the coast, without suffering from the diseases which are so fatal to the white man. Liberia is the door of Africa, and is destined to develop the agricultural and commercial resources of that continent, besides being the means of regenerating her benighted millions."

I also beg leave to refer to a few extracts from letters of individuals who have interested themselves in this subject, to the executive committee of the Colonization Society.

*Letter from Hon. Elisha Whittlesey, one of the Vice Presidents of the American Colonization Society.*

TREASURY DEPARTMENT,  
Comptroller's Office, July 20th, 1850.  
MATTHEW ST. CLAIR CLARKE, Esq.,  
Member of the Ex. Com. Col. Society, Washington.

My attention was first drawn to the subject of African colonization at the annual meeting of the Society in 1823, when listening to the remarks of the Hon. Robert Goodloe Harper, and others. From that time to the present, my belief has been, and now is, that an "all-wise Providence" will accomplish, through the institution of slavery in this country, the civilization and Christianization of Africa, by the agency of this Society and its kindred associations. The Republic of Liberia invites those who wish to give freedom to the human beings they hold in bondage to do so, without any excitement, commotion, or opposition. An acceptance of the invitation violates no right, alarms no fear, wounds no feeling, awakens no jealousy. One party is relieved from a heavy responsibility, and the other enjoys, in the land of their fathers, civil and religious freedom. Every intelligent emigrant from this country is a missionary to, and an instructor of, his brethren. Africa will be Christianized when parts of Asia will be in heathen darkness.

The plan ranks with the most important of those of the interesting age in which we live; and, if patronized by Congress, will richly bless two continents. There has been no colony so prosperous, or that has achieved so much within the same space of time, as the colony of Liberia; and it is a remarkable fact, that during a period of thirty years, since the first expedition was fitted out to Africa, not a life has been lost by shipwreck.

If this Congress shall co-operate in this great national interest, it will stand immortalized on the page of history.

Most sincerely yours,  
ELISHA WHITTLESEY.

*Letter from the Hon. R. J. Walker, one of the Vice Presidents of the American Colonization Society.*

WASHINGTON CITY, July 23, 1850.

I have had no time to examine the details of the plan, but as regards the main question, I most fully concur in the policy of a removal of our free blacks to Liberia, through the instrumentality of steamships, and with the aid of the Government of the United States. The plan presented seems to me free from all constitutional objections. It seems, also, to be perfectly practicable, and its successful execution would confer incalculable blessings upon our country. Indeed, I have ever regarded colonization and abolition as antagonist meas-



ures, and that the success of the first would overthrow the latter, and thus rescue our beloved country from the danger of disunion.

Very truly your friend,

R. J. WALKER.

M. ST. CLAIR CLARKE,  
Ch. Ex. Com. of Am. Col. Soc.

*Extract of a letter from Gov. Wright, of Indiana.*

INDIANAPOLIS, Ind., July 3d, 1850.

*To the Executive Committee of the Col. Society:*

GENTLEMEN: Your circular, containing a copy of Mr. Bryan's memorial, came to hand a few days ago, and I have no hesitation in saying that Mr. B's plan, or any other good plan, of forming a line, or lines, of transport to draw off our free people of color, will meet with general favor in our State.

And some movement of the kind is much needed; for the youth of the free States are growing up *ignorant* of the merits of colonization, and very *sceptical* as to its final success. This has been produced by the labors of men in the North who have never investigated the subject, and who have poured contempt on all your attempts to colonize—they have been too successful in indoctrinating the youth of the North. A want of faith in the enterprise, or confidence in its final success, will soon paralyze all your efforts in the North; for in a few years the unbelief of our young men will become confirmed, and when they grasp the reins of government, which they will do in the course of time, African colonization will be discarded by the North.

The best remedy that can be devised for the above *ignorance* and *scepticism*, among Northern men, will be a bold and decided *movement* on the part of the General Government, which will look directly toward the separation of the colored race from the *white race*, and the erection of the colored people into an independent commonwealth.

This movement will confound the opponents of colonization in the North; it will send a thrill of confidence through the hearts of all our friends; it will compel the people to think and talk on the subject of a national colonization enterprise, and it will compel each newspaper in the land to speak out on the subject. Discussion is all we want, for then we can make thousands of friends; in short, we can indoctrinate the nation with our opinions, "and opinion rules the world."

As to Mr. B's plan, we are willing that he and his friends shall have the monopoly of the African trade for a time; but that monopoly should be so guarded as to make it a source of wealth to Liberia, and not a drain on the wealth of that republic, or be calculated to retard her progress. The East India Company has been a stupendous leech on British India, from which

it has drawn untold millions, and under whose management India must become impoverished, and made dependent on England.

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I know of no enterprise of this age that we, as Americans, should be so willing to take hold of as one man, with nerve and energy, as that of the settlement of Liberia.

As one citizen of this nation, I would be willing to make all my contributions, and devote the last dollar of my means, to the colonization of the black man of this country to Liberia.

I have the honor to be,

Yours, most respectfully,

JOS. A. WRIGHT.

REV. WILLIAM McLAIN,  
Sec. Am. Col. Soc., Washington City.

MR. COOKERLY. I desire to make a remark or two upon this question, and I hope the Convention will indulge me in doing so. I think, sir, the time has come when it will be necessary for us to act upon this question. In my opinion, sir, the people of Indiana are looking for action upon this subject on the part of the Convention—decisive action; and I hope, sir, with the gentleman last upon the floor, (Mr. ———,) that no member will be deterred from doing his duty fearlessly and promptly.

Sir, it was charged by the gentleman from St. Joseph (Mr. Colfax) that there was a pro-slavery party in this Convention—

MR. COLFAX (interrupting and Mr. C. giving way). I did not say so, Mr. President. I said there was a pro-slavery sentiment in the State, which pandered to the pro-slavery party.

MR. COOKERLY. The gentleman's explanation does not better the matter.

MR. COLFAX (in his seat). It is the truth, however.

MR. COOKERLY (continuing). Sir, in my opinion, there is no such feeling in this body. In my opinion, we can have no occasion here to pander for the pro-slavery sentiment. There is no more occasion for such a thing in this State than there is for a feeling in favor of slavery itself. No man here would pander to the slave power, nor have anything else to do with it, unless it were for the sake of the preservation of this Union.

The gentleman from St. Joseph has asked, with a sneer upon his face: Is this a South Carolina Convention? I answer: It is not; but it is a Convention composed of the freemen of Indiana, convened here to alter and amend the Constitution of the State, and re-arrange the organic law.

And now, Mr. President, supposing that we adopt a section to read in this way: That the General Assembly, at their first session under the amended Constitution, shall pass a law to prohibit negroes and mulattoes from coming into this State. Do you think the General Assembly would regard such an injunction. Sir, if

we pass upon anything with reference to this matter, I say, let us adopt something that will be effective. Let us not say that the General Assembly shall prohibit negroes; for I tell you, sir, they will not do it; and it is my judgment that we ought either to adopt something stringent upon this subject, or nothing at all.

Gentlemen seem to be surprised that we should think to declare that negroes and mulattoes shall not acquire property in the State. They look upon it as a horrible idea—an outrage upon common justice, and an infringement of vested rights. But I contend that it is not. I contend that we have a right to prohibit them from coming in, in self defense; and to prohibit them from acquiring property under the law. The object of such a course of legislation is not to oppress the black race. Not at all; but to induce them not to remain amongst us; to show them at once that they never can acquire any more rights than they have, so long as they may remain here, and that those rights which they now have shall be abridged.

Even those gentlemen who oppose this measure, admit that the blacks and whites cannot live together in the same community to the advantage of both races. They admit this, while, at the same time, they are opposed to the adoption of any measure which would induce the blacks to go to their native Africa; and it is plain, that, so long as we have this eternal outcry that we legislate against the rights of negroes, we never shall get rid of them. There are some gentlemen, who, instead of adopting measures by which we might get rid of this race, would do almost anything in their power to prevent such a desirable result, and induce them to remain amongst us.

The gentleman from St. Joseph asserted that there was a party in this State who were pandering to the power of the slavery sentiment. I might in reply charge that gentleman with pandering here to the power of the free soil sentiment. But I shall not do it, because I will not so far impugn the motives of any gentleman.

Sir, I am in favor of the section as originally reported by the committee. I go the whole hog in this matter. I want no child's play; and I call upon the friends of this measure to hang together, and if they intend to do anything, to do it at once, and do it right. Let us not permit ourselves to be drawn away from our duty by such sermons as that delivered yesterday by the gentleman from Hendricks (Mr. Nave). Now, it is contended that this clause will deprive the children of negroes and mulattoes, already amongst us, from the right to inherit real estate by descent. But I contend that it does not. If it did, I would go against it; because it would destroy vested rights. But it cannot have that effect.

I would ask gentlemen: How are we to prohibit negroes from coming into the State? Should the Legislature pass a law to put a free

negro or mulatto in the jail of the county, or confine him in the penitentiary, for the offense of coming into the State, the moment such a law were attempted to be put in force, that very moment, the freemen of Indiana would rise up in arms against it. What, then, shall we do? Should we say to them that they shall never be able to acquire real estate here? It will probably be as much as two years before the amended Constitution can go into effect, and by that time, in all probability, the State will be flooded with this class of people, and the object intended to be effected by the provision will be entirely obviated.

There are many gentlemen, probably, who do not feel the same interest in this question which I do, and which I know to be the feeling of my county. We have, I suppose, some twenty-three hundred negroes in our county who have not proved themselves to be very good citizens and neighbors, and we want to get rid of them; not by any act of oppression, but by fair and honorable means.

The gentleman from Tippecanoe (Mr. Pettit) says, if we permit these people to come in amongst us, we should also allow them the right to acquire and hold real estate, and by this means raise up more men, who would become defenders of the country in war. But, sir, are the holders of real estate exclusively the defenders of the country? No, sir, it is to the poor men who are not very often capable of acquiring real estate, to whom we are to look chiefly as the defenders of our country and our country's rights; so that this argument against the section must fall to the ground.

I will say then, sir—defining my position—that I am in favor of the section as reported by the committee, and if I cannot get that, then I shall be in favor of making as fair a compromise as possible. I do not know at this time that I would object to submitting this section as a separate proposition to the people, to say whether or not it shall be adopted into the Constitution. For I believe that a majority of the people are not only in favor of prohibiting negro immigration, but that they would prohibit that class of people from the enjoyment of many other rights which are claimed for them.

Mr. SMITH of Ripley next obtained the floor, but he yielded immediately for—

#### EXPLANATION.

Mr. RARIDEN. I have not the least disposition to steal the thunder or the arguments of any individual in this body. I find, sir, in today's *Journal*, under my name, and credited to me by the printer or some body else, a speech which I never delivered. I believe the speech was made by the gentleman from Wells (Mr. Bascom). I do not want to borrow the speech of any gentleman for I always make enough of my own.



Mr. BASCOM. I called upon the Reporter and requested him to make the necessary corrections. I certainly have no desire that the gentleman from Wayne should be represented as making that speech.

Mr. RARIDEN. No, sir, I do not impute any such desire to the gentleman.

The PRESIDENT. The Chair would remark that when gentlemen find themselves misrepresented, it is a matter between them and the Reporter, over whom the Convention has no control. The time of the Convention, therefore, should not be occupied with corrections of the reports. The gentleman from Ripley will proceed with his remarks:

Mr. SMITH of Ripley. I do not rise for the purpose of defining my position and making a speech, but for the purpose of talking about what I understand to be the question before us; the question of reference. I believe the first question is upon the motion to refer the entire proposition to a select committee of one from each Congressional District, with a view of bringing the subject back again sometime during the course of the session, in some shape which might be more acceptable to its friends.

I would remark, however, that this question is one upon which every gentleman would wish to set himself right before the country, and therefore, I am not surprised to see gentlemen rising in every quarter of the house for this purpose. The proposition involves the settlement of a great principle, affecting not only our own interests, but the interests of those who are to come after us; therefore it becomes important, and should be duly weighed and considered. I confess, myself, that I have scarcely made up my mind with regard to the course which I shall pursue. The subject was not canvassed in my county. It was spoken of by a single individual who was a candidate in the field with me, and who obtained some few votes, but I did not canvass the question, and I have been listening here to the speeches of gentlemen for the purpose of learning something about it, but I discover that the confusion in their mind is becoming more confused—the further gentlemen pursue their investigations the greater the difficulty in my mind. For this reason, I am in favor of the motion to refer the subject to a committee. And when I say that I believe this question should be again referred, I mean no disrespect whatever to the committee whence the section came originally, for I believe that committee to be a very able and judicious one. But allow me to make this remark: that the section has come to us from a most inappropriate committee; for can any man doubt that if we adopt this section it must, to some extent, infringe the natural and inherent rights of men, if they happen to be black. I understand that it is the peculiar province of this committee to ascertain what are the natural and inherent rights of the inhabitants of the State of Indiana, and not to

infringe upon those rights. This section, then, has come from a very inappropriate committee, and therefore I would change the reference. But if it cannot go to a select committee, I would give it to the committee on miscellaneous provisions, so that if it must come in to the Constitution, it would come in under its appropriate head, and where it would not be the first thing to meet the eye. I would not prefer to place such a provision as this upon the very first page of the Constitution. But further, as to the propriety of this reference. We perceive that there are still very serious difficulties rising up in the minds of gentlemen, in connection with this subject. The remark of the gentleman last up is certainly true—that you must do something that will be efficient. You must take the lion by the beard. You must take care to apply the penalty for the infraction of your laws. The simple declaration that negroes and mulattoes shall not come into the State, will never prevent them from coming, so long as they shall be hunted down for their lives and their liberties in the adjoining States. What has been done with reference to the rights of this class of people in the State of Kentucky? Why, sir, the enjoyment of liberty by this class of people has been made a felony there; and if you say merely, in your Constitution, that these people shall not come into the State of Indiana, do you think that the mere declaration will prevent them? I tell you it will not, so long as they come here to prevent themselves from being sold again into slavery, or incarcerated in the penitentiary. Therefore, adopting the language of the gentleman, I say to you that you must take the "bull by the horns"—you must affix a penalty to your law which shall be dreaded and more horrid than the oppression which these people suffer elsewhere. Not only that they shall not hold land—not only that they shall not have the right of domicile—but you must say to them that they shall not breathe the air of our State and live. That will be the only sufficient penalty which will keep them away; and why? Because to keep them out of the State you must inflict a penalty more to be dreaded than the oppression which drives them here. You need not think to keep them out by confinement in the jail or penitentiary, or by taking away from them the right to hold land. What do the negroes care for land? You find them generally clustering about your cities and towns. They do not come here after land. Therefore you must make your penalty stronger than the oppression which is designed to drive them out of the slave States.

For this reason, also, I am in favor of giving ourselves some respite from the consideration of this subject, to give ourselves time to think of it and look the proposition fairly in the face. I would say, take the subject away from the committee on the rights and privileges of the inhabitants of the State, and give it into the hands

of a select committee of its friends, if it has any, and let them look over the whole ground, and let them look especially at the appropriate penalty. For if you merely give authority to the Legislature to pass a law on this subject, you will throw out the most exciting and dangerous matter of strife and contention that was ever cast before any community. Why, sir, there are hundreds of men in this State, who would stand up before the country, and discuss and denounce such a proposition, week after week, telling the people that they never should swear to support a Constitution, which contains it. If you require the Legislature to pass a law prohibiting this people from coming amongst us, such a requisition implies the power to impose such a penalty as will keep them away. I say, therefore, that the Convention themselves should look this matter in the face; they should propose the law, and affix the penalty, and not leave for those who are to come after us, to do the foul deed, if foul it be. For I assure you, that though you may direct this to be done, the Legislature will not do it, without imperative instructions from the people, and by it you will throw such a question before the people as will convulse the whole State, and greatly endanger, if not defeat the adoption of the Constitution. For that reason I insist that the question should be referred. Not on account of what we propose to do in the premises, for we propose to do right when the question comes up in a tangible form, but in order that we may do what we can, without infringing upon the laws of humanity, towards preventing these people from coming amongst us.

For myself, if I could speak, so as to keep them all out of the State, I would say, they should never come in amongst us; and I would say it now. But a great deal more is to be done, than has been thought of here. You must inflict stronger penalties. You must say to the people, you shall not rent your land to these people, you shall not harbor them nor feed them. These will be some of the laws which it will be necessary to enforce against these people; and I say to you now, that, whenever you invade any right, belonging to the people, you will strike a cord of sympathy, which will be felt throughout the State. Whenever you make a law that we shall not feed these unfortunate people, under the penalty of presentment, or indictment and fine; and whenever a man shall be brought into court, under a presentment, or indictment, of this kind, and shall stand up and plead his cause and say, "This man came to my house. He was starving! He begged of me bread; I gave it to him, and he did eat." How then under such circumstances, could you enforce a penalty of this kind upon any man? You cannot do it. I tell you, sir, I would feed the starving man, if black as Pluto. The dog does not live, that I would not feed, if I knew he were starving. Your penal-

ties would never quench these irresistible sympathies of the people of Indiana. [Applause.] I have too much confidence in their humanity, to believe they would suffer even a black man to die at their door for want of food.

But, sir, if you will do this thing, I must conjure you again, not to call in the aid of the General Assembly, which is to come after you; but take the lion by the beard; bring up your penalties, and let us look them in the face; and know precisely what we have to do. Let the whole matter be referred again to a committee of its friends; let them make the best they can of it. And if, they have outraged humanity in Kentucky; if they have declared the enjoyment of liberty to be a felony; and if it is proposed that their example be followed here; let every thing be fairly proposed, and let us look the matter full in the face.

I hope the subject may be referred; and then, if gentlemen are willing to look over the whole ground, I will go with them as far as possible in the premises; but I cannot consent to outrage the laws of humanity, of nature, and of God, "until we have time to make better."

Mr. GOOTEE said: It has been very justly remarked by the gentleman who has just taken his seat, that this is a very important and delicate question, upon which every man is desirous of defining his position before the Convention. I propose now to define my position; and in doing so, I hope the Convention will indulge, if I should go to some extent into an examination of the question; for it was a matter discussed at great length during the canvass last summer, in the county where I reside. But, at this late stage of the debate, when the subject has been discussed until it is worn out—when it has been examined in so many aspects—when it has been so often turned over and back again—it seems to me that very little should be said beyond what is necessary to set ourselves right before the people; and this is all I shall endeavor to do. I am perfectly willing that those who have heretofore dwelt so loud and long upon this subject, should have full credit for all they may have said, whilst I claim for myself the credit of having been a most attentive listener.

In the first place, Mr. President, I can have no doubt but that public opinion, to some extent, will censure the Convention for the time which they have already consumed in debate; but I shall not be charged with contributing to this delay; for I have barely done my part of the voting and listening—but scarcely the latter.

I am in agreement with my friend, the gentleman who was up a few minutes ago, (Mr. Cook-erly,) in one respect. I think we want action in this body. I think gentlemen were ready for action long ago. I think most of the members of this body came here ready for action upon this subject. For my part, I have listened to this discussion with a great deal of earnestness,



up to this very hour, because I am desirous of getting all the information I can upon this subject: but, Mr. President, I must confess that I came into this body at the first, just as well prepared to vote upon this subject, as I am now. The fact is, I brought my instructions with me. I told the people what I was coming here for, and how I would vote upon this question; and I cannot be drawn away from my adherence to the principles which I laid down before them, by any specious argumentation. Hence it seems to me, that all the learned reasoning and long speeches which we have had upon this subject, will not take very well with the people.

My position with regard to the pending question, is this: I stand pledged before the people, to go for any humane measure by which we may get rid of the blacks, and as soon as possible. If there is any course that can be proposed, by which we can get rid of those we have already amongst us, and prevent further immigration of the blacks, without public dishonor, I am ready to vote for it.

I am decidedly opposed to referring the subject again to a committee. Nothing could be further from my wishes than to agitate this subject any longer. If the matter is to be again reported upon by a committee, it would involve another discussion, and so we would have investigation upon investigation of the same subject, over and over again.

Mr. OWEN. I rise to speak to the question of reference. It did not occur to me, until it was suggested by my friend from Ripley, that it could, in any sense, be construed into a lack of courtesy, toward the committee of which I have the honor to be chairman, and from which this proposition was originally reported,—to refer the whole subject connected with negroes and mulattoes, to a select committee composed of one member from each Congressional district. The gentleman from Floyd, (Mr. Kent), before he presented the resolution for the reference, showed it to me, and told me his object. I cordially approved it. I considered that a committee so constituted would be likely to embody a fair representation of the public opinion of the State. I differ with my friend from Martin, the gentleman who last took his seat, (Mr. Gootee,) who seemed to think that we might save time by refusing to make this reference. The Convention will observe that some five or six different sections have been reported in connection with the subject of negroes and mulattoes, and that these are scattered all over our reports, not standing in one article, in connection. Now, any one who has had experience in legislative bodies, must feel assured that a separate debate will spring up upon every one of these sections, unless we can get them all into one article. We have for the subjects of these several sections, first, the prohibition of negro immigration; next, the question as to their right to hold real estate. Then the question as to their competency as

witnesses in courts of justice: then the question as to negro suffrage: and lastly, as connected with all these, the great question of African colonization. Now, sir, these various questions, as the matter now stands, will present themselves, probably, on separate days, and be considered one after another, until we shall dispose of them. I am satisfied, that, in order to save time, (and whatever may be thought of my vote on the half hour rule, there is no gentleman in this Hall, who is more disposed than I to save time, whenever it is not saved at the expense of principle,) this matter ought to be referred to a committee, to be constituted of members taken from different portions of the State; men who will give to so great and grave a question as this, the careful deliberation which it deserves.

The gentleman from Martin, (Mr. Gootee,) has said, (and no doubt with the utmost sincerity,) that he considers himself prepared to vote upon every question that may come up here, without further reflection, and without discussion. All I can say in reply, is, that that is not my case. Whenever I approach a subject like this, connected as it is, with great measures of public policy, and with a subject which now agitates the minds of the people, not merely of this State—not merely of the United States, but throughout the world—whenever I approach the policy of the separation of the two races,—the question of a homo-geneous race—I feel the difficult character of the questions: how may we best attain this object?—by what means, yet not too harsh, can we effect this separation? It is a great and a grave inquiry, how shall all this be done in the best manner? Other gentlemen may say that they are prepared to decide it; and that they know exactly what these means ought to be.

For myself, I am not yet prepared. On the policy of separation, I made up my mind long ago: but the means, the details, the penalties, if any; these are the practical difficulties. I desire to have the subject referred to a select committee, and to see their report; for everything connected with the subject of negroes and mulattoes, in the present state of public opinion in our State, is beset with difficulty, let us decide it as we may.

There is another consideration, connected with this subject—the Constitutional question, to which I hope the committee will give their best judgment. I regretted seriously, yesterday, to see the observations of the gentleman from Lagrange, (Mr. Howe,) cut short by the half hour rule. It seemed to me like cutting in two a demonstration of one of the problems of Euclid: and, if I had been disposed then, and there, to have replied to that gentleman, I should have felt myself utterly embarrassed in so doing, on account of the imperfect state in which the fall of your hammer, at the close of the half hour, left his argument.

There is one thing which I hope the committee will avoid—a matter which has been before complained of—I mean the error of getting two or more subjects into one section. In the arrangement of the article to be reported, every distinct subject should have a separate section, so that any gentleman, by demanding a separate vote upon each section, may have a chance of voting on a single proposition at a time.

I shall not, on this occasion, enter further into consideration of the subject; but, at the proper time, if the reference is carried, when the report shall come in from the select committee, so that we can have something tangible and definite before us—may know exactly what we are debating, and upon what question we have to vote aye or no;—I hope then, to have an opportunity of addressing the Convention.

I have said, with regard to another subject—the subject of the rights of married women—which has recently occupied our attention, that no one of greater importance would be likely to come up for consideration. I might say the same now. Of more importance than a question involving the rights to property, of one-half of our citizens, no other subject can well be. But of equal importance, I believe this subject is; equal in its influence on the prosperity of the State of Indiana, and her destiny through a long future, for good or for evil.

Mr. FOSTER. A few days since, Mr. President, I submitted a few remarks upon the section still in debate. I had no intention to speak further during the pendency of this question. The views that I then expressed and the course which I declared that I was prepared to take, and should take, were in conformity with my views of what was my duty to my constituents, as well as my own individual opinions in the matter. I believed it good policy, and I still contend that the best policy that, as a State, we can adopt in regard to the negro population within our borders is, to divest them of the right of acquiring and possessing property in the future—the best policy, to those in other States was to forbid and prohibit their emigration here, and finally, the most practicable, and, at the same time, the most humane course to take with the race generally was, to colonize them upon the shores of their native Africa.

On the present occasion, I intend to make a few remarks on my own account, and notice some occurrences in debate, as a duty which I owe to myself. And if there should be time, after a few brief words of personal explanation, I shall endeavor still further to fortify the position which I occupy in reference to this question.

I am not in the habit of writing my speeches, nor do I even correct and revise them after they are written out by the Reporter. I leave my speeches to the Reporters, just as I speak them in the hurry of the moment, without any effort to do more than make the Convention under-

stand my course, and to give such of my reasons and general views as happen to be uppermost in my mind. The Reporters will bear me witness that I do not prepare or revise my speeches. If I was jealous of my reputation I should correct them; but I am not.

I have no objection against the pending motion to commit this section and the amendments to a select committee, and that all propositions in relation to the subject should be referred to the committee, and let them report.

It has been often repeated in this chamber that all men are born free and equal. This is an eloquent declaration, and it is true in theory; but, sir, it is not susceptible of practical application to all men in the circumstances by which the people of this country are surrounded. It is true, practically, neither in the slave States or the free States. All men have not equal rights and privileges. I know how popular the phrase, borrowed from the Declaration of Independence, is; but practically, sir, it is a solecism.

Gentlemen who profess the greatest sympathy for the negro, have, in their admiration of his character, compared him and his struggles for freedom to the Hungarians and Poles, who fought against desperate odds for their political rights. But, sir, there is this great difference between the two: The Hungarians fought as a nation, and were recognized as a nation—not as isolated individuals; the case of the negroes cannot be compared to this, for they have no name or existence as a nation; even on their native continent they live in barbarian tribes of the lowest scale of sentient being; in this country, they exist only in two classes—the slave and the nominally free—and no one expects that we shall be engaged in a civil war with them. There is a vast difference, sir, between the moral spectacle of a national army, arrayed against the armies of another empire seeking to subjugate them, as was the case with Hungary, and here and there a straggling “nigger” absconding from the cotton field or kitchen of his master! [Laughter.] No, sir, there will never be a civil war between the two races in this country, unless, indeed, through the misguided sympathy of certain gentlemen, known as Abolitionists.

The gentleman from Tippecanoe has remarked, with great truth, that the two races can never amalgamate—that they must eternally remain two separate and distinct races. We know, on the other hand, that races which are homogeneous in their character, can and do amalgamate. The Saxons and the Normans were homogeneous, and, commencing at the time of William the Conqueror, they did amalgamate, and out of the union has sprung the most enlightened and the most powerful race on the globe. There are other instances, and they are apparent to all, in which similar races have united. But the Anglo-Saxon and the African



race are not homogeneous, and they never can amalgamate. There is no way to save both races from the accumulating evils of a mixed population, if living in the same country, but the scheme of African colonization.

It has been said that I was not going to vote for the latter clause of the section in debate, which declares that the Legislature shall pass laws prohibiting negroes or mulattoes from purchasing or otherwise acquiring real estate in this State hereafter; and it was urged that herein I showed a great inconsistency. Sir, while I will vote for the most stringent and effective measures to prohibit the immigration of negroes into the State, I shall not go to rob those already in the State of their rightfully acquire property. I claim to desire the good of the black race as well as of the white, and therefore I would do nothing to oppress the negroes now living in this State; on the contrary, I desire the amelioration of their condition. We do not propose to harm them by passing any *ex post facto* laws. Therefore, it will be seen that there is no inconsistency in my voting for the amendment to the section which was adopted, as proposed by the gentleman from Floyd (Mr. Thornton) this morning.

Gentlemen have remarked that the example of Rome should warn us from having too oppressive laws in relation to the blacks; the rabble of Rome had no property and no interest in the State. I am sure that if the negroes in the State already are allowed the undisturbed possession and use of their property, it will be better for the tranquillity and security of the people of the State.

Another gentleman, the member from Henry, (Mr. Kindley,) has alluded, at considerable length, to the positions taken in the debate on this question a few days since, and which were printed exactly as reported, in yesterday's city papers. I jocularly remarked that it was not a settled thing among learned men, whether or not, strictly speaking, the negro belonged to the human family, and mentioned that the celebrated Professor Agassiz, of Harvard College, had put forth a theory, and supported it in a learned disquisition, that the negro did belong to an entirely different race from ourselves. The gentleman (Mr. Kindley) quoted from this part of my remarks, and then compared it with another, in which I ventured the opinion, that, if the blacks of this country were all colonized in Liberia, they might grow up into a prosperous and a happy nation, and endeavored to ridicule the idea that a race which I had placed so low in the scale of being, could ever become a great nation.

Now, sir, when I jocularly remarked, that, according to Lord Monboddo and others, it was not yet quite settled whether or not man was not descended from the ape family, and that the negro might be nearer the original race than the white race, I spoke of *man*, not of the negroes

exclusively, and the report of my remarks will bear me out. So the gentleman has no foundation for that portion of his remarks.

The gentleman explained the difference in color between the African and the Anglo-Saxon as the result of climate.

Now here again, he is mistaken, for he will find upon research and inquiry, that the Esquimaux, who live in the frozen regions towards the north pole, are as black as the Congo negro. If the gentleman's theory of climate producing the difference in color be true, the Esquimaux would be white.

The gentleman also ridiculed my position, or rather the statement of my belief, that the curse of God pronounced upon the descendants of Ham was not yet removed. I still say, that that curse, pronounced ages since by the Almighty, has never yet been repealed.

The gentleman from Henry (Mr. Kindley) honored me with a lengthy notice on yesterday, and I wish to return the compliment by paying him my respects in person this morning [laughter]. Had the gentleman from Tippecanoe, (Mr. Pettit,) the gentleman from Posey, (Mr. Owen,) or the gentleman from Steuben, (Mr. May,) condescended to take so much notice of my remarks, my constituents would have thought nothing of it; but now, sir, I shall stand higher when it shall be noised abroad that I have been noticed by the distinguished gentleman from Henry, and the people will exclaim, "who would have thought it!" [Laughter.]

MR. KINDLEY. Perhaps the rules of courtesy would demand that I should ask the pardon of the refined and intellectual gentleman from Monroe?

MR. FOSTER. I did allude to the State of Illinois, as having, in her amended Constitution, declared that the Legislature should pass laws prohibiting the immigration of negroes into the State, and I did give it as one of the reasons, in addition to the fact that Kentucky and other of the slave States were driving their surplus negro population into our State, why we should protect ourselves against this flood of black paupers, by a stringent Constitutional provision against their future immigration into Indiana. And, sir, if the statement of the gentleman from Henry be true, that the provision of the Illinois Constitution was never complied with, it neither proves my inconsistency, nor is it an argument against the adoption of the section in debate.

The gentleman from Henry has cited us to the example of Massachusetts in making citizens of negroes and mulattoes, as worthy of our emulation. He tells us of the glory and prosperity of Massachusetts, and her superiority among the States. He speaks of her as "the child and mother of civilization."

Sir, I will detract nothing from the deserved fame of that State. I know that the Mayflower first anchored off her rock-bound coast;

I know that the "Pilgrim Fathers" landed on her shores, and I shall never forget the proud position she occupied in the war of the Revolution. But, sir, there is a reverse side to that glowing picture.

Federal old Massachusetts has often gone astray from the right paths. I recollect that her people, headed by her Quincys and her Parishes, met and passed resolutions against the declaration and prosecution of the war of 1812, and denounced it as a disgraceful act that this nation should go to war against the country from which we derived our laws and religion; and I have had little respect for Massachusetts since that time. I also recollect that her General Court refused to pass any resolutions of commendation of the heroic deeds of Commodore Perry, after his brilliant naval victory on Lake Erie.

And, sir, at this day, look at the meetings held all over that State, from desecrated Faneuil Hall to the smallest school house within her borders, in open opposition to the laws passed by the last Congress for the settlement of the Slavery question. I am as much opposed to the fanaticism of the North as I am to the ultraism of the South. I shall always go for upholding the laws as they are. I will rebuke the nullification of Charleston and the Garrisonism of Boston. Look at the condition of things in Massachusetts to-day. There are Garrison, and Abby Kelley, or Foster, as is her married name, and Thompson, an English abolitionist, who was mobbed out of the country a few years since.

A MEMBER. George Thompson is a member of the British Parliament.

Mr. FOSTER. Well, there is that band of worthies, preaching disunion, resistance to the laws, and all the incendiaries of the day, all over the State which the gentleman from Henry holds up for our example.

Mr. President, I have no hesitation in saying that I would assist to tar and feather such mischievous incendiaries. And particularly would I go for ridding the country of this English missionary. Why, sir, is the English peasant anything to compare, as to intelligence and the possession of the comforts of life, with the Southern slave? Why, sir, the laboring poor of England, and especially in the manufacturing districts, has not a tithe of the privileges and the necessities of life which the negro of this country enjoys. I say that such men who come here to lecture us in this way, ought to be driven out of the country, and so had all who will preach such incendiary sentiments.

The gentleman from Henry (Mr. Kindley) tells us that he is a benevolent man. He told us we must do unto others as we would have others do unto us, that we should give the negroes the privileges we would like to have them grant us if the position of the races was reversed. But I would inform the gentleman

that there is another passage of Scripture which I commend to his study. It is, in substance, that when we perform an act of charity, we should not let the right hand know what the left doeth. The gentleman told us how kind he had been to a drunken man whom he had found in the street, and who, he says, he took care of. I suppose the application of the story was that we must take care of the negroes instead of leaving them to perish. But the gentleman was not so self-sacrificing in his benevolence as he would insinuate. He took the drunken man to a tavern, not to his own home; he committed him to the care of strangers without provision for his wants.

Mr. KINDLEY. My boarding place was a mile from the spot where I found him, and it was out of the question as well as unnecessary to get him so far. I did not leave him till I was assured he should be cared for.

Mr. FOSTER. But the gentleman cannot get the credit of playing the good Samaritan. Did he give the innkeeper money, and tell him to take care of the unfortunate stranger, and say, "when I return I will give thee more?" [Laughter.] No; but he left him in a public house unprovided for, and then came here and boasted of his good deeds!

It was also brought up in judgment against me that I spoke of the negroes as "vermin." When I used that expression, I spoke of the negroes of Saint Domingo, whose moral and mental condition is so low, so degraded, that, if the gentleman could see them for himself, he, too, might describe them as "vermin" on society.

But, Mr. President, there are other vermin beside the Saint Domingo negroes. The abolitionists are worse than the negroes.

Now, sir, before I take my seat, I will, in order to fortify my position as to the prohibition of negro immigration, quote the appropriate remarks of a distinguished Judge, upon the subject. It will be seen that I have high authority for the constitutionality of the course I have urged.

"And the first inquiry is, whether, under the Constitution of the United States, the Federal Government has the power to compel the several States to receive and suffer to remain in association with its citizens, every person or class of persons whom it may be the policy or pleasure of the United States to admit. In my judgment, this question lies at the foundation of the controversy in this case. I do not mean to say that the General Government have, by treaty or act of Congress, required the State of Massachusetts to permit the aliens in question to land. I think there is no treaty or act of Congress, which can justly be so construed. But it is not necessary to examine that question until we have first inquired whether Congress can lawfully exercise such a power, and whether the States are bound to submit to it.



For if the people of the several States of this Union reserved to themselves the power of expelling from their borders any person, or class of persons, whom it might deem dangerous to its peace, or likely to produce a physical or moral evil among its citizens, then any treaty or law of Congress invading this right, and authorizing the introduction of any person or description of persons against the consent of the State, would be an usurpation of power which this court could neither recognize nor enforce.

I had supposed this question not now open to dispute. It was distinctly decided in *Holmes vs. Jennison*, 14 Pet., 540; in *Groves vs. Slaughter*, 15 Pet., 449; and in *Prigg vs. the Commonwealth of Pennsylvania*, 16, 539.

If these cases are to stand, the right of the State is undoubted. And it is equally clear, that if it may remove from among its citizens any person or description of persons, which it regards as injurious to its welfare, it follows that it may meet them at the threshold and prevent them from entering; for it will hardly be said that the United States may permit them to enter, and compel the State to receive them, and that the State may immediately afterwards expel them. There could be no reason of policy or humanity for compelling the States, by the power of Congress, to imbibe the poison, and then leaving them to find a remedy for it by their own exertions and at their own expense. Certainly no such distinction can be found in the Constitution; and such a division of power would be an inconsistency, not to say an absurdity, for which I presume no one will contend. If the State has the power to determine whether the persons objected to shall remain in the State in association with its citizens, it must, as an incident inseparably connected with it, have the right also to determine who shall enter. Indeed, in the case of *Groves vs. Slaughter*, the Mississippi Constitution prohibited the entry of the objectionable persons, and the opinions of the court throughout treat the exercise of this power as being the same with that of expelling them after they have entered.

Neither can this be a concurrent power; and whether it belongs to the General or to the State Government, the sovereignty which possesses the right, must in its exercise be altogether independent of the other. If the United States have the power, then any legislation by the State in conflict with a treaty or act of Congress would be void. And if the State possesses it, then any act on the subject by the General Government, in conflict with the State law, would also be void, and this court bound to disregard it. It must be paramount and absolute in the sovereignty which possesses it. A concurrent and equal power in the United States and the States as to who should and who should not be permitted to reside in a State, would be a direct conflict of powers repugnant to each other, continually thwarting and defeat-

ing its exercise by either, and could result in nothing but disorder and confusion.

Again: if the State has the right to exclude from its borders any person or persons whom it may regard as dangerous to the safety of its citizens, it must necessarily have the right to decide when and towards whom this power is to be exercised. It is in its nature a discretionary power, to be exercised according to the judgement of the party which possesses it. And it must, therefore, rest with the State to determine whether any particular class or description of persons are likely to produce discontents or insurrection in its territory, or to taint the morals of its citizens, or to bring among them contagious diseases, or the evils and burdens of a numerous pauper population. For if the General Government can in any respect, or by any form of legislation, control or restrain a State in the exercise of this power, or decide whether it has been exercised with proper discretion and towards proper persons, and on proper occasions, then the real and substantial power would be in Congress, and not in the States. In the cases decided in this court, and hereinbefore referred to, the power of determining who is or is not dangerous to the interests and well being of the people of the State has been uniformly admitted to reside in the State."

It is to the last paragraph that I wish to call the particular attention of members:

"I think it, therefore, to be very clear, both upon principle and the authority of adjudged cases, that the several States have a right to remove from among their people, and to prevent from entering the State, any person, or class or description of persons, whom it may deem dangerous or injurious to the interests and welfare of its citizens; and that the State has the exclusive right to determine, in its sound discretion, whether the danger does or does not exist, free from the control of the General Government."

With this quotation, and with the remarks I have made, I will, so far as I am concerned, submit the question.

Mr. COLFAX. Mr. President, I wish to say a few words upon the section in debate; not, however, touching the legal and Constitutional bearings of the question, for that branch of the discussion will be better conducted by gentlemen learned in the law. I shall speak solely and exclusively of the expediency of the adoption of this section as a part of the Constitution of the State. It proposes that—

"The General Assembly at its first session under the amended Constitution, shall pass laws prohibiting negroes and mulattoes from coming into, or settling in, this State, and prohibiting any negro or mulatto from purchasing or otherwise acquiring real estate hereafter."

That, Mr. President, is the provision which

we are *here and now* called upon to engraft in the organic law of Indiana!

It is a lesson, sir, which we learn from history, that all wrongs, however great, however flagrant, are always justified by those whose interest it is to support and defend them, by the plea of a seeming expediency. It is thus that all injustice, all crimes, have ever been covered over and gilded. The first murderers, the brothers of Joseph, the royal criminal who robbed Naboth of his vineyard, all wrong-doers; down to the perpetrators of that awful judicial murder of the Saviour, all plead expediency in justification of their crimes.

Secular history tells us also the same thing. The records of the past are full of cases illustrating the Universal Apology for wrong. The executions of Algernon Sidney, and of the peerless Mary, Queen of Scotland, the bloody trials of the bloody Jeffries, all were attempted to be justified by the "peculiar circumstances" of the time; it was policy—it was expedient. And so too when the streets of Paris ran with the blood of the best and the fairest of France, in the terrible era of her Revolution—it was "expedient" for the safety of the people, and the guillotine was therefore permitted to swell the vast hecatomb of victims.

Mr. President, in this day wrongs are still advocated on the ground of policy, and the individual or State that is about to commit a great wrong will seek so to cover it over that before the gaze of the present, they can hold up the declaration that its necessity or its expediency impelled to the commission.

I shall not compare the proposition in the section before the Convention to the crimes in the past which I have cited. It is not so palpable in its enormity. The victims of this provision do not occupy that elevated position in the world's eye that challenges its sympathy with their sufferings or its indignation at their oppression; for they are of a race which it is popular to deride and revile. But, sir, it stands on the same platform of wrongs, some greater and some of less magnitude, as the light of the future brings this act into bolder relief or throws another into a darker shade.

What is the main reason, what is the strongest argument most frequently urged and mainly relied upon, for the adoption of this section? It is that the State of Kentucky, in her Constitution, adopted last summer, has prohibited a free negro from coming into the State, and an emancipated slave from remaining in the State over thirty days, upon pain of being arrested for a misdemeanor, and sentenced to confinement in the State penitentiary. In the truthful, earnest language of the gentleman from Ripley, (Mr. Smith,) "Kentucky has made freedom a crime," and, sir, she has affixed a severe penalty to that crime. And while gentlemen denounce this clause in the Constitution of Kentucky in the strong terms of manly indignation;

while they say there is no palliation for the act, neither here nor at the bar of Eternal Justice, they turn and commend to us the example of that State in the adoption of that Constitutional provision—they ask us to adopt a similar section, and to bring upon ourselves the infamy which they say it has fastened on Kentucky. They propose that this extreme act of a slave State shall be followed by a free State which has not even so good an excuse for it as had Kentucky. What was the excuse for that act rendered by the Delegates in the Convention of that State? It has not yet been noticed in debate. But it was simply and solely this: that there were two classes of negroes in Kentucky—the slaves and the free blacks—and that the presence of this class of free negroes among the "chattles," rendered that description of property insecure. Hence the slaveholders demanded that the free blacks should be expelled, in order that they might be secured in the quiet possession and enjoyment of their property in slaves. This, sir, was the excuse for the adoption of the provision, so often alluded to in the Kentucky Constitution. Is it of the least validity or weight here?

Have we an excuse or an apology like this for the adoption of a provision similar in character but more heinous in its injustice? We live in a State which, for a third of a century, has proclaimed that all men are naturally possessed of certain rights, of which the section under consideration proposes to divest a class of men.

The right of ALL men to acquire and possess property, which was solemnly declared in 1816 to be inherent and inalienable, is now as solemnly to be denied by a declaration in the organic law of this free State. If the framers of the present Constitution uttered a truth—if this right of ALL men, without limitation of color or of race, to acquire and possess property, declared by them in 1816 to be *inalienable*, was really so, how can it be *alienated* now? If it was a natural right then, as they proclaimed, how can it be repealed now? If it was a right inherent in all men in 1816, how can it be violated and trampled on in 1850? Does progress learn us to alienate in one generation what was inalienable previously?

When I was upon the floor the other day I cited for the consideration of this Convention the Constitution of the slave State of Delaware, which solemnly recognizes the same great truth, *that upholds it yet*; and, sir, I have farther to say that that State, and Maryland, and the District of Columbia authorizes and tolerates the residence of free blacks within their borders and among their people, while to-day it is proposed to exclude them from Indiana. Why, sir, if we make haste we may outstrip slaveholding Virginia in adopting provisions of most unexampled severity and wanton injustice against the negro. The Convention of that State met a few weeks since, and a proposition



to exclude free negroes, heretofore allowed a residence, was introduced, but the Convention has temporarily adjourned without acting upon it. Virginia has not yet committed this great wrong, and if gentlemen make speed in their action, there is a probability that they may out-strip Virginia in its consummation. When the Convention of that State re-assembles it may find that Indiana, though she was made a free State by the ordinance of one of her own slaveholders, has borne off the palm from her, in the race of oppression.

The gentleman from Ripley (Mr. Smith) "hit the nail on the head" when he pressed upon this Convention the question, "What remedy do you propose effectually to prevent negroes from coming into the State?" Driven from Kentucky under pain of confinement at hard labor in her State Prison, you must make the pains and penalties severer—the punishment more dreadful and intense here, or you will not prevent their immigration, or, what this section will also prevent, their passing through the State on their way to Canada or Liberia. And we demand of gentlemen on the other side, that they come out boldly and frankly, like men, secure from fear in the consciousness of right, and tell the people plainly and openly what penalties shall be affixed for this new misdemeanor of their criminal code. How do you intend to carry this matter, so boldly begun, into execution? Let us, upon the same page that declares it a crime for a black man to come into Indiana, declare and enact the penalty attached to the commission of that crime.

Mr. President, we have often spoken with pride of this union of States, of the privileges secured by this republican form of government, of the priceless value of the liberties wrested from the gripe of throned despotism, which we have received from our ancestors. And with feelings of self-gratification we have pointed to the condition of the people of that Isle of the ocean, that England—whose name has become a synonym of power and national grandeur, as subjects of monarchical power, and far below us in the enjoyment of liberty and free institutions. But, sir, there is a glorious truth recognized, affirmed, proclaimed by England, and which I hope to live yet to see re-affirmed, re-proclaimed in my own country—the truth that man as man is free—the declaration that when a slave sets his foot on England's Isle, that moment the chains fall forever from his limbs, that moment he becomes forever free.

It will be long, long years before the slave States of our confederacy, who alone have control over their own institutions, will banish slavery from their borders, and before we shall, in this respect, stand free from stain in the eyes of mankind. But, sir, whether that time be far or near, let us act wisely in the present, and pause long before we adopt this section, which, when that time arrives, if ever it is destined to

come, we shall blush with shame to remember that we placed it in our constitutional law.

We cannot, if we would, conceal so great a wrong by gilding it with the tinsel of a seeming and temporary expediency. Time, besides being a great teacher, is always a great vindicator of right. Its unerring verdict has most sternly condemned every one of the great wrongs I have cited to you from the past. This decision we cannot escape. The cool judgment of the calm and unbiased historian is yet to pass our acts in review. When that time comes no expediency will weigh even as a feather in the balance of impartial justice. The question—the only question—will be, was it wrong, was it inhuman? And according to the answer will be the verdict rendered.

Sir, I make no boast of the purity of my motives here, but when I learned the lessons of freedom, I learned, also, to abhor oppression and tyranny; and wherever, within my sphere, be it narrow or wide, oppression treads its iron heel upon human rights, I will raise my voice in earnest protest; I will rebuke it and condemn it whether it emanates from a despot on a throne or from a popular majority which has become lost to sense of right. In carrying out such a principle I may fail, but I would far rather sink with the oppressed, however weak and despised and defenseless, than to rise with the oppressor, however powerful. I would rather have borne the name of a rebel and the brand of a traitor, with the patriots of the Revolution, than to enjoy the utmost favor of the tyrants who oppressed them. I would rather this day—this very hour—share a hovel and poverty with Kossuth, than a palace in splendor with his Russian foe.

Mr. McFARLAND. I rise for the purpose of calling the attention of the Convention to what is really the pending question, rather than for the purpose of discussing the merits of the proposition itself.

In common with other gentlemen who have expressed their feelings of disapprobation at the course which debate has taken, I feel that it is important and proper that we should come back to the consideration of the real question pending before the Convention. The question is, shall this section, proposing to prohibit negroes and mulattoes from coming into the State, and from purchasing or otherwise acquiring real estate hereafter—shall this section and the pending amendments be committed to a select committee, with the instructions moved by the gentleman from Floyd (Mr. Thonton)?

It must be apparent to every gentleman that this subject needs to be further investigated. I rejoice to see the feeling of courtesy and calmness which obtains in all the discussion of yesterday and to-day, compared with the excited state of temper with which the consideration of this section was first approached. I trust that this feeling, so necessary to the correct settle-

ment of the question, and so creditable to gentlemen whose feelings are so warmly interested for and against the provisions of the section, will continue to characterize the discussion. The question itself is one of the most important that will come before the Convention, and that can be submitted to the citizens of the State for their judgment and final decision.

It is a subject of far more than local, or even State importance; it has claimed and received, and justly, too, the longest and closest attention of those who are councilors in the nation. It is no simple proposition in which the citizens of Indiana alone are interested and concerned—it is a great national question—aye, more, a question in which the world is concerned and of which the world is now taking careful note.

When gentlemen approach the consideration of this question, they must forget the little petty squabbles and jealousies and the narrow feelings and prejudices which may have surrounded them in their petty local constituencies. We must recollect that it is no question which concerns one constituency alone; we must be conscious that it nearly concerns and intensely interests, the whole constituency of the State, and involves the consideration of a question that reaches the very vitals of the great nation, of which we, as a State, form but a constituent part.

It was well said by the gentleman from Vigo (Mr. Cookerly,) that the proposition in debate would, if adopted, prove inadequate to the expectations of its supporters, and the ends it is designed to accomplish. We have some experience in this matter; there are examples of States adopting similar provisions; and it would be the part of wisdom in us to study those examples and profit by that experience.

The State of Illinois adopted a Constitutional provision similar to the one under consideration.

Now, here, as you have heard, was full and complete power given to the Legislature of that State, in as solemn and mandatory form as we can give to our Legislature, and what was the result? Did the first Legislature under the amended Constitution comply with the supreme mandate of the organic law of the State? Search the official record of the Legislatures of Illinois from that period to this, and you will find not a single law upon the subject! Sir, the Legislature shrank from the discharge of the duty so solemnly imposed upon them by the Constitution—and well they might.

But, sir, let us meet this question with the cool temper and kindly feelings with which it was discussed this morning, and be resolved that whatever provision it may seem wisest and best to adopt, shall be made effectual and not stand upon the page of the new Constitution, null and void, a dangerous precedent to show that even the solemn mandate of organic law may be inoperative—may be disregarded; as a provision is al-

most certain to be which comes in collision with the sentiments and feelings of a large majority of the people.

Let us leave nothing to the Legislature that can be properly done here; we must shrink from no responsibility which it is our duty to take; in a word, sir, let us, to adopt the forceful, if not very classic language of the youth, and "take the bull by the horns" (laughter). If it is possible to "get clear" of that class of population which, in the earlier part of the debate was denounced upon this floor as "vermin," and by others as "apes and the descendants of the monkey species," if, I say, we can in time get clear of the negro population of the State, if we can prevent their future immigration into the State by any means short of an outrage upon the common rights of humanity, short of a violation of the spirit and terms of our own charter of liberties, short of trampling by the right of mere brute strength upon those rights and immunities sacred here and everywhere, it may be done. But, in the name of God, let us not dare the vengeance of Him who holds nations, alike with individuals, accountable for crimes, and at the same time suffer the double retribution of seeing our iniquity impotent, of seeing the provision we adopt fall short of its design.

There is no time, if there was a disposition, to argue this question; but with this brief expression of my views, I submit whether it is not better that this discursive debate should be brought to a close and this whole subject be referred to a committee. The instructions of the gentleman from Floyd (Mr. Thornton) are not imperative; they only require the committee to inquire into the expediency of their provisions. Gentlemen who are desirous, and whose duty it is, to discuss this question, can reserve their remarks, and make them when the subject again comes up, in better form for debate, on the report of that committee. Let this whole matter be referred to a committee of intelligent, thinking men, who will, calmly and deliberately and faithfully investigate the whole subject in all its bearings, with the advantage of the pretty full expression of sentiment from representatives of almost every portion of the State, and who will report a provision in the best form which their judgment, thus aided, will enable them to, for the action of the Convention.

At that time, when the proposition will come up in a more definite form, I hope to have an opportunity to express my views on the subject; but at present, I feel that the debate is really out of order, and shall not enter into a speech. And I think that at this time, gentlemen should strictly confine their remarks to propriety or impropriety of committing this section and amendments to a select committee.

I understand that the friends of a measure, effectually to exclude colored people from coming into or settling in the State, have no con-



fidence in the section as reported, while the opposite side denounce it as contravening the fundamental rights of all men.

This being the case, who so able as a committee of one from each Congressional district, as proposed by the gentleman from Floyd, to submit a proposition upon which a majority shall unite!

In conclusion, let me express a hope that this scattering debate will cease, that this whole matter will be sent to a committee, and that we may proceed to the discussion of other propositions which are already in a proper form for action.

**Mr. MORRISON.** I certainly have no disposition, Mr. President, to prolong this incipient debate, but there is much matter connected with the subject of this section, which in some shape has yet to be referred to the committee proposed by the gentleman from Floyd.

Before that committee reports in the form of sections what it may think to be the opinions of this Convention, there should be a much fuller expression upon many features of that report.

If those instructions presented by the gentleman from Floyd (Mr. Kent) pass, they will in effect be imperative, and the sections reported back to the Convention will embrace the principles expressed in those instructions.

But, sir, I must vote against some of the propositions contained in those instructions. I consider that public opinion is settled in opposition to the immigration of blacks into the State; I know that this is peculiarly true of the county of Marion. And, sir, I shall not be deterred from representing that settled will of my constituents against the influx of blacks, by the dolorous ditties which have been recited to us by gentlemen who may have a large abolitionist constituency, whose good opinion they may desire to propitiate. I stand here to say, that a large majority, not alone of the people of Marion county, but a large majority of the people of Indiana, have emphatically declared against the future immigration of negroes and mulattoes into the State. I hold, sir, that it is mere sophistry, a mere play upon logical formulas, to say that the people of Indiana has no power, under the Constitution of the United States, to prohibit this immigration. I shall not attempt to follow the arguments of the gentlemen who have taken the opposite side, because the restriction of the half-hour rule will prevent me from making myself understood by preventing me from reviewing the whole subject. But, sir, they do not, in my humble opinion, deserve so serious a consideration from any member.

I am opposed to the adoption of the instructions moved to be referred with this section, inasmuch as they contain several bad features.

And first, I will notice the proposition for the annual appropriation of ten thousand dollars, to

be applied to the colonization of the negroes of this State in Liberia. Are gentlemen prepared to vote for that provision, are they prepared to declare that there shall be an additional tax levied upon the people for an appropriation they never thought of when they elected them to this Convention? What man is there here who, in the face of the unparalleled burthens of taxation now bowing the backs of the tax-payers of Indiana, will vote to add to those burthens by the annual appropriation of this large sum, and for the purpose of African colonization? I am not prepared for such a step, and I will not vote to require the appropriation of one cent for that object.

I am as much opposed to the keeping up of the agitation of this subject which will be the result of another proposition contained in those instructions, the proposition to submit a section prohibiting negroes from immigrating into the State, and from acquiring real estate, to the separate vote of the people. I say again, that public opinion is settled upon the subject. We have been virtually instructed in the will of those we serve, and we must not turn aside to please and accomodate gentlemen who are disposed to shrink from their responsibilities by leaving this subject an open matter; by submitting a section relative to the immigration of blacks, and their rights of property, to the separate vote of the people. I cannot refuse to represent what I am convinced is clearly the popular will, merely for the purpose of accomodating gentlemen who have a delicacy in this regard. I shall go for closing this matter up in the Constitution, and let the people vote upon it as a whole, but I am willing to provide in this Constitution for amendments to it, by the concurring votes of two successive Legislatures, and without the calling of another Convention.

I hope that the various points contained in these instructions will be debated until the committee to whom the section will be referred will clearly comprehend the will of the Convention.

I have no objection to the reference, so that all the points involved are fully and fairly understood.

**Mr. OWEN.** I think the gentleman (Mr. Morrison) has somewhat mistaken the nature of the instructions moved by the gentleman from Floyd. I think that there are no positive instructions at all, but merely a direction to inquire into the practicability and expediency of certain propositions.

**Mr. MORRISON.** I understand it otherwise. I understand those instructions to be an insidious means of getting an expression of the Convention, that shall be urged upon the committee as the will of this body in favor of certain propositions contained in those instructions. Although they are not imperative in terms, they carry with them, by implication, if

adopted, the impression that the Convention favors their principles.

Mr. OWEN. I will read the instructions:

"Refer this section to a committee of one from each Congressional District, with instructions to inquire into the best means of ultimately separating the white and colored races in Indiana; and also into the expediency of incorporating in one article all Constitutional provisions relative to negroes and mulattoes, and submitting the same separately to the people."

Mr. MORRISON. Having heard the instructions read, I am confirmed in the conclusion that they have the insidious object which I mentioned. I wish to direct a committee to make no such inquiry as that. I do not wish the committee to go out with the idea that they are to report any such propositions; nor do I wish the Convention to be trammelled by the influence of a report which a committee thus instructed would make.

Sir, in this matter I have only to know the will of the people before I am ready to act. I have no ulterior object in view, which would be forwarded by deferring to the individual wishes or feelings of any member here. I have no courtesy to extend, at the expense of duty, for the sake of being in good repute with gentlemen who would like to dodge the responsibility of voting for or against the pending section. But as to some gentlemen here, a "change" seems to have "come over the spirit of their dreams" since they entered this Hall. I cannot account for that change, and can only say that I am not affected by it.

Mr. JONES. Mr. President, it is with the utmost diffidence that I attempt at this time to occupy the time and attention of the Convention.

I presume no member of the body labors under so much embarrassment as myself, in attempting to address a deliberative body. It has not been my fortune, heretofore, to have participated in the deliberations of any assembly of men where public speaking was required or expected. When I took my seat here, I was almost entirely unacquainted with the members of this body; I had no experience in public affairs; I knew but little of the rules of deliberative bodies. I therefore determined to remain silent, and not participate in the discussions of the Convention unless I thought my duty to those who sent me here imperiously demanded it at my hands.

Such a duty has now devolved upon me, and I will no longer shrink from the discharge of my obligations.

No question has come before this Convention upon which a more lively interest is felt throughout the State of Indiana, than upon the proposition now under discussion. It is a question upon the decision of which greater results depend, for weal or for woe, to the people of

Indiana, than any other question likely to be discussed during the session. Therefore, Mr. President, I feel that I am in duty bound to those who sent me here, to claim the attention of the body while I endeavor to present the views I hold and the reasons that will influence my vote when the question comes to be taken on the proposition now in debate. I was in hopes, yesterday, and I yet think it desirable, that the motion of the gentleman from Floyd to re-commit with instructions to a committee of one from each Congressional district, the entire subject, with all the sections connected or in any way relating to the rights and privileges of the negro race within the limits of Indiana, would be adopted, in order that the whole question, and every proposition connected with the future social and political condition of the African race, might be fairly and legitimately brought within the range of debate at the same time, and if possible be decided by one vote.

The section now before us, provides that the African race shall not, hereafter, be allowed to come within the limits of the State of Indiana from other States; and it also curtails the rights and privileges of those that are already here. Now, I am satisfied with the section as reported by the committee, and am ready to vote for it; but at the same time I wish to provide the means by which to remove the unfortunate blacks that are now amongst us.

We say by our votes here that the colored man shall have no privileges within the limits of Indiana. Does not justice and humanity require at our hands that, after adopting such a provision, we should provide the means by which they may be colonized on the shores of Africa, in the land of their fathers? Shall we, the delegates of the people of Indiana—a people deeply imbued with the principles of humanity and justice—a people devoted to equal laws and equal rights—shall we say to the unfortunate Africans amongst us, "You shall not enjoy the privileges of citizens; you shall not hold property within the limits of the State; we will not throw around you the protecting arm of government; we look upon you as an inferior race, as a withering and blighting nuisance, not to be endured, and not, at the same time, provide means by which to remove them from their hopeless degradation to a place where they can enjoy that equality of rights which is very properly denied them here?"

The time has evidently come when this question must be met. The people in whose behalf I here speak, demand bold and decisive action on the part of this Convention; they see and are fully sensible of the dangers that surround them; they see Kentucky thrusting her free negroes from her soil; they see Illinois refusing them admittance within her borders; Ohio will no doubt do the same; all the Southern States are sending off this worthless population as fast as they can. Where will they



find a resting place but in Indiana? They are now coming in upon us every day, and will so continue unless we protect ourselves by a positive Constitutional prohibition.

But concerning those unfortunate blacks that are already amongst us, I am willing—while we refuse to them the rights and privileges asked for them by some misguided philanthropists—I am willing and anxious that we shall provide means by which to send them to a land where they can enjoy that equality that they never can realize here. I am fully persuaded that the peace, and happiness, and prosperity of our country require that the two races be separated. All experience has taught us that two distinct races cannot live together in harmony and good feeling. Justice to ourselves requires that the negro population be removed from within our borders. Justice and humanity to our negro population also demand at our hands their speedy colonization. There is no alternative left us. I for one am prepared to meet this question; I am prepared to vote for the section as reported by the committee; I am ready to vote for it, because I know that in giving my vote in that way, and in no other way, can I truly and faithfully represent those who sent me here. And the deliberate convictions of my own mind fully sustain me in obeying the wishes of my constituents.

I am also in favor of requiring the Legislature to appropriate any sum of money, not less than ten thousand dollars annually, to the humane cause of colonization; and I have fears, that in supporting this measure I am not going far enough to meet the wishes of the people whose representative I am. I am proud to believe that the popular sentiment upon this subject is far in advance of any manifestations which have been made by the people's representatives.

I shall vote to re-commit the section, with the instructions moved by the gentleman from Floyd, and which were read a few minutes since by the gentleman from Posey.

On motion, the Convention adjourned until two o'clock.

#### AFTERNOON SESSION.

The Convention met, pursuant to adjournment.

Mr. WOLFE called for a division of the question, so as to see whether the Convention were in favor of again referring this question to a committee.

Mr. MILLER of Gibson observed, that he did not think the Convention were ready for the question; and he would therefore move a call of the Convention.

A call of the Convention was ordered, and the roll being called,

Mr. MORRISON of Washington moved to dispense with a further call, which was not agreed to.

Mr. MILLER of Gibson moved that those members who were not present, and who had not leave of absence, be sent for. [Cries of "no! no! no!"]

The question being taken on the motion to send for the absentees, it was decided in the affirmative—ayes 37, nays 32.

Mr. WATTS. I hope the Convention will consent to dispense with a further call of the House. We have as full a house as we usually have, and to demand a further call of the House will only waste the time of the Convention, and effect no good purpose.

Mr. GOOTEE moved that all the absentees have leave of absence.

The PRESIDENT. The motion of the gentleman from Martin is out of order, the Convention having already ordered that the absentees be sent for.

Mr. HALL moved that a further call of the Convention be dispensed with.

And the question being taken on the motion, there were ayes 41, nays 42.

So a further call of the Convention was not dispensed with.

Mr. PETTIT. You ought to close the doors so as to keep those gentlemen in who are now here. [Laughter.]

The PRESIDENT. The doorkeeper will close the door so as to keep in those gentlemen that are here. [Laughter.]

Mr. GREGG asked whose duty it was to go for the absentees.

The PRESIDENT. It is the duty of the Sergeant-at-arms.

Mr. GREGG. But he is sick and not able to perform the duty.

The PRESIDENT. Then it will be the duty of the Doorkeeper.

Mr. TAGUE moved that the Doorkeeper be placed outside the door with the key, so as to unlock the door in case of any members coming and asking admission. [Roars of laughter, accompanied by loud knockings at the door, which caused renewed laughter.]

Mr. WATTS. I hope the Convention has now thought over this matter sufficiently, and that they will consent to dispense with a further call. [Cries of "order! order!"]

The PRESIDENT. It is in order for the gentleman to move to dispense with a further call.

Mr. WATTS. I should not object to gentlemen indulging in a frolic of this kind were there none but Hoosiers here; but there are strangers present, and this conduct may produce an unfavorable impression upon their minds. I trust, therefore, that the Convention will dispense with a further call of the House, and proceed to business.

The PRESIDENT. Will the Convention dispense with a further call of the House?

The question being taken on a division, there were for the motion ayes 62, nays not counted.

So the further call of the Convention was dispensed with.

The Convention then proceeded to the consideration of the order of the day, being the fourth section of the report of the committee on rights and privileges, relating to negroes and mulattoes.

The PRESIDENT. A division of the question, before the consideration, being called for, the question will be taken first on re-committing, and secondly on the instructions.

Mr. PETTIT. I rise not to discuss a question of this importance now, but I ask whether it be in order in the first place to move to perfect this section.

The PRESIDENT. Not in the present stage of the question. The motion is to re-commit, which takes precedence of any motion to amend.

Mr. PETTIT. I am in favor of the motion to re-commit, and I hope the motion will prevail.

Mr. HALL. This subject has already been before a standing committee. They have labored upon it, and reported the result of their labors. We have now discussed this question some three or four days, and there is a proposition before the Convention on which I believe this body is pretty nearly divided. It appears to me that a subject of this kind should be decided without a re-commitment; I allude to the motion which was pending before the motion to re-commit was made, authorizing the free negroes now residing in the State to purchase and hold real property. That appears to me to be the question about which the Convention is most divided. Now if it is re-committed to a select committee of thirteen, how could that committee know whether to report a clause of that kind or not? It therefore appears to me that before the question is taken on the motion to re-commit, there should be an expression of opinion on the part of this Convention on that subject. I therefore move to lay the motion to re-commit upon the table, in order that we may have a decision of this Convention on the question to which I have referred.

The PRESIDENT. The Chair would remark to the gentleman from Gibson, (Mr. Hall,) that his motion is not in order.

Mr. LOCKHART. Having proposed an amendment to the resolution of instructions, I deem it my duty to state to the Convention the reasons which have induced me to offer that amendment. I am prepared individually to vote for the sections as they came from the hands of the committee, but I am not prepared to say that that vote would receive the sanction of the people of the State. I know, however, that it would receive the sanction of an overwhelming majority of my constituents. If any one question was discussed more than another in the counties which I represent, it was this very question: and with a voice almost unanimous,

the people decided essentially in favor of the sections reported by the committee. The reasons which have induced me to offer this amendment are briefly these: By a reference to the statute of 1831, by some styled the "black law," entitled "An act concerning free negroes and mulattoes, servants and slaves," approved February 10, 1831, may it not be held, under the first section, that the people had invited free negroes into this State. A portion of this section reads as follows:

"From and after the first day of September next, no black or mulatto person coming or brought into this State, shall be permitted to reside therein, unless bond with good and sufficient security be given on behalf of such person of color—in the penal sum of five hundred dollars, conditioned that such person shall not at any time become a charge to said county."

That section virtually provides that they might come into the State, and, if they did, that they should comply with its provisions. For a time it was supposed that this law was unconstitutional. The Supreme Court, however, has decided otherwise and that the act is constitutional. The amendment I have offered is substantially this: That all negroes who have been born in this State, or those who came into the State prior to the act of 10th February, 1831, just recited, and all who have come into the State since that period, and have complied with the provisions of the law, shall be permitted to hold real estate hereafter, as they have heretofore. It seems to me that if these instructions be adopted, the friends of the most stringent laws on that subject, would be satisfied. It would be leaving the negroes, exempted in the amendment, free to acquire and hold property. The ground which I have taken, I think would be neutral and common ground—ground on which we all would meet; that it would be a position which we could all maintain, and which would be maintained by the people of the State. It cannot be urged with propriety, that those who have come into the State since the passage of the act of 1831, and have not complied with its provisions, can have any claim to the protection which that law otherwise would have afforded them, or any other of the laws of the State. They reside here in fraud of the law and have no right to claim its protection.

Again: I am not prepared to say that either the courts of our State or those of the United States, would sanction a constitutional provision like that which we are proposing to adopt. It may be that we are going too far. It may be that the supreme judiciary of the State or of the Union may say, "By your act of the 10th February, 1831, you invited negroes to come into your State, or, in other words, you have said, that if they came they should give bonds; and if they have given bonds, you have no right to place such a provision either in your organic law, or on your statute book." I think, therefore,



that the amendment I have offered is just and proper. I would say let the negro or mulatto who came into the State previous to the passage of that law, or who has complied with its provision, since it was passed, hold real property, and exclude all others. These are the views which I entertained when I introduced the amendment to the instructions. The proposition to refer all these questions to a select committee struck me favorably, and I suppose that by adopting such a course, some provision might be suggested which would meet the wishes of, and be acceptable to, a large majority of the Convention, and would be received and sanction by the people.

It has been said during the discussion of this question, that there is a pro-slavery party in this Convention; that there are men on this floor who are pandering to the Southern slave-holders—men who are not willing to maintain the principles declared to be the rights of the citizen of this State, guarantied by the present Constitution. I, for one, sir, am not prepared to say that when I take the position which I do, that I am pandering to the prejudices of the southern slave-holder. I maintain that Indiana ought to be, and should forever remain free soil ("consent," from several voices). I go in, however, for maintaining the integrity of the laws, and of the Constitution of the United States. I go in for the enforcement of the bill which has been denounced from one end of the Union to the other—I mean the fugitive slave law. I believe that it is a duty which we owe to the sister States, a duty which we owe to ourselves, a duty which we owe to the integrity of the Union, to see that the laws are faithfully, honestly, and impartially administered. That was one of the principles on which the federal compact was framed; and it is unquestionably our duty to preserve it inviolate. Sir, I see very little moral honesty in declaring upon this floor, that we are in favor of maintaining the supremacy of the law, while at the same time we stigmatize each other as being panders to the interests of southern slave-holders, or northern fanatics. If to maintain the supremacy of the law be to pander, then I am willing to be branded as a panderer (several voices—"consent").

The gentleman from St. Joseph (Mr. Colfax) appealed this morning with an air of triumph to Great Britain, as a country where slavery does not exist. He says that that fast anchored isle, around whose shores the waves of the ocean have beaten from time immemorial, whose throne is covered with the dust of a thousand years of hereditary succession—in that isle, says he, no slave treads the soil. I will agree with him that no African slave treads that soil; but I cannot concede that there are no slaves there. I say there is more abject slavery in Great Britain to-day than there is in Kentucky, or Virginia, or Louisiana. I say that the white people, the poor laboring white operatives and

miners of England, are not so well provided for, not so well cared for to-day as are the slaves on southern plantations. Sir, as an evidence of the truth of this fact, hear what some of their own writers say upon the subject. Colquhoun, in 1817, says:

"When the population of England was less than 9,000,000, that there were 1,234,768 Englishmen in a state of indigence, requiring either total or partial support from the public."

Again, sir, hear what Southey says in relation to the poor of England:

"When the poor are incapable of contributing any longer to their own support, they are removed to what is called the work-house. I cannot express to you the feeling of hopelessness and dread with which all the decent poor look on to this wretched termination of a life of labor. To this place all vagrants are sent for punishment; and poor orphans and base-born children are brought up here till they are of age to be apprenticed off. The other inmates are those unhappy people who are utterly helpless, parish idiots and mad men, the blind and the palsied, and the old who are fairly worn out. To this society of wretchedness the laboring poor of England look as their last resting place on this side of the grave; and rather than enter abodes so miserable, they endure the severest privations as long as it is possible to exist. A feeling of honest pride makes them shrink from a place where guilt and poverty are confounded."

Again: he says that it is not uncommon that "you see women raking the ashes in the streets for the sake of the half burnt cinders. What a picture does one of their homes present in the depth of winter! The old cowering over a few embers—the children shivering in rags, pale and livid, all the activity and joyousness natural to their time of life chilled within them. \* \* To talk of English happiness is like talking of Spartan freedom: the Helots are overlooked."

This, sir, is but an imperfect picture of the situation of the laboring poor of Great Britain; and I ask those who declaim so eloquently and so loudly against American slavery, whether they can go upon a single plantation in the whole South and find wretchedness equal to that which an English author himself describes?

I wish now, sir, briefly to notice some objections which have been urged by my friend before me—the gentleman from Lagrange (Mr. Howe). He urges some legal objections to the passage of such a section as this; he seems to be of opinion that it would be unconstitutional, and that were we to place it in the Constitution it would be null and void. The gentleman from Monroe (Mr. Read) referred us to several authorities to show that such a law would be Constitutional. I have some other authorities to which I wish to call the attention of the Convention. The first to which I refer is in Little's Kentucky Report:

This, sir, was an action brought by Amy, a woman of color, born a slave in Pennsylvania, against her master, for trespass and false imprisonment, for the purpose of asserting her freedom. The defendant's plea was that she was a slave, &c.; verdict and judgment for the defendant. Upon the trial it was asserted by the plaintiff that she was manumitted by the will of her first owner, and that she was to have her freedom at the age of thirty-one, &c. She proved that she lived in Virginia as a free woman for several years, unmolested by any one, &c. The defendant relied, among other things, to defeat this action, upon the statute of Kentucky, which recites that, "whenever creditors, purchasers, and others are exposed to great injustice by the assertion of persons held in slavery of dormant claims to their freedom, founded upon certain acts of the Legislatures of Virginia and Pennsylvania and the interests and peace of society requiring that all such claims should be brought to a speedy determination," enacts: "That no writ, suit, or action shall be sued out, commenced, or prosecuted, by any person of color claiming his or her freedom in consequence of a failure to comply with the abolition act of Pennsylvania, requiring a registry of such person, or his or her ancestress; or in consequence of having been taken into the State of Pennsylvania contrary to the provisions of an act of the Legislature thereof; or in consequence of a failure to record the oath prescribed by the act of the Legislature of Virginia, entitled 'an act to prevent the further importation of slaves,' or an act amendatory thereof, unless such writ, suit, or action shall be sued out, commenced, or prosecuted within two years from the passage of this act; and it shall and may be lawful for any defendant or defendants to give the same in evidence without specially pleading it."

The constitutionality of this act was denied by the plaintiff, and upon the decision of that question, with others, the plaintiff's right to recover depended. The opinion of the court upon this branch of the case is very long, and, I will add, very able; I will, therefore, crave the indulgence of the Convention while I read it. It is as follows:

"It is obvious, that this act, according to the plain and literal import of its language, embraces the plaintiff's case, so far as her right to maintain the action depends upon a failure to have her registered according to the requisitions of the act of Pennsylvania, or to have taken the oath and have it recorded, as required by the act of Virginia, on the importation of a slave into that State; nor was it contended, that the act, if it can have any operation, would not be a bar to the plaintiff's action, so far as her right depended upon such failure. But it is urged, that the act, in limiting the right to maintain the action to two years, is void, because it is repug-

nant, both to the Constitution of the U. States, and to that of this State.

It cannot be pretended, that the Constitution of the United States contains any provision which prohibits the States from passing acts of limitation, in general. It may indeed be questionable, whether an act limiting the time of bringing an action to enforce a contract, which, when made, was not subject to such limitation, would not be incompatible with that clause of the Constitution which prohibits a State from passing any law impairing the obligation of a contract; for if, as is supposed by some, whose opinion is entitled to great weight, the obligation of a contract consists in the remedy which the law affords to enforce its performance, it would seem to follow, that an act limiting the time of bringing an action upon a contract, which, when made, was not subject to such limitation, would impair the obligation of the contract. But in this case, the action is not founded upon contract, but upon tort; and, of course, the act of 1808 cannot, upon any construction of that clause of the Constitution of the United States, be said to be incompatible with it.

It was not, however, of that clause of the Constitution of the United States, that the act of 1808 was contended by the plaintiff's counsel to be an infraction; but of the clause which provides that "the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States."—1st clause, 2d section, and 4th article. To entitle the plaintiff to the benefit of this clause, it is obviously necessary, that she should be a citizen of some one of the United States; and it is accordingly urged by her counsel, in support of her title to that character, that she was, before her removal from Pennsylvania, a citizen of that State, and that by her removal to Virginia, she became a citizen of the latter.

Before we can determine whether she was a citizen or not, of either of those States, it is necessary to ascertain what it is that constitutes a citizen. In England, birth in the country was alone sufficient to make any one a subject. Even a villain or a slave, born within the king's allegiance, is, according to the principles of the common law, a subject; but it never can be admitted that he is a citizen. One may, no doubt, be a citizen by birth, as well as a subject; but subject and citizen are evidently words of different import, and it indisputably requires something more to make a citizen, than it does to make a subject. It is, in fact, not the place of a man's birth, but the rights and privileges he may be entitled to enjoy, which make him a citizen. The term citizen, is derived from the Latin word *civis*, and in its primary sense signifies one who is vested with the freedom and privileges of a city. At an early period after the subversion of the Roman empire, when civilization had again begun to progress, the cities in every part of Europe, either by usurpation or



concession from their sovereigns, obtained extraordinary privileges, in addition to those which were common to the other subjects of their respective countries; and one who was invested with these extraordinary privileges, whether he was an inhabitant of the city or not, or whether he was born in it or not, was deemed a citizen.—See Rees' Cyclopædia, under the word Citizen. In England, a citizen is not only entitled to all the local privileges of the city to which he belongs, but he has also the right of electing and being elected to Parliament, which is itself rather an extraordinary privilege, since it does not belong to every class of subjects.—Com. Dig. Parliament, D. 6, 4 Inst. 6.

If we go back to Rome, whence the term citizen has its origin, we shall find, in the illustrious period of her republic, that citizens were the highest class of subjects to whom the *jus civitatis* belonged, and that the *jus civitatis* conferred upon those who were in possession of it, all rights and privileges, civil, political and religious.—Butler's *Horæ Juridicæ*, 26, 27.

When the term came to be applied to the inhabitants of a State, it necessarily carried with it the same signification, with reference to the privileges of the State, which had been implied by it with reference to the privileges of a city, when it was applied to the inhabitants of the city; and it is in this sense, that the term, citizen, is believed to be generally, if not universally understood in the United States. This, indeed, evidently appears to be the sense in which the term is used in the clause of the Constitution which is under consideration; for the terms "privileges and immunities," which are expressive of the object intended to be secured to the citizens of each State, in every other, plainly import, according to the best usages of our language, something more than those ordinary rights of personal security and property, which, by the courtesy of all civilized nations, are extended to the citizens or subjects of other countries, while they reside among them.

No one can, therefore, in the correct sense of the term, be a citizen of a State, who is not entitled, upon the terms prescribed by the institutions of the State, to all the rights and privileges conferred by those institutions upon the highest class of society. It is true, that females and infants do not personally possess those rights and privileges, in any State in the Union; but they are generally dependent upon adult males, through whom they enjoy the benefits of those rights and privileges; and it is a rule of common law, as well as of common sense, that females and infants should, in this respect, partake of the quality of those adult males who belong to the same class and condition in society, and of course they will or will not be citizens, as the adult males of the same class are or are not so. Nor do we mean to say, that it is necessary, even for an adult male to be a citizen, that he should be in the actual enjoyment of all those

rights and privileges which belong to a citizen. He may not only not be in the actual enjoyment of those rights and privileges, but he may even not possess those qualifications, of property, of age, or of residence, which most of the States prescribe as requisites to the enjoyment of some of their highest privileges and immunities, and yet be a citizen; but, to be a citizen, *it is necessary*, that he should be *entitled* to the enjoyment of those privileges and immunities, upon the same terms upon which they are conferred upon other citizens; and unless he is so entitled, he cannot, in the proper sense of the term, be a citizen.

It results, then, that the plaintiff cannot have been a citizen, either of Pennsylvania or of Virginia, unless she belonged to a class of society upon which, by the institutions of the States, was conferred a right to enjoy all the privileges and immunities appertaining to the State. That this was the case, there is no evidence in the record to show, and the presumption is against it. Free negroes and mulattoes are, almost everywhere, considered and treated as a degraded race of people; inasmuch so, that, under the Constitution and laws of the United States, they cannot become citizens of the United States.

It is true, that when the plaintiff resides in Pennsylvania and removed to Virginia, the Constitution of the United States had not been adopted, and prior to its adoption, the several States might make any person they chose, citizens. But as the laws of the United States do not now authorize any but a white person to become a citizen, it marks the national sentiment upon the subject, and creates a presumption that no State had made persons of color citizens. And this presumption must stand, unless positive evidence to the contrary were produced. But none such was produced, either as to Pennsylvania or Virginia. On the contrary, it appears from the preamble of the abolition act of Pennsylvania, that the legislature of that State intended to confer upon those whom it was their object to emancipate, only a portion of the freedom which they themselves enjoyed; and they could not, therefore, have designed to give them all the rights and privileges of citizens. Much less could they have designed to bestow those rights and privileges upon those who, like the plaintiff, were not intended to be emancipated; but who might become free, by the failure of their owners to have them registered. And as it respects Virginia, we know that free people of color have never been considered or treated, either in the practice of the country or by the laws of the State, as possessing the rights and privileges of citizens. On the contrary, they are incapable of holding the lowest office in the government; they do not enjoy the right of suffrage, and cannot even be a witness in a civil case. In short, they possess not one of the privileges which are peculiarly characteristic of

a citizen, and not even all those which are by courtesy allowed to aliens and strangers, while residing in the State.

The plaintiff, then, not being a citizen, either of Pennsylvania or Virginia, cannot be entitled to the benefit of the clause of the Constitution in question, and the act of 1808, most clearly, cannot be an infraction of it. But, supposing her to have been a citizen of Pennsylvania when she resided there, and by her removal to Virginia, to have become a citizen of that State; she must, upon the same principle have become a citizen of this State, by her removal here; and as a citizen of this State, the clause of the Constitution under consideration, would evidently not apply to the case. But again, admitting her still to have remained a citizen of either of those States; yet, as the act of 1808 operates as well upon citizens of this State, as upon those of any other, it cannot be a violation of the clause of the Constitution in question; for it cannot, upon any principle, be construed to secure to the citizens of other States, greater privileges, within this State, than are allowed by her institutions to her own citizens.

We cannot, therefore, in any light in which we have been able to view the subject, consider the act of 1808 as an infraction of the Constitution of the United States.

Nor can we think it a violation of the Constitution of this State. It was contended, in argument, to be in contravention of the 13th section of the 10th article, which declares, "that all courts shall be open, and every person, for an injury done him, in his land, goods, person, or reputation, shall have remedy by the due course of law, and right and justice administered, without sale, denial or delay."

We cannot admit that this section should be construed to operate as a restriction upon the power of the legislature to pass acts of limitation. It would rather seem to require them to make laws for the expeditious administration of justice, than to permit litigation to be endless. In fact, the power of the legislature to pass such acts of limitation, has been already settled, and cannot now be considered as open for discussion in this court. The act of 1809, by which actions to recover the possession of land from actual settlers, are limited to seven years, and the act of 1813, whereby the saving in the general statute of limitations, in favor of persons out of the country, &c., is repealed, are, in principle, the same as the act of 1808; and they have been decided to be Constitutional and valid, by the repeated adjudications of this court. It is true as was suggested in argument by the counsel for the plaintiff, that every day's detention of a free person as a slave, is a new wrong; but it is equally true, that every day's detention of the possession of land from the rightful owner, is a new wrong; and it only proves that in both instances the limitation operates upon future, and not upon past injuries, and thus affords an argu-

ment rather in vindication of the justice, as well as constitutionality of the act, than to prove it to be unconstitutional."

This opinion evinces great research and learning, and, to my mind, is a conclusive answer to all that has been said by my learned friend from Lagrange against the constitutionality of the subject matter now under debate. But, sir, I am not compelled to rely upon this decision alone; I have others.

The same doctrine is maintained by an adjudicated case, which I have in my hand, from the State of Arkansas. The case is short, and I will read it. It was an indictment against a free negro, and is as follows:

The record shows that the appellant, a free negro, was convicted in the court below of a violation of the provisions of the act approved the 20th January, 1843, entitled "An act to prohibit emigration, &c., of free negroes or free persons of color into this State;" and thereupon judgment was rendered accordingly. To reverse this judgment, upon the ground that the act upon which it is founded is unconstitutional and void, is the object of the appeal.

The proceedings appear to have been instituted upon the fourth section of the act, which provides: "That every free negro or mulatto, who may have emigrated to this State prior to the first day of July, 1843, shall, on or before the said first day of July, enter into bond to the State of Arkansas, with good and sufficient security for the use of any county, or of any person that may be damnified by such negro or mulatto, in any sum not less than five hundred dollars, before the Clerk of the County Court, conditioned for the good behavior of such negro or mulatto, and to pay for the support of such negro or mulatto, in case he shall, at any time thereafter, be unable to support himself, and become chargeable to any county in this State; and also to pay and make good to any person in this State any injury or loss which they may sustain, either in their person, money, or property of every description, by the wrongful acts or misconduct of said negro or mulatto."—See *Ark. Pamph. Acts* 1842-3, p. 62.

The Legislature, no doubt, intended not only this section, but the entire act, as a measure of police necessary to the security and well being of the people of the State. In this view, we are unable to perceive any clause or provision of either the Federal or State Constitution with which it conflicts. If any, it is that clause of the former which declares that "The citizens of each State shall be entitled to all the privileges and immunities of citizens of several States." Are free negroes or free colored persons citizens within the meaning of this clause? We think not. In recurring to the past history of the Constitution, and prior to its formation to that of the confederation, it will be found that nothing, beyond a kind of quasi citizenship, has ever been recognized in the case of colored per-



sons. It is a principle settled in all the States of the Union, at least where slavery is tolerated, that a colored person, although free, cannot be a witness where the parties are white persons. See *Treatise on the Law of Slavery*, by Wheeler, p. 194, and references.

In Kentucky the courts have said that "although free persons of color are not parties to the social compact, yet they are entitled to repose under its shadow." *Ely vs. Thompson*, 3, Mar. 71: And again in *Aury vs. Smith*, 1, *Litt. Rep.*, 327, that "prior to the adoption of the Federal Constitution, States had a right to make citizens of any persons they pleased; but as the Constitution does not authorize any but white persons to become citizens of the United States, it furnishes a presumption that none others were citizens at the time of its adoption." The protection of these persons, and the right of property, is provided for to a humane and just extent. To assault, to maim, or to murder a free person of color, is as fully prohibited by our Constitution and laws as the like offenses against one of the white race; and so, as to depredations upon their property or habitations. If citizens in a full and Constitutional sense, why were they not permitted to participate in its formation? They certainly were not. The Constitution was the work of the white race; the government for which it provides, and of which it is the fundamental law, is in their hands and under their control; and it could not have been intended to place a different race of people in all things upon terms of equality with themselves. Indeed, if such had been the desire, its utter impracticability is too evident to admit of doubt. The two races differing as they do in complexion, habits, conformation, and intellectual endowments, could not, nor ever will, live together upon terms of social or political equality. A higher than human power has so ordered it—a greater than human agency must change the decree. Those who framed the Constitution were aware of this, and hence their intention to exclude them as citizens within the meaning of the clause, to which we have referred. Another clause of the Constitution declares that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Art. 10. Under this provision it will be seen that no restriction is imposed upon State Legislation.

In our State Constitution there is nothing either express or implied, with which, in our judgment, the act in question conflicts. We entertain no doubt, therefore, as to the Constitutionality of the act upon which the prosecution is based.

The same doctrine has been substantially affirmed by the Supreme Courts of the States of Connecticut, Tennessee, Mississippi, Georgia, and more recently by the Supreme Court of the United States.

The sound of your hammer, sir, admonishes me that under the rule I must close. I shall hope, however, at some future day during the discussion upon this question, to finish saying what I would be pleased to say at this time.

Mr. WOLFE. I can see no use, sir, for my part, in referring this subject again to the committee without first coming to some definite action in regard to it. Its merits have been discussed now for some days, and some twenty or more speeches have been made, in regard to it; and if we refer it again, we will, when it is reported back, have to travel anew over the whole ground. It appears to me that the Convention is prepared to go right on and settle it in some way or other, and if, when the section comes up for its engrossment and passage, it should appear proper to make any amendments to it, they can be made, to the satisfaction of the Convention. If we send this section to the proposed committee of thirteen, it is not likely that their report will be satisfactory to one hundred and fifty members; therefore I think we had better proceed and settle the question now. I can see no use in referring the matter at all. I am glad to see that the Convention is considering the question in a calm and deliberate manner; and this I think is one of the reasons why we should act at once and not postpone action until a more exciting debate is sprung up on the question. The section embraces a subject that has created a great deal of excitement throughout the country, and before any new excitements are enkindled we had better dispose of it. Let us go on and amend the section if it be thought necessary, or consider any amendments that may be proposed, until it is made acceptable to the wishes of the majority, and then pass it.

Mr. KILGORE said, he did not like to engage in this controversy; yet, in justice to his constituents, he could not remain silent. He felt a dislike, also, to engage in it, from the fact that a rule, limiting the time of speeches, was hanging over him. He might not occupy anything like a half an hour in his remarks, yet, the fact that he was so limited tended to produce confusion and embarrassment in their utterance.

In the discussion of the propriety of referring this section, no gentleman had as yet been found willing to take upon himself the advocacy of the odious fugitive slave law, which, since its recent passage, had created so much excitement, and upon which, in connection with this section, he desired to speak briefly.

He would remark here that he did not wish to be misunderstood in what he should have to say upon this subject of the fugitive slave bill, so intimately connected with the section then under consideration. He was not in favor of repudiating the fugitive slave law while it remained on their national statute book. Black and odious as it was, he had no objection to its

enforcement, provided the officers of justice could carry into execution its provisions. The principle of the bill—the re-capture of the slave by the master—he would not controvert; it was the details of it that were odious in his estimation. It would be the proudest hour in his life, if he should have to surrender his property and personal liberty by a refusal to obey the mandates of an officer who should attempt, in this land of freedom, to carry out those details. While he was willing, as he before said, to see the law carried out, if it could be—although he would not himself assist in its execution—he hoped no gentleman—of any party—would, during their deliberations here, become the advocate of so odious a measure. He was no abolitionist. He was under as little obligation to that party as any gentleman on that floor; but, while he repudiated all connection or fraternity whatever with that class of their fellow-citizens, so far as their peculiar action was concerned, he must be permitted to enter his protest against the doctrine that the slaveholders of Kentucky and other Southern States had the right to use the freemen of Indiana like blood-hounds to catch their slaves.

With regard to the reference proposed, he trusted that the section under consideration would be referred to the committee that had been proposed, without any instructions whatever. He thought this was the most correct and proper course that could be pursued; for no section, more odious in its character than that now before them, could be presented.

He would pass now to the consideration of the rights granted to persons of color under the Constitution of the United States. He would remark in connection, however, that the intention of the provisions of the Constitution with regard to the owners of slaves coming into free States, was very clearly expressed by distinguished writers upon constitutional law, who had stated that slaveholders simply possessed the right of other citizens in the free States to reside in those States, and hold such property as was held by the inhabitants of those States. It was perfectly immaterial as to whether they were citizens of another State; they could only enjoy the same rights and privileges of person and property that were guaranteed by the Constitution of the United States to those residing in the free States, or in other words, that, because they were citizens of another State, or had been such, that no greater restrictions should be placed upon their rights of property than were placed upon the resident citizens. How unnecessary was it, then, to contend that rights were conferred upon the servants of the slaveholder which were denied to the master. The manumitted slave and the free negro, it was said, could emigrate into the free States with their property, but the slaveholder could not with his. Those who had advanced this argument had forgotten that the slaveholder enjoyed the

same privileges and immunities that the citizens of the free States enjoyed, and could hold the same kind of property they held. Then why should they complain of a law which put them on an equal footing with their brethren of the free States, who might not look with so favorable an eye upon the institution of slavery, or its advantages, as did its supporters? The negro had rights in a free State, and it was perfectly immaterial, so far as the rights of men were concerned in the free States, whether they were white or black—perfectly immaterial. The black man, as a citizen, possessed rights, and, possessing them, he could claim the protection of the provisions of the Constitution pertaining to the question.

If time permitted, he would go on and furnish many authorities in support of the position he had taken; but he could not at present enter into detail. In furnishing these authorities, however, he should not go to the decisions of the Mississippi courts, because, in nine cases out of ten, especially where the rights of free negroes were concerned, they would not be relied upon or recognized as respectable authority in the court of even a county justice of the peace.

While speaking of these cited authorities, he would say that he was somewhat astonished when he perceived that the distinguished chairman of the committee on rights and privileges (Mr. Owen) had been almost thrown into spasms when he had heard his friend from Monroe (Mr. Foster) read what purported to be the opinion of the Supreme Court of the United States, when, in truth, it was only the opinion of one of the Judges, who dissented from the opinion of the majority—Judge Taney. The majority of the court had given an opinion, the very reverse of that so triumphantly cited, which was merely the dissenting opinion of one of the Judges. He hoped the gentleman from Posey (Mr. Owen) had examined the matter; if so, he could not have failed to discover the mistake that had been made.

Mr. OWEN. I crossed over to where the gentleman from Monroe sits, for the special purpose of examining it.

Mr. FOSTER would repudiate most emphatically the idea of attempting to palm off upon the Convention the opinion of Judge Taney for the opinion of a majority of the Supreme Court. It was a misunderstanding into which the gentleman had fallen.

Mr. KILGORE said, that he thought it was very queer, to say the least, that the gentleman from Monroe should cite the opinion of one Judge in preference to the opinion of the whole court as an authority. Why did not the gentleman read the opinion of the majority of the court?

A word in relation to what it was proposed to do with reference to persons of color. It was now proposed to carry out the principle of the odious slave law, for the infamous fugi-



tive slave bill and the present law under consideration were of a similar character, and connected with one another. It was proposed to pass a law prohibiting the immigration of persons of color into the State of Indiana, and the Legislature of the State was to be required to pass stringent laws upon the subject—for it was evident to every mind that the law must have stringent penalties attached to its violation, in order to attain the end designed; penalties even more severe in their character than those passed in Kentucky.

Because, sir, continued Mr. K., if free blacks will not come here, slaves will, and we must pass a law far more cruel than the law of Kentucky, or the slaves will make Indiana a kind of city of refuge, it being adjacent to the slave States from which they are driven. What are we to do? We are to declare that any negro or mulatto that sets his foot upon the soil of Indiana is guilty of a misdemeanor, and that we must inflict a certain punishment upon him for the offense, say confinement in the jail; and if the offender be a fugitive from labor, the man who claims him can come and take him back. Will not the people of Kentucky, sir, thank us for our praiseworthy efforts in catching their slaves, and in making slaves for them of the free blacks? How rejoiced will they be on hearing of the passage of such—a law! This will be the alternative offered in Kentucky to the free black man residing there—you will either have to leave the State or be sold into bondage, and if you leave the State and go into Indiana, you will be incarcerated in the penitentiary. And this, too, sir, for daring to be a freeman. How consistent with republicanism,—with the teachings of democracy!

And, sir, you go still further. You say to the officers of the State who administer justice: You must swear solemnly under high heaven to carry out the provisions of this iniquitous law. You cause them to swear that they will violate the laws of God and everything that is sacred, for the purpose of carrying out these provisions that you may engraft upon your Constitution. This, sir, is the necessary result.

If, sir, this law in all its provisions be a good and wholesome law, and there is a general feeling pervading the entire community in its favor, as gentlemen say there is, why engraft it upon the Constitution? The Legislature having charge of all municipal regulations, can enact such a law. They have the power to pass a law excluding persons of color from our State, and to inflict stringent penalties upon all who violate the law. Why not leave the Legislature in charge of this matter, who have the power of passing all laws for the protection of the citizen?

Sir, gentlemen know they are wrong in this matter, and they fear to carry out the question to its necessary bounds. Every principle of hu-

manity, of philanthropy, of justice, and of religion forbids it.

I regretted exceedingly, sir, to hear professors of religion—men whom I am told, have graced the pulpit—taking sides with the advocates of the section reported by the committee. As a mere question of expediency, the gentleman from Putnam (Mr. Farrow) remarked that it was exceedingly unjust that we should deny to the master, who is our friend and neighbor, the privilege of coming here with his negroes and settling among us, and yet turn round and extend to the negro the very privilege that we should say to the master that he should not come into Indiana excepting side by side and on an equality with his slave, as regards the protection of person or property. Well, sir, for one I can see nothing cruel or unjust in such a provision. We simply say to these masters that we will not permit them to bring their *chattels* into our State to tarnish our land of freedom with the curse of slavery. Sir, our sympathies should be extended rather to the oppressed than to the oppressor.

Mr. FARROW. I would remark to the gentleman from Delaware that I was simply alluding to the question of sympathy, which I thought should be extended in preference to our own color than to any other. I barely stated that in respect to immigration from a slave State, I saw no reason for extending a sympathy and a privilege to the slave which was withheld from the master.

Mr. KILGORE. The unfortunate slave, sir, is not in our land as a matter of choice. The ruthless hands of our people dragged the African from his home and made him a slave. Therefore it is that he is entitled to our sympathy, and those who are engaged day by day riveting the chains of oppression upon him still tighter and tighter, are entitled to no sympathy at my hands. Why, sir, we propose to treat this oppressed class of our population as we have treated no other portion of God's creation. The unfortunate Greek has had our sympathies in his hours of suffering—the oppressed Poleander has had our sympathies, and prayers, and tears; and even since this Convention has assembled, we have had some one or two meetings expressive of our sympathy with the oppressed Hungarians, few of whom have sought our State as a place of refuge. The oppressed, sir, of all nations of the earth have sought this land of freedom as a matter of choice; and while we have been extending our sympathies to them, we have forgotten the defenseless and down-trodden African, whose rights have been trampled in the dust in our midst for centuries. We even shut our ears to his cries for help and mercy, and are ready to stifle the feelings of the philanthropist, and denounce those who express any sympathy for this poor and oppressed portion of God's, creation as fanatics and agitators—as

men who would uproot the very foundations of our government.

Let me tell gentlemen who attempt to stifle investigation and act the part of the tyrant to look to themselves in the future. How was it, sir, when years ago these same efforts were made, and when the right of petition was sought to be destroyed? Did not good and great men—the great and lamented John Quincy Adams for instance—foretell the period when these restrictions would be borne away as chaff before the wind, and the rights and privileges of the crushed and forlorn slave be still further extended? And what has been the result? Is not the light of liberty dawning on the benighted African? Are not his shackles being broken? Who would have thought at the time when those restrictions were attempted to be made upon human rights—who would have predicted then that the slave trade would have been abolished in the District of Columbia? And we find too, sir, that Southern territory has been admitted as free territory—a result that has astonished the whole South—and this is the result of the labors of these very agitators. And, sir, let this provision be engrafted upon the Constitution, or the odious slave law and other laws so intimately connected, be put in operation in this State, and you will make this little band of agitators the strongest party in Indiana. The very moment you attempt, in this State, to denounce their sympathies and to oppress the object of their commiseration, you give them strength—you give them the sympathies of the whole community—not for abolitionism, but for the unfortunate object at whom you aim the death-blow of oppression.

If, sir, a provision is to be engrafted in our Constitution prohibiting the emigration of persons of color into this State, and annexing the penalty of imprisonment for its violation, let us not leave it for the Legislature to pass it. Let us not declare that the first Legislature that comes after us shall do that which we are not willing to take the responsibility of doing ourselves. I am willing, sir, to take the responsibility of acting upon the section, and a very decided action too, although I must say I feel very little responsibility in relation to the action of this body. I hardly know, sir, where I stand, for I seem to be in strange company. I expected that this would be a whig or democratic Convention, but I find that whigs and democrats are advocating the same measures. And if, sir, the oppression of the African becomes one of the cardinal principles of the whig party I shall cease acting with that party so far as I am concerned. I may then unite myself with some other party, and if I should we will try to keep that party free from all the ultraisms which seem now to pervade the ranks of other parties.

I have remarked, sir, that many of the gentlemen who advocate this section reside on the borders of Indiana, who were probably overrun

with fugitive slaves from Kentucky. Now, sir, I have great sympathy with the Kentuckians, for who has not reason to be proud of the land of his nativity? But I think that one cause of this ultra sympathy with the Kentucky master in preference to the slave is to be found in the fact that many gentlemen living on the borders of this State intermarry in Kentucky, and thus by acquiring property through their wives, perhaps in the shape of negroes, become to have pecuniary interest in that class of people. I do not know that there are any gentlemen here who have thus an interest in Virginia or Kentucky slaves. I have heard stories about some of our great men owning plantations in Kentucky, (a voice—"it is true,") and I feel pretty well assured that such is the fact, and that personal interest in too many instances has prejudiced their views upon this question.

Mr. NEWMAN. I am not disposed, Mr. President, to let this subject pass without saying a few words. This is not a question of a day, nor is it one merely of jest; for it rises far above all mere municipal regulations. It is one of immense consequence to the American people, and for one I have no disposition, no anxiety, to become the member of any party which will come in conflict with the rights of even the humblest portion of the Anglo-Saxon race.

Here, sir, is a population to say the least, one sixth of the entire inhabitants of this glorious Union, and what are you doing with them—what will you do with them? Will we crowd them out, and say there is no place in this broad land of freedom where you can set your foot?

Gentlemen have said, let them go to the land of their forefathers. But how will they go? If gentlemen would have them go let them come forward with some liberal proposition providing for the expense of their journey, and invite them to set their feet upon Africa's soil, there to rest through all time to come. But how can they leave this country without the means? If when this inducement is offered to them to leave this country, they will not leave, then with more propriety you can pass stringent laws providing that they must go.

A suggestion has been made by one of the members, that the free negroes who refuse to go, should be sold or hired into domestic bondage, and that the sum thus obtained shall be applied to defray the expenses of emigration of those who will go. With this proposition, sir, I do not concur. These men have rights of some kind.—And there is, sir, a law of necessity which, whether higher than the law of the land or not, must be set up in opposition to existing or human law—there is no other remedy. These persons must live somehow, and they have that guaranty from the fact of there being born. They are entitled to a place of residence in some portion of God's footstool, and where will you place them?



I am opposed, sir, to the passage of any law which will give them additional privileges. That is the position I have hitherto occupied. Neither do I desire their immigration into this State; for as every one knows, they are not a population to be desired by any means. Yet in the name of a common humanity, let us provide some other means of getting rid of this population, than by passing a law of this character.

It is further agreed that though they are citizens on our soil, yet that they have no rights here; no rights but what we, as a people legislating in our primary capacity, have the power to abrogate at pleasure; or in other words, that we have a right to exclude the whole of them from the State of Indiana, and not merely to exclude them from coming, but to drive out these already here.

If this class of population are not citizens they cannot, sir, appeal to the great charter of the Constitution which secures the citizen in his rights; and if they have no rights under it what is to prevent their extermination? What guaranty have they that they will be protected in any rights belonging to the human family? Will gentlemen go so far as to say that the Constitution of the United States guarantees to them no rights; that they have no protection under it. It seems to me this is going further than any man on this floor would be willing to go.

It is said that they are not citizens of the United States, and the opinions of certain persons have been quoted, who have undertaken to expound the law on the subject that such is the fact. Now, sir, I have examined no authority on this point;—I appeal only to the nature of the case.

When the Constitution of the United States was formed the number of this class of persons in the United States was something near a million. The framers of that instrument contemplated, as is evident from their debates, and the remarks made by the most distinguished and enlightened men, the institution of slavery in the light of a temporary institution, and considered the time was fast approaching when it would cease to exist. What did they contemplate would be done with the negroes? Did any one then look forward to the period when they would be transported beyond the bounds of the United States? If such was the fact I have seen or heard nothing of it. Because, sir, they calculated the system of slavery would yet cease to exist, from the fact that they were careful to exclude the odious term of slave from the Constitution. They have not named the black man or the negro in all that instrument; but have styled them as persons, as members of the human family; and they have so recognized them to a limited extent as the basis of representation.

If then they are the basis of representation, if taxable as other inhabitants of the United States, what position should they occupy? What rights should they enjoy? Let us come right to the question whether they have or have not any rights within the bounds of this Union. If they have none, we can exterminate them, we can transport them, we can confiscate their property, we can do what we will with them.

My friend from Vanderburgh (Mr. Lockhart) read us an opinion from Littel's Kentucky Reports; and I was really sorry that his half hour had expired before he got through with reading the opinion and his comments upon it. I wanted to know these opinions to see what that Convention recognized as the rights of the black man or the mulatto. The question was there raised as to what constituted a "citizen," and the Judge went back to the derivation of the word for the purpose of establishing in what citizenship consisted—an act which as applied to modern times—to the people of the United States, was manifestly wrong. Originally it applied simply to the liberty of a city; whether the term referred to all the franchises of the city, I do not undertake to say, although the Judge, in speaking of it, seemed to consider it to have reference to all the franchises of a city. If that was what was meant by it, it was palpably erroneous as applied to them, as it would be palpably erroneous as applied to the people of the United States. Let any one of our citizens go into the State of Virginia, for instance, and no matter how long he may remain there, unless he possesses certain qualifications not required here, he does not enjoy the same franchises or privileges that citizens residing there enjoy. He would labor under like disabilities if he went into South Carolina. But let the humble Virginian or South Carolinian come into Indiana, and he is at once placed on the same footing with the citizens of Indiana. It is then a local disability they labor under, and nothing more. It is a local disability such as women and minors labor under, who are not admitted to the same franchise that the male portion of the community are admitted to. Does it necessarily follow, sir, that they are not citizens within the true meaning of the term? Will any one say that that is not a fair construction of the instrument, that they are citizens? If then any one may labor under a peculiar disability in a particular State does the principle the less apply to the whites than to blacks, when the blacks labor under certain disabilities? It seems to me it does not. It was remarked by a certain Judge that every person born within the jurisdiction of sovereignty became the subject of a sovereign, and that in this country the term citizen was merely explanatory of the same sense. He was merely subject to the law of the country—the ruling power. And so is every person, black or white, male or female, born within the jurisdiction of the United States subject to the jurisdiction

tion of the United States, and of the particular State in which he may reside. That constitutes his inherent right of citizenship. That makes him a citizen and he consequently owes allegiance to the government.

Will you say that the black man owes no allegiance to this government? Then he owes allegiance to some other government, and if he does, to what government? To whom is he bound in allegiance? If he is not a citizen or a subject in this country, where is he a citizen, of whom a subject? Has he no rights?

The second section of the first clause of the Constitution of the United States which has been referred to, does not use the term citizen for any particular class, but speaks simply of the people of the United States. Now who were the black people of the United States at that time? Were they any part of the inhabitants of the United States upon whom the provisions of this instrument were to operate? Were they to be governed by them? Did they owe allegiance to this country? It seems to me most clearly that they were, from the words that representation and direct taxation should be apportioned among the several States who should be included within this Union according to the respective number of inhabitants in each State, who should be determined by adding to the whole number of free persons, including those bound to service for a number of years, and excluding Indians not taxed, three fifths of all other persons. This indirect term of expression was adopted in order to avoid the use of the odious term slavery, as it would have been a disgrace to put it upon the great charter of American freedom. And as it was thought, too, by those who framed the Constitution that slavery would soon become extinct, it was considered that if this appellation was retained in the Constitution that it would appear a lasting memento of the fact that slavery had existed among us.

I have come, sir, to the conclusion, from my own cogitations merely, without reference to any authorities, although there are many authorities of varied character, that they are citizens of this government and that we have no constitutional right to pass this enactment. This is a constitutional question, but aside from that it is a grave question, and one with regard to which we should be careful in our action.

This population, sir, is increasing at an unheard of rate. It is rapidly filling up the whole Southern portion of the Union. And what remedy do we propose to alleviate the evil of their increase among us? We may adopt temporary expedients of the kind proposed in the present section, but they will only be temporary. We must go further back. We must provide some permanent remedy. And I, for one, am willing to go as far as any member on this floor to furnish this remedy. If the Convention instead of adopting the present provision will

vote a sum of fifty thousand dollars annually for the transportation of these negroes from the State, I would take the responsibility of voting for such a measure.

This would be a just and righteous measure; and if we make such a provision as this we may come forward and say with greater confidence as well as truth, that we are making the most liberal provision for ridding ourselves of this population. With these remarks, Mr. President, as I have nearly exhausted my time, I will take my seat.

Mr. TAGUE. I wish to make a few remarks on this matter and but very few, as I have not said any thing on the subject yet. [Cries of "hear him."] I myself, Mr. President, am in favor of, by some means or other, trying to get rid of this colored population, which is talked of here. I would like to have the indulgence of the Convention; I cannot talk very loud and I would like to be heard, if the Convention pleases. [Cries of "hear him."] It takes me a good while to try to say something, and I frequently fail. [Cries of "consent."]

The PRESIDING OFFICER (Mr. Watts). The Chair will be much obliged to the Convention, if they will give the gentleman from Hancock a strict attention. [Several voices "consent, consent, consent."]

Mr. TAGUE. As to the justice of the matter of getting shut of these colored people, I must confess it looks to me a middling hard case. However, with regard to prohibiting them from coming here, I think we have a full right. In the first place, self-defence requires it; ["consent"] and from what information I have I find that the surrounding States—at least the State west of us, Illinois, have got a clause in their Constitution similar to the one reported for us to act upon. Also I discover in the debates of the Kentucky Convention, and in their new Constitution, I see they have a clause in their Constitution, that free negroes and mulattoes cannot inhabit that country, unless they are in the penitentiary [laughter]; and if that can be called a habitation they are so far inhabitants. The Convention of Ohio has a proposition of the same kind before them, and in all probability they will pass it. If we leave a gap here open for this colored race to come in, according to what we discover from the Southern States, there are many slaveholders setting their negroes free, and are wanting to get rid of them; and I have been informed that they are shipping them to Indiana now. I have been informed that there were sixty-five sent from North Carolina; that a gentleman of the name of Rush, an honorable and fine man, right adjoining the county which I have the honor to represent, who means to settle them, and in all probability some of them wish to be settled in the county where I reside, and if we don't prohibit them from coming here, we will be inundated with black people entirely. We will



either have to leave ourselves, or to prohibit them from coming. [Cries of "consent, consent."] I say that that is the case. I would say let us vote here—and if you permit Dutch people who are white—and the gentleman from Delaware, who is not now in his seat—[several voices, "here he is, here he is," and "go ahead."] I did not understand the gentleman entirely. I was looking at a newspaper and trying to read a little, and I heard him make some remarks relative to foreigners. I thought he had an allusion probably to my Dutch brethren. [laughter and "no, no,"]—and it set me to thinking right off with regard to this matter before the Convention, about referring this back to another committee. I did not know but that when they reported from that committee, that they might take the matter into consideration and take the Dutch in also [laughter]. I have frequently heard remarks made about the "black Dutch" &c., and I don't know what the movement is here. Of course I am distinctly opposed to referring this, on that ground, for one thing.

Another reason, too, why I am opposed to it, we have now already spent some four or five days in discussing this matter, and should it be again referred it will probably be a week or ten days before the committee will report again to this House. We have already business enough before us for a month or two longer, certain; and, in all probability, if we take the business in its regular order, this will come out in the rear, and it will not come up until next harvest [laughter]; and the gentlemen that have been speaking upon it would forget all that they have said, and they would discuss every section over again, and there would be weeks spent, and we should have the work discussed all over again. Now, we had better stick to what we have got. I find that when gentlemen rest over only one night they come here pretty well filled up with gas again. [Great laughter.] Now I am in favor of getting this matter to a close sometime early, and we can as easily amend these sections now in the Convention as we can when they are reported back to a committee. We have got a start on it, and I think we had better hold on. As my friend from Sullivan observed the other day, if we have a hook fast we had better hold on and bring this matter to a close as soon as we can. It does appear to me that on this matter the sense of the Convention is understood, if we can only fix some way to bring it to a vote. Now, I am pretty much in favor of the section as reported by the committee. There might, perhaps, be a slight amendment, but I am willing to swallow it just as it stands; or if it can be arranged or amended so as to get shut of these colored people any sooner by it, I am in favor of that, for their own benefit as well as for our convenience. I have not at any time yet called the previous question.

[Cries of "No, no, no, no; not yet; it would be wrong; don't do it."] Well, I was going to, but I will not this time. I did not intend to make a speech ["go on, go on"]; I only intended to make a few remarks, and I will now take my seat; but I do hope the Convention will bring this matter to a close. I ought to be ashamed of my conduct in making these remarks. ["No, no," and "all right."] They are not to the point, as they ought to have been, but I hope the Convention will pardon me.

Mr. BLYTHE and Mr. STEELE having risen together, there were loud cries of "Steele, Steele."

Mr. BLYTHE. I will give way to the gentleman from Wabash. [Applause.]

Mr. STEELE. I hope the Convention will come to order. I did not anticipate saying one word upon this important subject. I can very justly say, sir, that it has detained this Convention some three or four days, and has already cost the State of Indiana some thousands of dollars, and we are no nearer the object than when we first set out.

My friend from Hancock (Mr. Tague) labors under some difficulty to know in what manner the Convention will be enabled to conclude this important matter. In speaking of the State acting in self-defense, he reminded me of an anecdote which I once heard of a Kentuckian, [Cries of "hear him, hear him," and "let's have it,"] and the probability is that it would apply to the gentleman's argument in reference to these blacks we have so much difficulty about in the whole nation. Well, the man in Kentucky was thanking his Maker for the good soil, and the extensive range, and the large quantities of corn they raised; yet, he said, there was one important obstacle in the way of continued success. He remarked to the Lord that the Indians discommoded them very much. "Well, now," says he, speaking to the Lord, "what shall we do with them? Good Lord, what shall we do with them? We cannot rid ourselves of the difficulty. Nothing short of Thy power can do it. Thou canst take them and curse them, and damn them, and blow them up like peelings of onions." [Roars of laughter.] Now, the gentleman's argument amounts to that, and it cannot amount to anything more. But this is a grave subject, and one, although it has already occupied much of the time of this Convention, that requires a reference to the committee called for. In none of the forms and shapes in which it has been presented to this Convention, has it been placed on a ground on which I could honestly vote for it. We have it in the first place with instructions to re-commit to a select committee, and there are several amendments. Thus has the whole time of this argument covered the main question that has been before us, and to remove the drift and get the matter in its proper shape, I believe we ought, long ere now, when the prop-

osition was made by the gentleman from Floyd, to have made a reference and got it back again in better order than it now stands in. First, my conscience taught me that we ought to have these sections separated. We ought first to prohibit the immigration of these negroes and mulattoes into this country, and in the second place we ought to consider the section preventing them from inheriting property. If the question had been on these sections separately, gentlemen could have voted on them long since, and the question could have been settled long since.

With the gentleman from Marion (Mr. Morrison) I am well aware that the State of Indiana loudly calls for a prohibition of the immigration of men of color; but I think the interest of the country as loudly calls for opposition to the second branch of the subject. By making this reference, we can decide upon each branch. But by dividing them the Convention can go further. Some gentlemen say the section prohibiting immigration is not stringent enough; and if it is again referred, the committee can report back with such a penal clause as they may think proper, and they can subdivide these sections as they may deem best, and be more cool, more dispassionate, more deliberate than this whole body can be upon this important subject as it now stands before them. These being my feelings on the subject, I would vote directly for a re-commitment of this matter as called for by the gentleman from Floyd; and I am with the gentleman from Delaware, and would rather see it naked and without a dress—without any restriction; and I would leave it to the sound wisdom of the committee to report back to this Convention what they may deem to be of the most interest and of the greatest advantage to the State.

Now for a moment—and with that I will conclude—let us anticipate who this committee will be. It is to be composed of a selection from the several judicial districts of the State of Indiana, and that selection will be made by the Chair, of the most prudent, cool, and deliberate men of these districts; men well adapted to draft a report and bring it back to this Convention. For these reasons I ask the Convention to re-commit it and let us proceed to something else, and see if we can make any further progress in completing the revision of the Constitution of Indiana. Let me say to gentlemen that I am beginning to get anxious to get home, and I would like to see our work progress a little faster. This is the seventh week of the session, and if we do not progress faster than we have done, we will not get home till corn planting time, or in time to make our gardens next season.

Now, sir, we had a new rule the other day limiting the speakers to half an hour each, and I find that even with that rule, we have not gained much ground [several voices, "not one bit"]. Sir, before we advance in this Conven-

tion we must come to the conclusion to govern ourselves [hear, hear!]. One reason why I voted against that resolution was this—will we send it abroad to the country—will gentlemen of talent and observation let it go out to the country, that they are not competent to govern themselves? [Hear him! hear him!] No; never will I give such a vote; and I am fully of opinion that the Convention can pass on with half the length of argument, and secure to the citizens of Indiana as good a Constitution as they would have if we keep talking here for months [hear, hear]. And let me say to this Convention that I have not been lengthy in my arguments; but I have come to the conclusion that they shall be made shorter; and where I believe that the citizens of Indiana have an interest at stake, I will merely explain the reasons why I vote thus and so. Let us control ourselves; let us bring our own words and thoughts into subjection. Let us consolidate them and propose them in few words, and go on from this time forward and prove to the citizens of Indiana that we are revising the Constitution in earnest.

Mr. BLYTHE, having obtained the floor,

Mr. LOCKHART said, that, as it was late in the day, and the time had arrived at which the Convention usually adjourned, with the consent of the gentleman from Vanderburg he would move that the Convention do now adjourn.

Pending the question on the motion to re-commit the section and amendments,

The Convention adjourned.

#### REMARKS OF MR. BIDDLE.

*Made in Convention, Saturday, Nov. 2d, on the subject of the tenure of State Officers.*

Mr. BIDDLE—Mr. PRESIDENT: I do not rise to debate this proposition, but would say a word however to the question which seems to be in controversy between the gentleman from Posey, (Mr. Owen,) and the gentleman from Wayne, (Mr. Rariden,) namely, whether a State Constitution is restrictive or delegative in its character. It is undoubtedly restrictive. The people of a State in their primary condition, before the institution of any government, possess the entire human sovereignty, and are restrained only by the laws of nature and of God. When they enter into civil government each individual yields up as much of this natural right as shall be necessary to the rational liberty of the whole. This is what I understand to be the true distinction between natural and civil liberty. There can be no government without restriction. When gentlemen say they will not restrict the people, they say they will have no government. The people in their cool moments deliberate together and settle what shall be their rule of action when the day of excitement comes—when they are disturbed



by fear, hope, interest, passion, hatred, love, and the thousand motives that unbalance the human understanding, and break up the human heart to its very depths. This is what I call self-government. And, Mr. President, there is not a sublimer moral spectacle on earth than to see vast bodies of men, States, Nations, thus nobly actuated. It is the yielding up of individual interest to the common good, the subjugation of passion to reason, and a complete triumph of moral right over the physical arm. This, sir, is true self-government.

The Constitution of the United States, however, in this respect is the reverse of a State Constitution. That instrument is one of delegated powers only. The United States have no natural right to govern the individual States, no more than one State has to govern another. They are not a government strictly, but a confederation of governments. Congress, because it has not the natural sovereignty, can do nothing which is not expressly delegated, or fairly implied in the Constitution of the United States; a State, because it has the entire natural sovereignty, can do all things not prohibited by its Constitution.

But, Mr. President, I deny that the proposition before the Convention is restrictive of the people proper, that is, of the many—the masses. It restrains the few who hold office, for the benefit of the many who do not. The tendency of it will be to fairly distribute the honors and profits of office, and to insure the pure administration of the functions of the State. Sir, it is a law running throughout nature that like begets like; power begets power, sir, and unrestrained, will perpetuate itself. I go for the proposition.

#### WEDNESDAY, Nov. 20.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. STEELE.

The Journal of yesterday was read and approved.

#### ORDERS OF THE DAY.

The PRESIDENT announced the first business in order to be the consideration of the motion to re-commit with instructions, the section relating to the prohibition of the immigration of negroes into the State, and the right of those already here, to hold property.

The gentleman from Vanderburgh, (Mr. Blythe,) being entitled to the floor,

Mr. GREGG desired that the order of business might be suspended in order to enable him to introduce a motion that the half hour rule be suspended for the present. In some remarks which he had submitted to the Convention on this subject, he had occupied more than half an hour, and he hoped that other gentlemen would

have the same privilege accorded to them. He was satisfied that no gentleman, who desired to express his views upon the subject could do justice to himself if he were restricted to half an hour.

Mr. BLYTHE. I may be permitted to remark, Mr. President, that the motion of the gentleman from Jefferson, is made without any application on my part. I am content to abide by the rule.

The question being taken on the motion to suspend the order of business to enable the gentleman from Jefferson to make his motion to dispense with the half hour rule, it was decided in the negative.

So the order of business was not suspended.

Mr. BLYTHE. The question which has been for some days before the Convention, has been, by most of those who have spoken on it, divided into two parts; one resting on the Constitutional objection to any action by the Convention; and the other on the injustice of the section which has been proposed.

As was remarked some days since, by the gentleman from Floyd, I think that, unless we can in the first place, dispose of the Constitutional objection, which has been urged to our action in the premises, it is useless to discuss the matter further.

This question out of the way, then, free from embarrassment, we can discuss the other; and, as my time is limited, and as the Constitutional question embraces a great many points, I shall, for fear that I may find myself without time, in the first place, direct my attention to that part of the question which, in my judgment, is most important, and which is most easily supported by *judicial authority*.

On yesterday, sir, the gentleman from Monroe, (Mr. Foster,) read from the opinion of Chief Justice Taney, a recognition of the principle which we seek, by the first clause of this section, to establish—the principle which, in my opinion, is the correct one. The gentleman from Delaware, in the afternoon of the same day, in commenting on this part of the case, remarked that the gentleman from Monroe had read from the *dissenting* opinion of the Chief Justice, and that he (the Chief Justice) was not sustained by the court pronouncing judgment in the case.

Now, sir, it does seem to me that the gentleman from Delaware should have read the opinion and judgment of the court before undertaking to pronounce so authoritatively in relation to it.

I undertake to say, after having examined the opinion of the Supreme Court, or rather of a majority of the court, in that case, that they agreed with Chief Justice Taney in the opinion that he expressed in relation to the point now at issue between us; I undertake to say that, in that very case, the Supreme Court of the United States, sanctioned and sustained the principle for which I contend. There was a difference of

opinion, it is true; and the opinion of the Chief Justice was, it is true, *technically* speaking, a dissenting opinion, but what was the difference of opinion between the majority of the members of the court, and the Chief Justice? It was this: A question had arisen under a legislative enactment of the State of Massachusetts. One section of the act provided that paupers, idiots, lunatics, and other persons likely to become a State charge, should not be permitted to land from vessels from foreign ports; and the third section provided that a tax should be levied on all *other alien passengers*, all persons not embraced within the description of paupers, idiots, and lunatics; and this tax was to be paid by the master of the vessel, before his passengers should be permitted to land. And the question upon which Chief Justice Taney differed from his associate justices, was this: whether this was a *police or revenue arrangement*. If it was a revenue arrangement, then it was in contravention of a clause of the Constitution of the U. States; and therefore, null and void: if it was a police arrangement, it was clearly within the scope of their jurisdiction, and Chief Justice Taney was right. Now, what is the opinion that was delivered by the Chief Justice, on that question? It is this:

"I think it, therefore, to be very clear, both upon principle and the authority of adjudged cases, that the several States have a right to remove from among their people, and to prevent from entering the State, any person, or class or description of persons, whom it may deem dangerous or injurious to the interests and welfare of its citizens; and that the State has the exclusive right to determine, in its sound discretion, whether the danger does or does not exist, free from the control of the general Government."

Now let us see how far this opinion of the Chief Justice is supported by the other members of the court. Justice Grier delivered the opinion of the court against sustaining the law; but after setting out in full the several sections of the act, he proceeds:

"It must be borne in mind (what has been sometimes forgotten) that the controversy in this case is not with regard to the right claimed by the State of Massachusetts, in the second section of this act, to repel from her shores lunatics, idiots, criminals, or paupers, which any foreign country, or even one of her sister States, might endeavor to thrust upon her; nor the right of any State, whose domestic security might be endangered by the admission of free negroes, to exclude them from her borders. This right of the States has its foundation in the sacred law of self-defense, which no power granted to Congress can restrain or annul."

Now, sir, could the Supreme Court have recognized the right which we claim to exercise, in more unequivocal terms? And at the conclusion of the opinion, when its several points are grouped together, the distinction between police and

revenue arrangements is still recognized and kept up.

And yet it is a dissenting opinion. Well now if this remark had been made by one who was not a lawyer, it might have been permitted to pass, but when it is made by one who is a lawyer, and who knows the force and effect of such a declaration that the opinion quoted is but a dissenting opinion, it seems to me, certainly, that it ought not to pass without remark.

Then I say, sir, that we have the very highest judicial authority known to the Constitution and laws of the land. The right which we claim is a right which the Constitution says is *unquestionable*; and what is its foundation? The right of self defense. The right to guard ourselves against the dangers which are hinted at in that decision, dangers which every one will recognize who recognizes the principle there laid down.

It is a principle, sir, upon which you and I and all of us act every day we live. We have not only the right to guard our property, but we have the right to guard our firesides, our domestic and social institutions and relations. Sir, we carry it with us, and act upon it in all the relations and business of human life.

But we are not alone with this decision. It is a little remarkable that in questions of this character, gentlemen, with all their industry and research, have as yet been unable to produce to us a solitary decision on their side of the question; and yet we have decisions made by the courts of Connecticut, of Tennessee, and of Arkansas, and of old Kentucky herself, upon this very question.

The gentleman from Vanderburgh (Mr. Lockhart) alluded to this Kentucky decision yesterday, and it is the only legal decision I have yet seen which gives the true history and meaning of the word citizen.

Gentlemen who take the other view of this question, if they have examined a note by Chancellor Kent, which was referred to some days ago by the gentleman from Monroe, (Mr. Read,) will there find that Kent expresses the opinion that free negroes are citizens within the meaning of the Constitution. And I will venture to say that that is about the only respectable authority they can find sustaining that position.

Now let us look for one moment at this authority. The cases to which I have referred as having been decided by the courts of Connecticut and Tennessee, are referred to in a note. In the same note, after remarking that citizen and subject are convertible terms, and that birth upon the soil is a test of subjection to the government, although it is not necessarily of citizenship, he says: "The better opinion, I should think was, that negroes or other slaves, born within or under the allegiance of the United States, are natural born subjects, but not citizens. Citizens under our Constitutions and laws mean free inhabitants, born within the



United States or naturalized under the law of Congress. If a slave born in the United States be manumitted, or otherwise lawfully discharged from bondage, or if a black man be born within the United States, and born free, he becomes thenceforward a citizen, *but under such disabilities as the laws of the States respectively may deem expedient to prescribe to free persons of color.*"

Now can any one tell me what this means, or what test of citizenship is here given?

Now, I want to give both sides of the case, and there is authority on the other side, and I will venture to say there is no authority, but that can be produced on that side. Let us look at it for one moment. Citizen and subject are convertible terms. The slave, though born on the soil, is not a citizen but a subject, while the free negro born on the soil, but exercising none of the rights, privileges, or immunities of citizen, having but very few other rights beyond those of a slave, is not merely a subject but also a citizen; but then he is a citizen under such *disabilities and restrictions* as the States may see fit to impose upon him.

He departs from the test which he, in the first place lays down, that is the place of birth. But how does he supply it? Not at all. It is left undefined and uncertain, and we must look somewhere else for a test, under such restrictions and disabilities as the States may see fit to impose. What restrictions? Taking away from him some one or more of the privileges which we as citizens enjoy. What are those privileges? Personal security. The right to hold and transmit property. The right to vote and to hold office, or in other words, to participate in the affairs of Government. Well, now, the law may take from the colored person some of these privileges. He is a citizen under such disabilities as the State may impose. If the State may take away one privilege, it may another, and if it may take away two, it may take away all, as a matter of course. The free colored citizen of New York, so designated and styled in the Constitution and laws of the State, when he removes to Indiana, though in the State of New York he has been accustomed to exercise the privilege of marching up to the ballot-box and casting his vote, encounters at once a power which says to him, you may enjoy all the other privileges of a citizen, save and except that of voting and holding office. Now is there any difference in principle between depriving him of either one, or both of these privileges and depriving him of the privilege of holding property? If you deprive him of the one, why not deprive him of the other also? If you take away the privilege that is of chief value in his estimation, you may as well strip him of all the others. And when you have done all this, what do you leave to him? You leave him the privilege of locomotion, and that is all. You do not imprison him; he can cross the river, and at the very moment, in the lan-

guage of the gentleman from St. Joseph, when he sets his foot upon our soil his shackles fall off and he stands erect a freeman. He has the glorious freedom of locomotion. Well, now, if you *by law*, can strip him of all these, what law prohibits you to strip him of the only one that is left? Can any one give me a reason why he talks about principle, the Constitution, and *citizen's rights*, and at the same time proposes to strip the free colored citizen of some of the rights of a freeman? Why is it that if we may strip him of one right we may not of the rest? There is no good reason that can be given.

A day or two since the gentleman from Lagrange assumed to lay down several fundamental propositions in relation to this question. It is not my purpose to enter into a detailed examination of those propositions, for I have not time.

But his argument amounts to this: if the free negro of Massachusetts and New York is entitled to the privileges of citizenship in those States, he is entitled to the like privileges in every other State. Now to show the fallacy of his argument, let us follow its consequences and see if it does not inevitably lead us into sundry absurdities. Why does he select as an instance the case of the free negro of New York? Is it because in that State he has super-added to his other privileges the right to vote? Does he not by this selection evidently make this right to vote one of the criteria of citizenship? He is a citizen of New York, so recognized, as Chancellor Kent says, by the Constitution and laws of that State. Very well. He removes to Indiana, where we recognize his right to hold and transmit property; nothing more. How is that? Is it not a violation of the Constitution of the United States. Unquestionably it is, according to the argument of the gentleman from Lagrange; because we deprive a citizen of New York of one of the most invaluable privileges of a citizen, and the Constitution of the United States says that the citizens of each State shall be entitled to *all* the privileges and immunities of citizens in the several States. Then I say, that if the argument be true, once a citizen, always a citizen, and there is no power in the State of Indiana to deprive him of the privileges of a citizen. But he is a citizen to all intents and purposes, and entitled to all the rights, privileges, and immunities of the citizens of the several States, and he has as much right as you have to use the ballot box, and to participate in *all* the affairs of government. Nay more; he is entitled to sit in this Hall, and in the Hall adjoining this; he is entitled to still more: he is entitled to preside as Chief Executive officer over the destinies of the State. And why? Because he is entitled to *all* the privileges of a citizen, and there is no escape from the conclusion. But the gentleman from Lagrange, conscious of the weakness of his position, yields

the whole argument by saying that we have a right to exclude the pauper, but have not the right to exclude the free negro. On what principle, I ask, do you exclude the pauper. It is on the principle recognized by the decision of the Supreme Court, that we have the right of self-defense. Yet the pauper, destitute as he may be of all property, a vagabond on the face of the earth, may be a citizen, and clothed with as many political rights as you or I, or the proudest citizen can claim to enjoy; and if he go to a sister State, he is entitled to go to the ballot box and vote; he is entitled to hold office. But poverty is a crime, and we may take from our State Treasury money for the purpose, if necessary, of lining our borders with musketeers, to keep out those who are unfit to associate with us, and why? That we may protect the State from pecuniary burden. And yet when the question is, whether we will protect our social and domestic relations and institutions; whether we will preserve from contamination the race of which we are a part, we have no power to do it! [Applause.] And this is the test of citizenship? Away with all such arguments.

But one step further. The argument of the gentleman makes the slave a citizen. The bondmen of the Southern States are just as much entitled to sit in the Legislative Halls of Indiana, and to hold the highest office in the gift of the people of the State, as our own free born natural or adopted citizen.

One step further: If every free negro of Massachusetts and of New York, is a citizen, then all who enjoy the same, or similar privileges, must be citizens. The indian is therefore a citizen—why? Apply the test. The gentleman from Lagrange says, that he is a citizen who is entitled to personal liberty, to hold and transmit property, personal and real. Apply this test, and the indian is a citizen. But, I ask, has the government of the United States power to lay its hand on a citizen of Indiana, and remove him beyond the borders of the State? No, Sir! No, Sir! Let the government of the United States attempt it, and there would be a blaze enkindled throughout the State of Indiana, that could not by any possibility, by any power on the face of God's earth, be extinguished. [Applause.] Yet the government of the United States will lay its hand upon a whole tribe, a whole nation of indians, and remove them to a remote territory. If they are citizens according to the test of the gentleman from Lagrange, they are citizens in the same acceptance and sense, as the free colored person.

Then the argument is false, because it leads us to the most ridiculous absurdity in its consequences.

There is one word that I want to say in regard to the other branch of the question, and I quit this Constitutional argument, for the pur-

pose of doing so. Gentlemen talk to us about humanity and justice, and that in time to come, when the storms of passion shall be stilled, and the mists of prejudice shall have rolled away from our vision, we ourselves will blush at the work in which we are this day engaged. They talk of tyranny. But who are the tyrants? Sirs, you yourselves have avowed on this floor, time and again, that you would not grant to the negro, free or not free, the inestimable privilege of voting or holding office. There you have placed your hand on him, and you are thrusting him lower down in the scale of social and political privileges. I take bolder ground than you, and say, either recognize this principle of exclusion, or its antagonist principle:—that negroes shall be—as I believe, in all sincerity, they never can be—citizens on an equality with ourselves. I believe the Almighty himself, has written the decree with his own hand, and that there is no power in man, or in human legislation to eradicate or blot it out—it is written by the hand of the Deity himself [applause].

Now I go one step further than you. I would, if I believed as you do, either remove them to a place where they may be free men, surrounded by their peers, where they may stand erect amongst their equals in all the dignity of freemen, or else I would admit them as citizens with us. If we cannot exclude them, I say to you live up like men to the profession of your faith. You say we must elevate him. Then why do you not come up to your work, and, instead of recording your votes against his right of suffrage, take him by the hand and lift him up to the same platform of social and political privilege upon which you stand? The elevation of which you talk, he can never attain, while your votes shut up the pathway to the enjoyment of the highest and most valued privileges of a freeman. You taunt us with tyranny. But is this your philanthropy? Is it thus you would elevate the black man? I would thank no man for such philanthropy, displayed in my behalf. I would thank no man for saying that he sought to elevate me, when he said merely, you may have the privilege of coming to our State, of settling down amongst us, of acquiring, holding, and transmitting property; but those privileges of freemen, which we value above all things, in defense of which we would shed every drop of our blood, those privileges you cannot enjoy. I would thank no man to place me so low in the scale of social and domestic relations; and yet this is the humanity of the gentleman. Glorious humanity it is—

The gentleman's remarks were here arrested by the expiration of the half hour.

Mr. BASCOM. I do not rise, Mr. President, to discuss the merits of this question; but to express the hope that the section may be recommended. As for myself, sir, I have nothing to gain or lose by opposing the section as it now



stands. I came here, perhaps, with as unprejudiced views as any member of this Convention; but I tell gentlemen who are so ready to exult at a supposed victory, that it would be well for them to pause and reflect, lest after a fancied triumph here, a power should come down upon them at the ballot-box, which they will not be able to resist. It would be well for them to consider whether it is not better to pass provisions that will meet the views of the people of the State, and not attempt to put into the Constitution such an odious provision as this.

Mr. MURRAY. I rise merely to say a few words in explanation of the vote that I shall give upon this question. I shall vote against the proposition, because it is in opposition to a principle I was taught in youth, and have cherished in riper years; and, the people of the district which I have the honor to represent are opposed to it. Having been a member of the committee which reported the section, I feel bound to say that I saw no disposition on the part of the committee to do anything that was contrary to the interests of the State. There was a difference of opinion among the members of the committee. Some dissented, but dissented silently. For myself I thought it better to make this explanation to the Convention than to oppose the report of the committee or to offer a minority report. All that I have heard on the subject cannot chase from my mind the heart and home words of memory. We are, sir, by a provision such as this, trampling under foot the principles that are embodied in the Constitution of the United States—principles which are founded upon the natural rights of man. Thousands and thousands of the oppressed of other lands are arriving at our ports, seeking a refuge in what they consider a land of freedom, a home for the oppressed, a place of refuge for the down-trodden of all the nations of the earth. While I believe that every member of this Convention is acting in conformity with what he conceives to be the best interests of Indiana, I cannot concede this great principle for the sake of mere expediency. Look at the reports of your police courts; you will find that nine-tenths of the cases of disturbances of the peace, arise from the conduct of these foreigners. The statistics of the country will show the immense sums of money that you are compelled to expend annually on account of these people. Yet there is no law to prevent their landing upon your shores; there is no law by which you can repel them. I regard this subject as being well worthy of the serious attention of the Convention. I would go any lengths consistent with humanity in order to separate the colored from the white race. I have no wish to see them amalgamated. I have no desire to see those strongly contrasted colors blended into one. I have no sympathy with the abolitionists. I believe if that party had not sprung up—if the sentiment which an-

imates them had been clearly defined and understood at the commencement—before this day, the whole of this State of this Union would have emancipated their slaves. I believe there is something wrong about the whole thing; but in order to rid ourselves of trouble and of danger, and of the degradation, if you please, of mingling with those who come within our borders, it seems to me we are going too far; and it seems to me that we are trespassing upon the original rights of man—upon the very principles of civil liberty. Sir, all those who may come to the State hereafter can do the State no harm; they will never hold office—public sentiment will prevent it; public sentiment will draw the line of distinction between the white and the colored race; and if there are some so depraved, so lost to all sense of shame as to mingle with them, the loss is their own. I hold that we should never infringe upon the principles of civil liberty for any object that is a mere matter of expediency.

[NOTE.—Mr. Niles followed in a speech occupying half an hour, but as his remarks were cut short for want of time, the Reporter, at his request, withholds the manuscript till he shall have an opportunity to finish what he desired to say upon the subject. It will appear hereafter.]

Mr. HENDRICKS said: Mr. President, if I express the wishes of the people whom I have the honor to represent in this Convention, I will be compelled to vote for the first part of this section. The second part I do not expect to support. The reasons against the latter part of the section were so well given the other day by the gentleman from Tippecanoe (Mr. Pettit) that they need not be considered by me.

What I have to say upon this question I desire to submit in this connexion, as it will be rather in continuation of the argument of the gentleman from Vanderburgh (Mr. Blythe). It is assumed by gentlemen who oppose this measure, that it is inconsistent with, and in violation of, the second section of the fourth article of the Constitution of the United States, which is as follows:

“The citizens of each State shall be entitled to all the privileges and immunities of the citizens of the several States.”

And in favor of this position the gentleman from Wayne (Mr. Newman) and the gentleman from Laporte (Mr. Niles) have given their opinions. I desire that this question shall be fully discussed; for if the section be in violation of the Constitution of the United States, all argument as to the expediency and propriety of its adoption is unnecessary. This would cut off all further debate. And, sir, I will say, that I can conceive of no graver Constitutional question that could occupy our attention. It involves not only a right and power to pass this measure, but, sir, it might reach to many other questions and measures. It involves, sir, the sovereignty of our State, her right to the exclusive control

and regulation of many of her domestic affairs, and the power of other States to interfere with our domestic policy, and prescribe what shall constitute citizenship in Indiana, and the rights, privileges, and obligations resulting therefrom.

I propose to examine this question further; not by the authorities and decisions of the courts that bear upon it, for this has been thoroughly and ably done by the gentleman from Vanderburgh, but by a few general principles and universally admitted rules of construction.

And I would first suggest, that the argument of the gentlemen on the other side destroys itself. It is contended that the other States may, and that New York and Massachusetts have, by their laws, constituted free blacks within their borders their citizens, and that under this clause of the Constitution of the United States they have the right of emigrating into any of the States, and of acquiring and holding property. But, sir, how and by what authority do they become such citizens of those States? The answer is direct, that the States had the power, and by their laws made them citizens; that, for instance, Massachusetts, by the exercise of that sovereignty which is hers as an independent State, made those citizens who were not so before. This very argument admits that each State has the power to prescribe what shall constitute citizenship within her limits—a power that must of necessity be exclusive.

In giving construction to any written law, it is proper to look to its subject matter; and the words should be taken in such sense as will be reasonable, as applicable, and referable to such object. To state the rule more distinctly, the words should be construed in reference to the subject matter. If we apply this rule of construction to the section under consideration, we will find that the word "citizen," as used therein, does not include the black population; for whom, sir, was the Constitution provided as a form of government? I should rather ask by whom it was formed, for it is the government of those by whom it was constituted. The gentleman from Wayne (Mr. Newman) said that it was provided as a government for the whole population found within its limits, whether white or black; and to sustain himself in this position, the gentleman read from the preamble to the Constitution the following:

"We, the people of the United States, in order to form a more perfect union," &c., "do ordain and establish this Constitution," &c.

This is the language of the people of the United States through their delegates—it is the language of those who were represented in that Convention. It cannot be the language of others. Delegates in the Convention could only speak for and use the language of those whom they represented—from whom they received their power. The Convention was composed of the delegates of the free white population of the United States, and in no instance

was any delegate in that Convention selected by a black population, or by a mixed population of whites and blacks. The Constitution is the form of government for the free white people of the United States, constituted for their good, formed by them to secure "the blessings of liberty to themselves and their posterity." Of whom does this section then speak, when it uses the word "citizens?" If we say that it was intended, as is insisted, to secure the rights, the equality of the citizens of all the States, who, I ask again, were intended by the word "citizens?" Most assuredly the free white people; those by whom and for whom, and to secure whose rights, liberty, and equality, the government was established; those who owe to the government allegiance, and who are entitled in return therefor from the government to protection, security, equality.

Again, sir, in giving construction to this section of the Constitution of the United States, we must look to the circumstances existing at the time of its formation, and interpret the language as then used and understood. At that time none were recognized as citizens of any of the States but the white population. Gentlemen say that the States of Massachusetts and New York have made negroes and mulattoes citizens; but at the time this language was used they were not recognized as citizens in any of the States. The language of this section when adopted did not include them, and we cannot now construe or interpret it so as to include a class that it did not then embrace. The language of the Constitution of the United States cannot be made to change in compass or meaning with the changing laws of the States.

To ascertain the propriety of any proposed construction of a law, it is proper to look to its tendency and consequences, and if these should be ridiculous, or unreasonable, we say this could not have been the intention of the law-makers. Let us examine by this rule, the construction of this clause of the Constitution of the United States, contended for by gentlemen on the other side. They say, that if a State grant to any one, the privileges of citizenship, he is entitled to these privileges in all the other States. Suppose then, sir, Massachusetts should make colored men citizens, with the right of voting, holding office, testifying in courts, serving on a jury, appearing in court in person, &c., these same privileges he would carry with him to Indiana, if he should immigrate to this State. Or suppose the same State should declare married women, and minors over the age of fifteen years, competent to vote, hold office, make contracts, wills, &c., they would carry the same rights with them upon emigrating to another State. This construction, sir, would enable any one State, to regulate and control the question of citizenship, and the "privileges and immunities of citizens" in all



the other States, itself, at the same time being subject to the same control, from the other States. This, sir, would be a result, which would not only destroy the sovereignty of the States, but their independence, and separate existence, and throw their laws and institutions into inextricable confusion. Such a result could not have been intended, or contemplated by the framers of that instrument. It is absurd to suppose, that the framers of the Constitution of the United States, intended to introduce into it any provision which would necessarily cause a conflict between the laws and institutions of the different States.

The correct construction of this second section of the fourth article of the Constitution as I suppose, is, that the persons, or inhabitants of each State, shall enjoy all the privileges and immunities in the other States, which persons of the same class enjoy therein. That no State shall grant privileges or immunities to citizens of one State, which she refuses to persons of the same class in other States. For example, Indiana shall not by law provide, that persons immigrating from the State of Ohio, shall be entitled to vote or hold office in this State, sooner or under less restriction than persons of the same class coming from Kentucky. This construction is not liable to the same objection as that which I have examined, and, sir, it leads to a result worthy the Federal Government, the perfect equality of the States.

I am the more convinced of the correctness of this construction, by an examination of the context—the other sections of the same article. I find this section, concerning the right of citizenship, in article IV. of the Constitution of the United States, an article nearly every provision of which is to secure State rights and equality. The first section secures full faith and credit to the public records and judicial proceedings of each State. The second section (a part of which we are considering) secures the equality of the States, as to their citizens, and the rights of the several States to demand and recover fugitives from justice or labor. The third section provides for the admission of new States into the Union, and secures the unity of the old States, and the regulation of the Territories of the United States; and the last section of the article secures to each State a republican form of government, protection against invasion, and domestic violence. Finding this second section in such connection, in an article almost wholly devoted to secure State rights and equality, I infer, that it was intended by the framers of that instrument to secure the equality of the several States, as to their citizens, and not the political equality of all the persons in the United States. This construction does not impair the sovereignty of the States, within their spheres, but maintains and secures it, and with it the provision excluding

free negroes and mulattoes from immigrating to our State, is not inconsistent.

Mr. President, I will not detain the Convention longer with further argument upon this branch of the subject, but will very briefly consider the question of the right and propriety of our preventing the further immigration of free blacks and mulattoes into our State, and notice some of the objections urged by those who oppose it.

Those who favor this measure are charged with pandering to a pro-slavery sentiment. For myself, sir, in reference to this charge, I have only to say that I have no sympathies for the institution of slavery. My strongest prejudices are excited by any oppression of man. But let us examine this charge, and see, if we can, which is the pro-slavery side of this question. Two years ago, we heard it from these same gentlemen, that the institution of slavery ought not to be carried into the free territories, not because the number of persons held in bondage would be increased—not that slavery in one State or Territory would be any greater violation of man's rights, than in another—nor that the condition of the slave, upon the banks of the Rio Grande, would be worse than upon the Roanoke—but that the institution ought to be confined within its present limits, until the number would be so increased as that slave labor would become unprofitable, and the institution unmanageable, and fall by its own weight. The same argument has been urged against the Colonization Society, that it only carried off the surplus and unprofitable black population from the South. The South, sir, in reference to the free black population, has adopted its policy—a policy, which, in my judgment, is as wise as it is unjust. The Southern States prohibit their immigration within their borders; Kentucky drives them from her limits, and the other States require such security from the master, when he manumits his slaves, as in fact drives them out. The policy of the South is, that the whole black population, which is not continued in servitude, shall be driven out. This policy is adopted, not only to relieve themselves of the burthen of this population, but to secure the permanency and vigor of their peculiar institution. And, sir, these gentlemen, who oppose this measure, now say that we must suffer the South to carry out her policy, and throw upon us and our children the burthens of their institution—that we shall prune it of its decayed and unprofitable branches—that we shall nourish the institution of slavery, that it may grow and have perpetual vigor. And yet they say that those who demand that the South shall bear its own burthens, and not throw them upon the North, are pandering to a pro-slavery sentiment. I say, sir, that these gentlemen, by their course upon this question, are lending “aid and comfort” to the supporters of the institution of slavery.

This is not a question, sir, between the State of Indiana and the free black population of the South. With that population, Indiana has no controversy. For Indiana, it is a question of policy; but, as between her and the South, it is a question of right—of obligation. It is one of the highest obligations of every State to provide for the destitute, the indigent—for all, sir, who are unable to provide for themselves, within its limits, whether they are white or black; and I would hope always to see Indiana faithfully discharge this obligation; but it is no part of this obligation that our State shall bear any part of this burthen for another; and upon this principle is based the law which has been upon our statute books for a number of years, which provides that any one (white or black) coming into this State, and likely to become a public charge within the first year, shall be removed by the overseers of the poor beyond the limits of the State, and taken to their old settlement. This statute, which may exclude the white man from our borders, because he may be poor and dependent, and secures us from the burthen of the pauper population of the other States, does not so excite the sympathies of the gentlemen.

Shall the State of Indiana suffer the South to throw upon her, to be provided for, the old, the diseased, and the vicious of her black population? Shall we bear the burthens which the institution of slavery creates? Every principle of justice—every dictate of sound policy—answer, we should not. We have none of the advantages of the institution, (if it have any,) and we ought to bear none of its burthens. Under the influence of the present Southern policy, the number of negroes and mulattoes coming amongst us is greatly increasing; and in a few years the North will be burthened with the whole black population of the United States, if we adopt no measure to prevent it.

I will not go into any comparison of the white and black races. It is enough for my purpose, in this argument, that the races are different—physically, intellectually, and morally—as different in all these particulars, as in their color. They cannot meet and mingle, in a state of social and political equality, without a violation of the laws of nature, and a gross outrage of all our better feelings, and without producing a degradation of our own race. If the blacks are permitted to be among us, it must of necessity be in a state of social and political inferiority—a condition prejudicial to both races. I hope never to see, permanently established amongst us, a race that we will regard as inferior. Under such an influence, we cannot maintain in their purity our plain republican principles and manners, regarding all as politically equal. Nor could we maintain the dignity of labor. The white laborer would not be willing to work with, and at the same employments, with an inferior race. I will close my argument upon this subject by saying that the races

ought to be separate; and I hope yet to see a policy adopted that will eventually place this unfortunate race, as an independent people, in their own country.

Before I take my seat, I desire to say that I have not much objection to the proposed reference of the several questions relating to the black race; but if I should vote for the reference, I do not thereby commit myself to the support of all the measures. The first part of the section under discussion I will support; but I do not expect to support the latter part, which would (if it have any effect) prevent the negroes and mulattoes now within our State from acquiring any more real estate, and even prevent that which they now hold from descending to their heirs. I think we have no right to drive those out who have acquired settlements under our laws, nor ought we to impair their present rights, but rather to give them inducements to industry and good order. Nor do I expect to support the proposition making it obligatory upon the Legislature to appropriate annually a sum of money towards the cause of their colonization. I do not know the wish of my constituents upon this question. It is purely and properly a question for legislative control; and for these reasons I cannot support it here. In the Legislature, after the people were further freed from the public debt, I would be delighted to carry out the will of my constituents, by providing for the removal of the blacks from amongst us. But we are not here to legislate.

Mr. SMITH of Ripley said: I have a word to say in reply to the gentleman who has just taken his seat. If I understood the gentleman aright, he stated that I had said that the State of Kentucky had made poverty a felony. My remark was intended to be that the State of Kentucky had made freedom a felony.

Mr. BRACKEN. I am inclined to think that we are now about ready for the vote; and, therefore, I call for the previous question.

And there was a second.

The PRESIDENT. A division of the question having been demanded, the main question is upon committing the subject to a select committee of one from each Congressional district.

Mr. McFARLAND. What would be the effect of the previous question if the motion to commit fails? Would not the previous question bring us to the first section before the House?

The PRESIDENT. Yes, sir.

Mr. McFARLAND. Then I suppose there can be no more amendments offered.

The yeas and nays having been demanded and ordered, upon the question of commitment, the Secretary was directed to proceed with the call, and he reported—yeas 74, nays 48—as follows:

YEAS.—Messrs. Alexander, Allen, Anthony, Balingall, Bascom, Beard, Berry, Bicknell, Bracken, Brookbank, Bryant, Carr, Chapman,



Chenowith, Clark of Tippecanoe, Cole, Colfax, Conduit, Crawford, Crumbacker, Davis of Madison, Dunn of Jefferson, Foley, Garvin, Gordon, Graham of Miami, Gregg, Hall, Hawkins, Helm, Hitt, Hogin, Holman, Howe, Johnson, Jones, Kent, Kendall of Wabash, Kinley, Lockhart, Maguire, March, Mather, May, McClelland, McFarland, Miller of Fulton, Miller of Gibson, Milligan Milroy, Morgan, Mowrer, Murray, Nave, Newman, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Rariden, Robinson, Shannon, Sherrod, Sims, Smiley, Smith of Ripley, Steele, Taylor, Tood, Watts, Wheeler, Work, Wunderlich, and Mr. President—74.

**YAYS.—**Messrs. Badger, Barbour, Beach, Blythe, Bourne, Bowers, Clark of Hamilton, Coats, Cookerly, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, &c., Duzan, Farrow, Fisher, Foster, Frisbie, Gootee, Haddon, Hardin, Helmer, Hendricks, Hovey, Huff, Logan, Mathis, McLean, Miller of Clinton, Moore, Morrison of Marion, Morrison of Washington, Nefsinger, Prather, Read of Clark, Read of Monroe, Ritchey, Schoonover, Smith of Scott, Spann, Stevenson, Tague, Walpole, Wiley, Wolfe, Yocum, and Zenor—48.

So the subject was referred to a select committee, to consist of one member from each Congressional district.

Subsequently the President appointed the following gentlemen to serve upon said committee:

Second District, Mr. Kent; First District, Mr. Owen; Third District, Mr. Holman; Fourth District, Mr. Rariden; Fifth District, Mr. Maguire; Sixth District, Mr. Dobson; Seventh District, Mr. Stevenson; Eighth District, Mr. McFarland; Ninth District, Mr. Niles; Tenth District, Mr. Howe.

Mr. SMITH of Ripley. If these instructions are to be now voted down, the whole subject would still be before the select committee. Would it be in order to move to lay the instructions upon the table?

The PRESIDENT. It would not.

Mr. FOSTER. I propose further to amend the instructions as follows:

The PRESIDENT. No amendment is in order. The question is upon the amendment proposed by the gentleman from Vanderburgh, (Mr. Lockhart,) to the instructions proposed by the gentleman from Floyd (Mr. Kent).

The amendment having been read again by the Secretary—

Mr. PETTIT. If in order, I would move to lay the instructions upon the table.

The PRESIDENT. The motion is not in order. The instructions are under a call for the previous question.

Mr. PETTIT. The previous question was demanded upon the reference.

The PRESIDENT. The force of the previous question extends to the whole subject.

Mr. LOCKHART's instructions were now rejected; and the question recurred upon the adoption of the instructions proposed by Mr. Kent.

Mr. HENDRICKS. Supposing these instructions to be lost, I would inquire whether the vote upon the original section will come under the force of the previous question?

The PRESIDENT. The original section has already gone to the select committee.

Mr. PEPPER of Crawford demanded the yeas and nays, and the demand being seconded by ten members, the Secretary was directed to proceed with the call, and he reported—yeas 60, nays 63—as follows:

**YAYS.—**Messrs. Alexander, Allen, Anthony, Badger, Bascom, Berry, Bowers, Bracken, Brookbank, Bryant, Clark of Tippecanoe, Coats, Colfax, Conduit, Crawford, Crumbacker, Davis of Madison, Dobson, Dunn of Jefferson, Foley, Gordon, Graham of Miami, Gregg, Hall, Hawkins, Holman, Johnson, Kent, Kendall of Wabash, Kinley, Maguire, Mather, McClelland, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Morgan, Mowrer, Murray, Newman, Owen, Pepper of Ohio, Pettit, Rariden, Read of Monroe, Ritchey, Robinson, Shannon, Sherrod, Sims, Smiley, Smith of Ripley, Smith of Scott, Taylor, Todd, Watts, Wheeler, and Wiley—60.

**NAYS.—**Messrs. Balingall, Barbour, Beach, Beard, Bicknell, Blythe, Bourne, Carr, Chapman, Chenowith, Clark of Hamilton, Cole, Cookerly, Davis of Parke, Davis of Vermillion, Dick, Dunn of Perry, &c., Duzan, Farrow, Fisher, Foster, Frisbie, Gibson, Gootee, Haddon, Hardin, Helm, Helmer, Hendricks, Hitt, Hogin, Hovey, Howe, Huff, Jones, Kilgore, Lockhart, Logan, March, Mathis, May, McFarland, McLean, Moore, Morrison of Marion, Morrison of Washington, Nave, Nefsinger, Pepper of Crawford, Prather, Read of Clark, Schoonover, Spann, Steele, Stevenson, Tague, Walpole, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President—63.

So the instructions were rejected.

Mr. FOSTER. I would inquire of the Chair whether it would now be in order to propose instructions to this select committee?

The PRESIDENT. It would be in order.

Mr. FOSTER. Then I propose the following:

"The General Assembly shall pass laws providing that any free negro or mulatto hereafter immigrating to, and refusing to leave, this State, or having left, shall return and settle within this State, shall be deemed guilty of a misdemeanor, and punished by confinement in the county jail, or apprenticed for a term not less than six months, and the proceeds devoted to the Colonization Society in trust for the benefit of those negroes in this State who are willing to emigrate to Liberia."

Mr. GIBSON. I propose to amend the instructions as follows:

"And inquire further into the expediency of reporting a section, in substance as follows:

SECTION —. Any person who shall knowingly permit any negro or mulatto, coming into this State after the adoption of this Constitution, to occupy any real estate of which such person may be the owner, shall forfeit such real estate to the county in which the same lies, for common school purposes."

The amendment was agreed to, upon a division—affirmative 50, negative 46.

Mr. HALL. I propose further to amend the instructions by adding the following words:

"The object is to have the proceeds of such hire first applied toward sending the negro or mulatto so hired to Liberia, if he will consent to go."

Mr. FOSTER. I accept the amendment.

Mr. PETTIT. I want to inquire whether the instructions now offered are of an imperious character, or whether they are submitted as a mere matter of inquiry?

Mr. FOSTER. I have no objection to such a modification.

Mr. McCLELLAND. I propose further to amend the amendment by way of substitute—striking out and inserting these words: "that the committee be instructed to inquire whether the Legislature does not possess ample power to prevent the immigration of negroes and mulattoes without any express provision of the Constitution? and if so, whether there is any necessity for making such a provision?"

The yeas and nays were demanded and ordered upon the adoption of this amendment.

Mr. MORRISON of Marion. Is it in order now to debate this subject?

The PRESIDENT. It is.

Mr. MORRISON. It seems to me, that, by this time, it must be evident to every member of the Convention, that there are certain principles which cannot be sustained here; and I, for one, am perfectly willing—since these instructions have been somixed up—that the subject should remain in the hands of the committee without instructions. I am willing to trust to their report to shadow forth the opinions of this Convention as reflected by the votes which have been given, in such manner as their judgment may direct. I think that in this way we shall be able to come at the most satisfactory conclusions with reference to the whole subject. Therefore, I shall move to lay the instructions upon the table.

The motion was agreed to, and, accordingly, the instructions were laid upon the table.

Mr. OWEN. Mr. President, I would ask whether all the sections which have been heretofore reported relative to negroes and mulattoes, have been referred to this committee?

The PRESIDENT. No, sir.

Mr. OWEN. Then I would ask for a suspension of the rules to enable me to move that all the sections heretofore reported upon the subjects of negroes, mulattoes, and colonization, be severally referred to this committee.

The motion was entertained and agreed to by unanimous consent.

Mr. GIBSON. There is a petition upon this subject from Clark county. I ask the consent of the Convention that this petition may be taken up and referred to the same committee.

A VOICE. "That petition is already referred."

The PRESIDENT. It cannot be reached then.

Mr. McCLELLAND. I move to take from the table a petition which, some days ago, I presented from my county, and refer it to the same committee. Some days ago I presented a petition upon this subject from three hundred and twenty citizens of Randolph county—moving myself to lay it upon the table at the time, because it could not have an appropriate reference. If the Convention still desire to tie down the hands of these petitioners, they have the power to do it, and I will give them the opportunity. I do not see why the petition from Clark county should have the preference.

The PRESIDENT. The Chair would remark that debate upon a question of reference is entirely out of order. But by unanimous consent, the Chair will entertain the motion.

The petition was accordingly taken from the table and referred to the committee by unanimous consent.

#### RIGHTS OF MARRIED WOMEN.

Mr. STEVENSON moved to dispense with the consideration of the previous order, for the purpose of resuming the consideration of the report of the committee on rights and privileges, submitting propositions to amend with reference to the rights of married women.

The Convention refused to dispense with the consideration of the regular order.

#### PUBLIC WORKS.

The PRESIDENT. The next order is the consideration of the report submitted by the chairman of the committee on the State debt and public works, (Mr. Hall,) on the 26th of October. Is it the pleasure of the Convention to consider the bill by sections?

SEVERAL VOICES. "By sections."

The Secretary then read the first section of the report, which is as follows:

"SEC. —. The credit of the State shall never be given or loaned in aid of any person, association, or corporation."

Mr. READ of Monroe proposed to amend the section by adding these words: "Nor shall the State hereafter become a joint owner, or stockholder in any corporation or association."

The question upon the adoption of this amendment having been announced by the Chair—



Mr. READ of Monroe said:

Mr. President, my object in offering the proposed amendment, is to effect a complete separation between the State and all corporations, in carrying on business of any kind whatever.

If there is a single proposition settled beyond all manner of controversy, by every principle of sound reason, by experience all over the world, and more especially by the experience of our American States, it is this, that government should not in its own capacity, nor by a partnership with individuals, become an agent in business operations, except so far as required for the mere purposes of government.

The history of the last thirty years has taught the American people a lesson on this subject never to be forgotten; the results of which, I trust, will be incorporated in every amended State Constitution, that like fatal experiments may not under any new phase of circumstances be repeated, or even attempted. Why, sir, what have we seen? We have seen the enormous sum of two hundred and thirty three millions of debt heaped upon our American States, within the memory of most of us. We have seen the public patronage of the States the mere foot-ball of contending political parties—we have seen partisan leaders advocating local expenditures to strengthen their own power—we have seen hosts of contractors, bankers, stock jobbers, brokers, corporation mongers, gamblers, speculators, and petty office holders, rioting upon the spoils of the State, and united to support the powers which most favored themselves; under these influences, State after State was launched into the vortex of extravagance and corruption. Ten sovereign States were driven into bankruptcy, and disgraced in the eyes of the world.

Government, sir, has no capacity to make canals, to construct turnpikes or railroads, deal in stocks, or to enact the banker. These are no proper functions of government; and as often as the State is entangled in any such operations, it not only violates the very end of its existence, but is sure, sooner or later, to be cheated, plundered, victimized.

In the grand aggregate of State indebtedness, Indiana comes in for her full proportion. No less than twelve millions fell to her lot; an amount equal to a twelfth part of all the present taxable wealth of the State, and, at the time it was contracted, equal to an eighth of it. After that terrific crash of State credit, which broke upon the country, in which public and private credit was prostrated, and individuals and communities were alike overwhelmed, had in some measure passed off, men began to reflect and soberly inquire what can be done to prevent similar ruin in the future.

The great remedy which has been devised, is so to change the State Constitutions as to take away from the Legislatures the power again to involve the State credit. Mainly with a view to

provisions of this kind, State after State has changed its Constitution, and other States are now engaged in the work.

In order to apply an effectual remedy to the plundering of the State Treasury, we must understand how these hundreds of millions were lost, and how other hundreds of millions would inevitably have been lost, but for the total explosion of the system of State credits.

The laws under which these debts occurred, have been very aptly called **PLUNDER LAWS**, and they are three fold in their character:

1. Laws for constructing works of internal improvement.

2. Laws involving the funds of the State in banking.

3. Laws loaning the credit of the State, or the trust funds of the State, for one or the other of these objects, to corporations.

All the State indebtedness has grown up under legislation falling under the one or the other of these divisions, or all of them united, and no other way whatever.

Sir, I wish in our new Constitution entirely to cut off this legislation, falling under I care not which of these divisions, and to cut off all power to create State debt, except in the case of public defense. The objects which these laws contemplate, so far as proper in themselves, are most safely and economically accomplished by individual sagacity and enterprise; and with one accord, the people of all the States, have committed their railroads, their plank roads, and their turnpikes to companies of individuals.

Mr. President, one of the most important offices of a written Constitution is found in its requirements to keep the State to its appropriate sphere of action. Government is ever passing its legitimate bounds, and intermeddling in subjects which do not properly appertain to it. In all ages, and under all forms, too much government and the improper interference of government in matters not belonging to it, are among the sorest evils which have afflicted men.

The State, sir, I need hardly say, is an exceedingly bungling and unskilful manager of all business transactions. It is ever liable to be cheated, and never upon capital makes the same returns as do individuals. Hence, it is much more profitable to leave money in the pockets of the people than for the State to undertake the management of it for their good. The purposes for which money should be raised by the State, or its credit embarked, should be strictly limited by the Constitution. Let the State take the place of the merchant, the manufacturer, or the banker, or in any way become a partner with companies, no matter under what pretext done, it is sure in the final result to be the loser.

All common sense and all the history of the past proclaim this as the unfailing result.

I was struck by the sound philosophy of an essay on the question, "what is the State," found

in the French Almanac for 1850. "To those," says the author of the essay, "who say the State should *do much*, we reply, then the people must allow it to *take much*. To those who say the State should raise but *few taxes*, we reply, then the people must not require it to proceed beyond its special function. As to those who pretend that the people should require *much* of it, yet give it *little*, their claims are chimerical and absurd."

It would be a most instructive lesson on the capacities of a State for business operations, if we had any means of determining the present value of the immense investments which the States made during the period of the internal improvement and State banking mania. By a table taken from the American Almanac, when the total amount of State loans was, in round numbers, \$180,000,000, the following was its distribution:—\$53,000,000 for banking; \$69,000,000 for canals; \$43,000,000 for railroads; \$7,000,000 for turnpikes, and \$8,000,000 for miscellaneous objects. In Hunt's Merchants' Magazine, I find the following statement, which I believe to be entirely correct; that, in State internal improvement, the only example of complete success, is the Erie Canal, of New York; and, in relation to banks, the use of State credit has been a total failure, and of unmixed evil. I suppose the present actual value of the aggregate State investment, would not be, as measured by the dividends which they yield, 25 per cent. upon the investments made. The committee on State debt in the Ohio Convention, in making their estimate for meeting their interest amounting to 1,250,000 dollars, calculate the income of their public works at only 366,000 dollars. The actual cost of their public works, stands them in, at this time, 30,000,000 dollars—(that is including interest over and above income, for some years)—the value of the works is \$6,000,000. And Ohio, in regard to her public works, it must be remarked, is considered one of the fortunate States. But we have a better illustration, and nearer at home, in the sale of our own Central Canal, on last Saturday, by the Governor, at the State House door. The work, I understand, cost three quarters of a million, and sold for \$2500.

VOICES.—"And a bad bargain at that."

The loaning of State funds to companies has proved equally disastrous. The amount of such loans in Ohio was three millions—the loss two millions. In 1842, Mr. Brough, then Auditor of State of Ohio, was appointed agent to look after the interests of the State, in these companies. His report to the Legislature is full of developments, showing that the State, in such concerns, is always the sleeping partner, and exhibiting the various frauds by which the State was plundered of her interest.

In New York, the State loaned its credit to the extent of five millions: the loss was, I believe, in still greater proportion.

But, sir, if it could be shown that the State in all these transactions is largely the gainer, still I hold they are utterly wrong in principle. Money making is not the business of the State. If the State claims a monopoly of any business she inflicts an injury upon her citizens which is little better than downright robbery. If she sells out a monopoly for a *bonus*, the robbery upon the citizens is ordinarily still worse, as being paid for and sanctified by a right purchased from government. If the State becomes a partner with a few of her citizens, to the exclusion of others, offering the same terms, it is still a most odious and anti-republican principle, and more worthy of the days of monopoly, in the reign of Queen Elizabeth, than of an American State. Should vast profits be pointed to as the result of such alliances, I say, in the first place, I have no faith whatever, that, in the long run, there will be any such profits. All experience is against the supposition. But if there are really such profits, so much the worse for the people.

Business, when left open to private enterprise, regulates itself. Competition soon reduces profits to a just standard. Could government, by selling out to a few of its citizens, the exclusive right of making or vending any articles of manufacture, or of carrying on any kind of commerce, save the people from all taxation, does not every one see that this would be the most unjust and oppressive of all modes of raising revenue?

In some oriental countries, there is no taxation. The whole revenue is raised by extortions for the use of certain privileges. 'If, by a continued connexion between the State and banking, in the form of a monopoly to a few persons and a few towns, as it now is, the whole expenses of the State could be paid, still it would be the most unequal mode possible to be devised, of taxing the industry of the country. It would be the most expensive, too, of all methods of taxation. It would be giving a few persons *much*, in order that the State might gain a *little*. It would be of that species of legislation of which Dr. Wayland says, it is not *legislation* but *robbery*.

In regard to all such connexions, I am reminded of the story of the Sultan and the Dervish. The Sultan, opening his coffers, showed the Dervish a large pile of gold, which he had received from one of his pashaws; ah, said the Dervish, if your highness could only see the pashaw's pile, you would see a much larger one.

My design, in the amendment which I now propose, is to produce a complete divorce of the State from corporation mongering of all kinds. The section, amended, embraces just this principle—that the State shall not loan its credit to corporations, nor enter into a partnership, in any form, with them.

The same principle, also, in regard to counties, I wish incorporated into the Constitution.



Public debt is a hydra-headed monster, which is always springing forth in some new form, and under some new pretext. Cut it off in the nation,—straitway, it shoots forth in the States—cut it off in the States—it comes forth in the counties—cut it off in the counties—and it steals forth in the form of town or city bonds.

Mr. President: I wish to quote a sentence. It is this: "It is not in a splendid government, supported by powerful monopolies, and aristocratical establishments, that the people will find happiness, or their liberties, protection; but in a plain system, void of pomp, protecting all, and granting favors to none."

This is a plain sentence, from a man who did not deal much in the graces of composition, and it may not sound well to "ears polite." It is from Andrew Jackson.

I have another sentence to quote. It is from the writings of Moses. It is of far better composition—it is more appropriate to our subject—it is short, direct, and pithy. In quoting it, I wish to say, that it is not for the purpose of holding a rod over the head of any one. It embraces, however, the very precept which I wish to carry out in our State Constitution, in reference to all the funds of the State. The sentence, sir, is this—"Thou shalt not steal."

Mr. WATTS. Is it in order to amend at this time?

The PRESIDENT. It is in order to amend the amendment.

Mr. WATTS. Then I will offer a small amendment.

The amendment was read by the Secretary, as follows:

"Provided, The State shall have power to invest capital in a State Bank and branches."

Mr. RARIDEN next obtained the floor, and, upon his motion, which was agreed to,

The Convention took a recess till 2 o'clock, P. M.

#### AFTERNOON SESSION.

The Convention resumed the consideration of the first section of the report of the committee on the State debt and public works, in relation to the State credit. The section is as follows:

"The credit of this State shall never be loaned in aid of any person, association, or corporation."

The PRESIDENT stated the question to be on the amendment to the amendment proposed by the gentleman from Dearborn (Mr. Watts).

Mr. DOBSON remarked, that he did not think this was a proper time to go on with the bank question, and that, perhaps, it would be better to lay the resolution and amendments on the table, and proceed with other sections which were less likely to elicit debate.

Mr. WATTS. If the gentleman from Owen and Green is of that opinion, I will withdraw my amendment.

Mr. DOBSON. I would suggest that this bank question will, in all probability, involve a week or ten days of hard work, or hard talking, whichever the Convention has a mind to term it; and I think it would be better to pass on for the present, over some of the sections that are less likely to excite debate, and to adopt or reject them, so that the people may see that we are doing something. This section does not appear to me to involve the bank question, although gentlemen may think it does. We shall come to that question directly in the order of business, and if gentlemen think that this section does involve that question, I would lay it upon the table for the present, and proceed to something else, so that the people may not think that we are spending all our time in doing nothing. I would be like the boy at school, who, when asked if he had got his lesson off, replied "yes, all but a few hard words," and he had "skipped" them, [laughter] and would try to learn them some other time. Now, as the Convention has spent so much time, and done nothing, it appears to me that we had better lay aside for awhile those questions which excite debate, and endeavor to pass such amendments as we are pretty well agreed upon.

Mr. READ of Monroe. If that is the disposition of the Convention, I will withdraw my amendment.

The PRESIDENT. Then the question will be on the first section of the article reported by the Committee on the State debt and public works.

Mr. STEPHENSON suggested the propriety of passing over this section for the present, and considering it when the bank question should come up. If the section were considered now, he thought it would necessarily bring up the bank question, for which he thought the Convention was hardly prepared. He would, therefore, move to lay the section upon the table for the present.

The question being taken on the motion, it was not agreed to.

The PRESIDENT. The question is on engrossing this section for a third reading.

Mr. WOLFE moved to strike out the word "this" and insert the word "the" so as to make it read "the credit of the State" instead of "the credit of this State." That was all the change which he desired to make in the section.

The amendment was rejected.

Mr. RARIDEN. I move to strike out the section with the view of inserting another which I will disclose shortly to the Convention.

A MEMBER. Read the substitute.

Mr. RARIDEN. It is not quite ready yet, and at any rate I believe it is quite in order to move to strike out without offering any substitute at all. Mr. President, I object to this section on the ground that it is too indefinite for my purpose. I do not know what it means. If it means to say that the State of Indiana shall

never become a partner in any banking system, as it is now, I am against it, and it strikes me that that is the object of it. I can suggest a great many states of cases in which it would be quite proper that the "credit of the State should be loaned"—that the State of Indiana should contribute of her means, and even though everything was lost, in one sense of the word, the State would be the gainer by the sacrifice of the amount of money thus advanced. For example, if any of those great thoroughfares—the arteries of the commerce of this country—should happen to fall into a state of dilapidation, if the work should go down—say, for example, that it was even this line of Railroad from Indianapolis to Madison, if that should go into waste and decay, the State of Indiana could very well afford to spend fifty thousand dollars and to lose that money entirely and forever, rather than have that line of communication with the Ohio river cut off. The same thing may be said of the Wabash and Erie Canal. We cannot at all times foresee forthcoming events. These companies might all collapse, and the whole property fall into the hands of the State. Take it, for instance, where I reside—on the White Water Canal; the State of Indiana has expended \$1,100,000 on that work, and a company of men have spent \$700,000 more. Suppose the company were now broken up. I have no hesitation in saying: that the construction of that work has not lost to the State one dollar, although we expended \$1,100,000 in it and never got a cent except in the shape of enhanced taxation, on the property on the margin of that canal; and that I believe in itself, has been amply sufficient to compensate the State for all the outlay. It may be so with this great work in the West, for aught I know; and judging of the future by the past, I must confess, that I am indisposed to tie up the hands of the Legislature.

Sir, the whole theory on which this section is based is wrong. It is upon two ideas, both of which are absurd. The first is that all the wisdom of the State will evaporate with the dissolution of this Convention, and the second is that mankind are incapable of self-government, and that they cannot be trusted with power. Now, sir, with this view let us contemplate for a moment the character of this Government, and what will be the effects of these restrictions upon the legislation of the country. In order to have a government that can control public affairs and guarantee individual rights, we must delegate a sufficient amount of power, and it takes as much power to administer a republican form of government as it does to administer a monarchical form of government. The only difference is that in a monarchy it is concentrated in one or two hands, while under a republican government it is distributed among a great many, who act as checks to each other; but the elements of power are in both instan-

ces the same. We must then delegate power to guarantee individual rights and to protect public liberty. We look to the Government as parental in its character, as fostering every thing that is calculated to benefit society, and not as laying its iron hand upon every thing in the shape of improvement. Not a bit of it. My theory of government is that the representatives of the people always reflect public sentiment. There may be, it is true, an occasional mistake; there may be an aberration; but every thing admonishes us that the representative, to be a faithful representative, must reflect the sentiments of the people who have elected him; or if he is indisposed to do so, when he looks forward to the next election he is admonished that he ought to attend to the wishes of the people if he wishes to be re-elected.

Well, sir, if I am right in this theory, that the representative always reflects the sentiments of the people who have elected him, I think it is a great mistake to suppose that there is patriotism in restricting the delegation of power, and to suppose that the people retain the power, the exercise of which is thus restricted. I deny that they do retain it, and for this reason—that there is no organization through which the people can carry out that power which is not delegated; and if it be not delegated to the representative it cannot be exercised at all for want of that organization. Then no matter how wise or how beneficent the object may be, it seems to me that the object and purpose of this provision is to cut off every thing of the kind.

Now there is another principle, and it is one which I have maintained some ten or fifteen years. You may talk about the supremacy of the law and the sacredness of the Constitution as much as you please, but whenever laws become obnoxious—whether they be organic or statute laws—the people will change them. Public functionaries universally truckle to public sentiment on every point. And that is as it should be, because it shows the omnipotence of the people. Gentlemen need not therefore talk to me about betraying the people, because they never intend to do anything of the kind. The representative may err, and so may the people, but my word for it, he will never err long unless the people go with him and sustain him in that error. Gentlemen talk about the ruin which is brought upon the people by their representatives by their connection in Indiana with the system of internal improvements. Well, sir, I occupy a position in which I could denounce these improvements with as much freedom and with as good a grace as any gentleman on this floor, for I was opposed to the whole system—I was opposed to everything of the kind. Now I admit that when I look over the whole ground, when I contemplate the immense debt which now lies upon the people of the State—when I look upon the situation in which the State then was and in which it would have re-



mained if my advice had been pursued—when I look upon all this and contemplate at the same time the present position of things, I am not at all prepared to say that the State would have been in any better position if my advice had been followed, and that is a large admission for one occupying the position which I occupy. I was a representative most of the time when these improvements were begun. I was opposed to the Wabash and Erie Canal and to the State Bank; and when I look at all the consequences which have resulted from these measures, I ask myself "would the State have prospered if my advice had been taken?" I ask myself "what would the State have been in such case?" Why, sir, it would have been a wilderness, as it then was. You would have heard nothing of your Madison and Indianapolis Railroad. You would have heard nothing of your Wabash and Erie Canal and other great public works. Now what does it amount to when you contemplate this matter philosophically? All these public works are a mere tax upon the capital of the country. They are a mere exchange of money for the labor of the country. It is the rich man exchanging that much money to the man who constructs the work for the work itself, and what is better than all, it is of advantage to both parties. The one class furnishes the elbow grease, and the other the capital, and it works mutually to the advantage of both. These works are now completed and have been completed by the united efforts of the State and of individual enterprise; and although I was so narrow-minded at the time as to refuse to take any interest in them, I have no hesitation whatever in saying that they have been of immense advantage to the State. Although I opposed these improvements, and at that time could have bought the stock at half its present price, I can attribute my opposition only to my short-sightedness. I had no confidence in them. Well what have we seen as their consequence? We have seen that the products of the State have been increased more than a hundred and fifty thousand dollars per annum. I know that I am within the bounds when I say that. Now who is injured by this? The farmers? No; for every man who owns a farm in their vicinity receives in consequence of these improvements ten times the amount in the enhanced price of his land and products, over and above all that he pays in taxes to meet the interest of the debt. Does any gentleman here doubt that? I think no man can doubt it who reflects on the matter for a single moment. Then I am entirely opposed to restricting the representatives of the people in future. I would not object to it if we could leave the power to be exercised by the people themselves whenever they may think it necessary to exercise it; but when you fail to delegate the power to those only who can exercise it, it is in my judgment tantamount to an abandonment of the power itself. Why then

would you restrict them? Is it true that those who are to come after us are not to be trusted? I do not believe in any such thing. I believe in the progress of mind and intelligence; I believe that those who are to come after us will be as capable of managing their own affairs as we are. I believe another thing—that with all the misfortunes and calamities which gentlemen have bewailed with so much lamentation, have resulted beneficially both to the State and to the people. The mind of the people has been developed; their intellectual resources have been called into action which would in all probability have lain dormant had it not been for these stimulants in the shape of enterprise and disaster, which have been applied to the mind.

Another word on this subject: The question is significantly asked, "If the people had had a part in enacting these disastrous measures, would the difficulty have come upon us?" I say yes, they would; for the people were in advance of their representatives all the time. Although the people of the county of Wayne have fostered and maintained me from my boyhood, entertaining the sentiments which I then did, I was too prudent to put my name before the people in reference to this question, because I was opposed to them. I now, however, entertain the idea that they were nearer right than I was, and that if they had taken my advice the State would have been in a less prosperous condition without the present debt upon it than it now is with that debt. Then are you afraid to trust the people hereafter, that you are thus to restrict them? Why should we clog their action? I tell you that these parchment barriers cannot restrain the people when they entertain the idea that they are a restraint upon their power. I say, then, that when you consider that their representatives are responsible to them every year, the representatives will be apt to think more about what will best secure their next election, and how, in order to effect that, they can best subserve the interests of the community at large. Does not every body know that? It is as plainly true as any proposition that can be set forth. Some men of platonic patriotism may think differently, but they are only the exceptions and not the rule. Every man who is a candidate for popular favor will study how he can best secure his next election; and in order to do that, he will study how to subserve the interests of the community. Now shall we tie the people down in this way? They have always held the rod in their own hands; and if any individual goes beyond the wishes of those he represents, he is at their mercy, and in nine cases out of ten they will turn out such a man and put a more faithful representative in his place. I say, then, that there is no inducement for the representative to violate the wishes and the interests of those whom he represents; and I cannot but think that in most cases it is their mistake rather than

their design. What object can they have in so doing? All their hopes of future preferment depend upon their maintaining the people's confidence. And why should they destroy that confidence, and with it every hope for the future, by abandoning the interest of their constituents, and by sacrificing their confidence by misrepresenting them? The people have the power in their own hands.

If you can find a majority of a Legislature silly enough to stultify themselves in any such manner, let them do so; but that is an event which I do not expect to see while I live. Why, then, will you restrain the people? Sir, I am limited to half an hour in my remarks, but I assure the Convention that I could not recite in an hour all the occasions on which it might be necessary for the State to become a partner with corporations; and even supposing it to be true that the funds of the State might, in some instances, be sacrificed, if they promote the great object of all governments—the best interests of the community—although I admit that such partnerships should not, perhaps, be sought by the State, especially with the view of raising revenue—for I am of opinion that all revenue should be raised by taxation—but if the government, by connecting itself with associations, thereby improves the State and enhances its own revenues, it is, in that case, doing the State a service. Why should we tie down the community in this respect? Is all the wisdom of the State—past, present, and to come—concentrated in this Convention? Can we see and provide for all the various contingencies that may arise in future? I apprehend not. Will not the people who come after us be as anxious to see to their own interest as we can be to see to it for them? If they act in contravention to their real interests, does not the calamity rest upon themselves? Most certainly it does. I implore the Convention, therefore, to leave this matter open to the people. There is one thing that I would go for, because I think it would only be honest and fair to posterity; and that is, that, whenever the State of Indiana makes a loan of money, I am willing to say at the same time that taxes shall be imposed sufficient to meet the interest of the amount, and a sinking fund; and that they should not be repealable until the debt is paid. [Several voices, "Consent."] But if, on the other hand, it is to be said that there is no contingency in the future in which it would be proper for the State to advance pecuniary means, or to connect itself, in any way, with the enterprises of the country, I should be against all such propositions.

Some gentlemen say that we have no right to impose such burthens upon posterity, and that we have now loaded it unjustly with a heavy burthen by way of a State debt. It is true that we have a State debt, a part of which will be left to posterity; but have we no credits against that? We received the heritage an unbroken

wilderness, and we have converted it into fruitful fields; we have created its productive capacities, and have intersected it with commercial facilities without number. In a word, sir, we have almost annihilated space, and brought its remote parts in connection with commercial emporiums and places of market. Is this nothing for which posterity should thank us and give us credit? Why, sir, the increased productions and the increased markets of the State which have been stimulated by those enterprises, would themselves pay the whole public debt in less than five years. Then what has posterity to complain of?

Here Mr. R.'s time expired.

Mr. HALL. In reply to the gentleman from Wayne, (Mr. Rariden,) I would observe that the object of this section was merely to prevent the State from connecting itself with any work of internal improvement of any kind. The only provision which is omitted is that of which the gentleman speaks. The section does not say that the State shall not be an agent or owner or have any interest in any banking institution. It does not go that far. This question was considered by the committee on currency and banking, and it may be important that we should not forestall the action of that committee on the subject.

To give no credit of the State, as the section provides, seems to me altogether proper. We see the embarrassments which have been brought upon the country, by loaning the credit of the State for purposes of internal improvement. These should be carefully avoided in the organic law which we propose to adopt. The committee say, furthermore, that the State shall never embark in any work of internal improvement, because the credit of the State shall not be given for the purpose of carrying on such work. For these reasons the section was reported in the shape it was.

Mr. McFARLAND proposed, further to amend the section, by inserting after the word "State," in the first line, these words: "or of any county in the State."

Mr. McFARLAND, in explanation of his amendment, said: By reference to the 28th order before the Convention it will be seen, that no county shall subscribe for stock in any incorporated company, unless the same be paid for at the time of such subscription; nor shall any county loan her credit to, or borrow money for, the purpose of taking stock in any incorporated company; and it strikes me, that the same arguments which are used in favor of prohibiting the State from embarking in enterprises of this kind, would be equally as applicable to the several counties; and that, by the terms of the section as reported, the evil complained of is only taken from the State and transferred to the counties.

But this amendment was rejected, and the question recurred upon the adoption of the



amendment of the gentleman from Wayne, (Mr. Rariden,) striking out the first section of the report.

Mr. BASCOM. Would it be in order now to propose an amendment, in order to perfect the original section? I understand the pending amendment is to strike out.

The PRESIDENT. Precisely so.

Mr. BASCOM. I wish to offer the following amendment which is similar to that proposed by the gentleman from Monroe:

Amend by adding "Nor shall the State hereafter become a joint-owner, or stockholder in any company or association."

Mr. BASCOM said—

Mr. PRESIDENT, I offer this amendment for the purpose of covering the ground which the Chairman of the committee (Mr. Hall) has admitted was not covered in the original section. I would prohibit the State from being a stockholder in any bank, or any other corporate association whatever. I can see nothing beneficial resulting to the State from any such association; and when we look at the results of the past experience in the State, in her connection with every work to which she has extended her credit, it is preposterous for any gentleman to get up here and ask that the State should again embark in such enterprises. There is no one case in which the State has taken hold of any public work, that she has not been stript of thousands. I hope, therefore, that some stringent measure will be adopted, by which the State shall not only be prohibited from embarking in works of internal improvement, but that her credit shall be wholly disconnected and withdrawn from the banks. I hope the great State of Indiana will no longer be found engaged in supporting and upholding as a partner, what I call a swindling machine. I hope the State will dispense with all connection with banking; for all banks have but one tendency—one destiny—and that is, to swindle the people. Gentlemen talk about bringing down the price of produce and labor. Sir, are the banks of the State to rule the people as by a monopoly, and fix the price of produce and labor? If so, it would be safe for me to say that this State Bank is a monster and will swallow up all the labor of the country. Sir, this institution does already to a great extent, rule the State; and she is a monster, and I stand pledged, before the people, that I will here, and elsewhere, wage a war of extermination upon the State Bank and all similar banking institutions. I want something that will better remunerate the labor of the country, than any of these shaving systems ever has done or ever will do.

But they say we shall be flooded with the paper of other States, in the event of the winding up of our own banks. Sir, I hope that the day is coming, when our neighboring States will not be infested with these institutions, and I hope that the whole band of the sisterhood of

States will follow in the wake of those west of us, who are already in advance of us with respect to the subject of currency. I hope, sir, that these institutions will all be hurled from power, and placed where they can be no longer an eye-sore to the community. These are some of the reasons why I hope the section will be so amended as that the State shall not be connected with any corporation or association whatever.

Mr. MORRISON of Marion. The Convention are about to take a vote upon a question which occupies but little over one and a half lines in the printed bill before us, but I consider it to be one of the most important questions which may be presented to the consideration of this Convention during the whole session. Sir, I consider this so plain a question, that I would scarcely think it necessary to argue it, were it not for the ground which has been assumed in a long legal argument of the gentleman from Wayne (Mr. Rariden).

I, sir, am one of those who on all occasions promptly respond to the sentiments of the people as they may be expressed with reference to any great measure. I consider this proposition (without reference to party considerations) truly a democratic measure. When I say democratic I do not mean to be understood as declaring that the proposition is especially favored by those who politically call themselves democrats; or that it is opposed by those who are politically called whigs; but I speak of it as a measure connected with the rights of the people. I will state to the Convention that they will generally find my votes and my voice given to sustain the interests of the people against any course of policy which will permit corporations to filch from the people their rights which they can never get back again. It is strange that in full view of the political schooling of the year 1836, that we should hear such arguments as have fallen from the lips of the gentleman from Wayne. Our people are to this day ground down by most oppressive taxes, which the system of internal improvements of that year have inflicted upon them;—better called a system of oppression, inflicted by the representatives of the people, as they call themselves, in the Legislature, by means of a regular system of log rolling. And now why should gentlemen wish to place a power so dangerous to the people again at the disposal of the Legislature? If gentlemen were to go among the people and ask them whether they desired such a restraint to be placed upon the Legislature as to prevent a recurrence of so great an evil, I have no doubt but that the majority in favor of such restraint, would astound every man who has the slightest doubt upon the subject.

It is well known how these schemes are got along in the Legislature. Corporations are always well represented there, and the people

have no knowledge of what is going on until they are entrapped by them.

What right has the State of Indiana to become a partner with any speculation? She has no more right to do this than she has a right to form a regular co-partnership with a merchant or manufacturer, in any speculation looking to a profitable result. I hope this Convention will take such action, upon this subject, as will forever silence the presumption that the State of Indiana may become a partner in any money making enterprise.

I voted for the amendment of the gentleman from Tippecanoe, because I think the same principle ought to extend to the counties which we are about establishing for the State. There is no justice in the principle that the property or money of the people should be taken to make profits for corporations. I shall be found constantly voting against any proposition to connect the interests of the people with the interests of the corporations; for the reason that corporations always labor and scheme for their individual benefit, which is always antagonistic to the interests of the people. The proposition is so plain that it is unnecessary to elucidate by giving examples. Gentlemen have no interests to maintain here which should prevent them from reflecting the will of their constituents upon this subject, and the question narrows itself down to the simple proposition whether the State is to become a partner or a stockholder in any public enterprise—whether taxes shall be laid upon the people to raise capital, and then be appropriated by the State for the purposes of private speculation in any concern where individual interests are always militating against the interests of the State. The individual who stands in such a connection with the State, knows that the State will stand more shaving and speculation, and he will indulge more in this way than he would if he were acting in an individual partnership concern where his partner stands ever actively watching the operations of the concern. The State has been aptly compared to a goose, and according to the saying, he was a fool who did not pluck her. And in view of what we have suffered heretofore, I think it is but the part of prudence that we should provide for the evil to come.

I hope the Convention will put this principle imperishably into the Constitution; and say to the people: We will protect your pockets from any attempt to get you into partnership with individuals, where they have the control of affairs, and will most naturally pocket the largest share of the profits.

Mr. PEPPER of Crawford. Would it be in order now to offer an amendment?

The PRESIDENT. There are two amendments pending.

Mr. READ of Monroe. I would observe, sir, that I withdrew the amendment now offered

by the gentleman from Wells, (Mr. Bascom,) upon an appeal made to me by several gentlemen around here, who considered that, as we had just passed through a heavy debate, it would be better to put off this discussion for a few days. But I think, myself, that it would be just as well to meet the question now as at any future time. I hope, therefore, that the section will be allowed to pass with the proposed amendment, so that it will read in these words:

"The credit of the State shall never be given or loaned in aid of any person, association, or corporation, nor shall the State hereafter become a joint owner or stockholder in any corporation or association."

Mr. WOLFE. If it is the object to get up a discussion of the bank question upon this subject, I will move to lay the section and pending amendments upon the table. I think we had better get along with one thing at a time.

This motion was agreed to, and accordingly it was

Ordered, That the first section of the report, with the pending amendments, do lie upon the table.

#### PUBLIC DEBTS.

The PRESIDENT. The next thing in order is the consideration of the second section of the report, which the Secretary will now read. The section is as follows:

SEC. —. The General Assembly may contract debts to meet casual deficits or failures in the revenue, for the purpose of paying the interest on the State debt; but such debts shall not, at any time, exceed one hundred thousand dollars: *Provided*, That the State may contract debts to repel invasion, suppress insurrection, or, if hostilities are threatened, provide for the public defense.

Mr. GIBSON. I will move to amend by inserting after the word "hundred" the words "and fifty," so that it would read: "but such debts shall not, at any time, exceed one hundred and fifty thousand dollars." I think that, although at the present time the sum named in the section might be sufficient, still it might not be sufficient twenty years hence. I think this limitation should have some reference to the amount of wealth and population of the State; that a limitation which might be proper enough now, might not be so after the time when our wealth and population shall be doubled.

The PRESIDENT. The gentleman will send up his amendment in writing.

The amendment, having been sent up and read by the Secretary, was rejected without a division.

Mr. ROBINSON. I propose to amend as follows:

Strike out the first, second, and third lines of the section, and so much of the fourth line as to include the word "provided," so that the section will read: "That the State may contract



debts to repel invasion, suppress insurrection, or, if hostilities be threatened, provide for the public defense."

Mr. R. said, Mr. President, I am very unwell—hardly able to be in my place. Such is the state of my health, that I am not able to defend the amendment as I could wish to do. I will, however, briefly point out to the members of the Convention the reasons which have induced me to offer this amendment.

In looking at those lines of the section which I propose to strike out, I see that authority is proposed to be given to the General Assembly to contract debts by borrowing money for certain specific purposes, so making it possible for the Legislature to increase the State debt. These lines propose to authorize the Legislature to borrow money at interest, for the purpose of paying interest on the State debt, the principal of which debt, ultimately, must be redeemed by taxation. Now this power is liable to abuse. Gentlemen who have been members of the Legislature well know, that, for the last several years, there has always been a deficit in the amount of money on hand necessary to meet the interest on the State debt; and is it proper thus to authorize and empower the Legislature to resort to a new loan every year, especially since we find that those who hold our State bonds (at least some of them) have got them into their hands by not paying anything like their value for them! A large proportion of these bonds have been procured for thirty-seven and a half cents to the dollar; and we now are shouldering the responsibility of paying their face with interest, in accordance with the act passed for the payment of the State debt. Now this matter must at last result in this: that, if ever the interest and the principal of the State debt is to be paid, it must be paid by means of taxes directly collected from the people; and therefore, if there should be a deficit of money in the treasury to meet these payments of interest, I would be in favor, at once, of levying a tax upon the people to meet that deficit, instead of resorting to a loan—for a loan must be a loan at interest—and in this way, the State will be placed in such a predicament that she will have to pay what is called compound interest; and the only means of relief from this condition of things will be found at last in a resort to direct taxation.

For these reasons, sir, I am opposed to this section, or to this part of it which proposes to give to the Legislature, any authority to borrow money to be expended, directly or indirectly, in the construction of works of public improvement.

I am opposed to giving the Legislature power to borrow money, even for the purpose of paying any debts already contracted. If we are in debt now, let us meet interest and principal by a direct tax, however hard it may seem in the present, and not put off the burdens of the

evil day upon our children and theirs. Let us pay our State debt, contracted in folly as it was, by direct taxation and not swell it to a more fearful bulk by borrowing more to pay interest.

As I remarked, such is my health that I cannot speak at length, but I wish to impress it upon the Convention, that it will be dangerous to give the authority to the Legislature to borrow money for any purpose. When the Legislature finds that the amount needed for annual or biennial appropriations exceeds the amount of revenue, they will, unless restricted, resort to borrowing, in order to get rid of the responsibility and perhaps the odium of increasing the rate of taxation.

I hope that the amendment will be adopted, and that we shall forever shut out the possibility of the accumulation of another State debt—the present one is curse enough for at least three generations, no matter how great their political sins.

Mr. COLFAX moved to amend as follows:

Add the words, "The General Assembly shall have no power to contract debt in the name of the State, except as is granted in this section."

Mr. COLFAX: Mr. President, I have offered this amendment because it contains a salutary principle. I shall heartily advocate the adoption of the next section, provided a still further restriction like this *cannot* be obtained. The amendment proposed is further restriction—a wise and healthy one. It is a step in advance of the section as reported by the committee; and though I know not how many there are who coincide with me, I am, for one, ready to take that step.

When we look back upon the scenes of excitement through which our State has passed—when we remember that so enthusiastic were the people in favor of the mammoth system, that they would as heartily and as strongly, and as overwhelmingly have voted for its adoption at the polls, as did their Representatives in the Legislature, it does seem as if, now in our cooler moments, with the results of that infatuation in full view before us, we should so act as to prevent, if possible, their repetition. Let us resolve, and place it in this instrument beyond repeal, that no more State debt shall hereafter be created upon any pretext whatever.

I have but little doubt that the people would hail the adoption of such a section. And, as we have suffered more than other States from the results of imprudent debt, which still hangs over us, impairing our prosperity, and impeding our progress and advancement as a State, let Indiana be the pioneer in the adoption of this new Constitutional principle, and become, in this respect, a model for others to follow. For, I might say in addition, if it is eminently judicious for a man to resolve against incurring debt, except for what are really the necessities

of life, it is equally so for a State, which is but an aggregation of individuals, to resolve, especially after the costly lesson we have learned from experience, that she will not suffer the creation of additional debt, except what may be necessary, as provided for in this section, to keep the wheels of government in motion.

It might be wearisome to detain the Convention with additional remarks. I know not what will be the fate of this motion. But, whatever it may be, I shall not be the less convinced that this Convention should so put up the bars that they cannot hereafter be taken down, and should inscribe plainly and positively on the Constitution, "No more State Debt."

Mr. DOBSON. I would impute no "insidious designs" to any gentleman, but it strikes me that the amendment just proposed has a strong squinting towards the protection of certain banking interests.

I move that the amendment be laid upon the table.

Mr. HOWE. The gentleman from St. Joseph will find in another section a provision which obviates the necessity for his amendment, if I correctly understand his intention.

Upon Mr. DOBSON'S motion to lay the amendment (Mr. Colfax's) on the table, the yeas and nays were demanded.

After the call,

Mr. TAGUE asked to have his vote recorded.

The PRESIDENT. Which way does the gentleman vote?

Mr. TAGUE hesitated for several moments, amid cries of "vote yea" and "vote nay" from all parts of the chamber, but finally voted *yea*.

Mr. MAGUIRE asked and obtained leave to change his vote; he wished to vote *yea*.

Mr. BASCOM asked leave to change his vote.

Mr. DOBSON. I remarked to some members near me, that the gentleman was caught in that vote, and would be reminded of it.

The PRESIDENT. Was the gentleman within the bar at the time his name was called?

Mr. KILGORE remarked that it might not be necessary for a gentleman to be within the bar at the time his name was called.

The PRESIDENT. If the gentleman will read the twelfth rule, he will find the Chair is right. [The President read the rule.]

Mr. KILGORE. If the Chair will read what immediately precedes that——

The PRESIDENT. The Chair has read sufficient to show that the gentleman is in error.

Mr. KILGORE. I think the matter is of sufficient importance to be settled, and I do not think it necessary that a member should be within the bar at the moment his name is

called to allow him the privilege of recording his vote.

The PRESIDENT. If the gentleman finds fault with the rules, he can move to amend them.

Mr. MORRISON remarked that the twelfth rule was a proper one. When the yeas and nays are called, the question is not really put to the member till his name is called by the Secretary.

The result of the vote was—yeas 69, nays 55—as follows:

YEAS.—Messrs. Alexander, Allen, Anthony, Badger, Barbour, Beach, Blythe, Bourne, Bow-ers, Bracken, Carr, Chenowith, Clark of Ham-ilton, Coats, Conduit, Crawford, Crumbacker, Dobson, Dunn of Perry, Duzan, Fisher, Foster, Garvin, Gibson, Gordon, Hall, Hardin, Helm, Helmer, Hitt, Hogin, Hovey, Huff, Johnson, Jones, Kent, Lockhart, Logan, Maguire, March, Mathis, McLean, Miller of Gibson, Milroy, Moore, Mowrer, Nave, Newman, Rariden, Read of Clark, Schoonover, Shannon, Sherrod, Sims, Smith of Ripley, Spann, Stevenson, Taylor, Todd, Trimble, Wallace, Walpole, Watts, Wolfe, Wunderlich, Yocum, Zenor, and Mr. President.—68

NAYS.—Messrs. Balingall, Bascom, Beard, Bicknell, Biddle, Borden, Brookbank, Bryant, Chapman, Cole, Colfax, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dunn of Jefferson, Farrow, Foley, Frisbie, Gootee, Graham of Miami, Haddon, Hawkins, Hendricks, Howe, Kilgore, Kinley, Mather, May, McClelland, McFarland, Miller of Clin-ton, Miller of Fulton, Milligan, Morgan, Mor-rison of Marion, Murray, Niles, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Read of Monroe, Ritchey, Rob-inson, Smiley, Smith of Scott, Steele, Tague, Wheeler, and Wiley.—55.

So the amendment was laid upon the table.

The PRESIDENT. The question now is, upon the engrossment for a third reading of the second (on the page of the report) section of report number three.

Mr. NEWMAN. I desire to offer the fol-lowing amendment:

"Insert after the words, 'the General As-sembly may contract debts,' the words, 'for the purpose of paying or extending the time of the payment of the public debt of the State.'"

It will be borne in mind that it may be de-sirable to borrow money for the purpose of paying the State debt, just as individuals fre-quently find it convenient and profitable to pay one debt by contracting another. It may be that the State will find itself able to contract a loan at a lower rate of interest than she is now paying her bond-holders; in this event, which, sir, is a very probable one, the Legislature ought to have the power to borrow the money for that specific purpose. It would be simply carrying forward the present debt without the



accumulation of the principal, and with the advantage of a lower rate of interest. No new debt would, in reality, be created.

Mr. PETTIT [in his seat]. No more a new debt than if the State bonds were assigned over to other parties by the present holders.

Mr. NEWMAN. Precisely. In the business transactions of every day, individuals find it to their interest to create one debt in cancelling another, and I wish the Legislature to have the power to do the same thing for the State when the public interest would thereby be promoted.

Mr. HALL said.

Our present State debt is probably placed upon a different footing from that of any other State in the Union. It is payable at the pleasure of the State. So long as the interest shall be paid, the principal never becomes due. Most of the outstanding bonds of Indiana bear five per cent. interest. As the value of bonds or stocks always depend on the amount of interest or dividends paid thereon, so long as money shall be worth six per cent. interest, the market value of our five per cent. bonds will be about eighty cents to the dollar, which is now their market value.

If the present rate of taxation shall be continued, it is fair to calculate that our domestic debt will be paid off in three years; and that a continuation of the same rate of taxation will fully discharge our foreign debt in fifteen years. The data upon which these conclusions have been arrived at, will be exhibited to the Convention when the appropriate subject comes up.

I can scarcely conceive it possible for a us to place our State debt on terms more favorable than now exists. For these reasons, Mr. President, I consider the amendment just offered at least unnecessary.

The question being upon Mr. Newman's amendment, the same was disagreed to.

Mr. TODD offered the following amendment:

"Strike out the words 'one hundred thousand dollars,' and insert the following, 'amount of said interest;' so that the section should read:

"The General Assembly may contract debts to meet casual deficits or failures in the revenue, for the purpose of paying the interest on the State debt, but such debts shall not at any time exceed ["one hundred thousand dollars" stricken out] the amount of said interest."

The amendment was disagreed to.

Mr. HELMER moved to amend by striking out after the words "shall not exceed" the words "one hundred thousand dollars," and insert the words, "amount of such deficit."

Mr. MAGUIRE. This section restricts the Legislature from borrowing any money for any purpose, except to meet the interest on the State Debt, and limits the amount to one hundred thousand dollars. The amendment, if adopted, permits the State authorities to borrow

to the amount of the deficit, be it more or less. It is my opinion that, after the expiration of the next two years, the State will not have to borrow any money at all, and we can certainly trust the Legislature and the State officers for two years. It is very important that we should lay the interest upon the State Debt promptly. At the time the committee had this subject before them, it was supposed that one hundred thousand dollars would prove sufficient to meet all the deficiencies likely to arise in the revenue to meet the accruing interest on the State Debt; but, from information since received, it appears that there is a possibility of a small additional sum being needed for one or two years. For this reason, I hope that the pending amendment (Mr. Helmer's) may be adopted. It provides that, instead of the Legislature being restricted to the sum of one hundred thousand dollars, we should declare that the amount of debts contracted, should not exceed the amount of deficits in the revenue. As I before remarked, if the sum needed to meet the deficit should be less than one hundred thousand dollars, the Legislature would not be authorized to borrow more than that amount, and the sum borrowed cannot, by any possibility, be applied to any other than that specific purpose.

I do not desire to see one dollar of debt created beyond the amount absolutely needed to meet deficits, but for that amount it is right, and also good policy to provide. The amendment is a good one, and I hope it will be adopted.

The amendment was agreed to.

The section was then ordered to be engrossed for a third reading.

The PRESIDENT. The next thing in order is the consideration of the section of report number three:

"No act of the General Assembly shall authorize any debt to be contracted on behalf of the State, except for the purposes mentioned in the—[preceding;]—unless provision be made therein, to levy and collect an annual tax, sufficient to pay the interest thereon and to discharge the debt in twenty-five years; nor shall such act take effect until it shall have been submitted to the people at a general election and have received a majority of all the votes cast for and against it.

Mr. SMITH, of Ripley. I rise for the purpose of moving to strike out the entire section.

A single remark in which I will give my views.

This proposition is one to introduce into legislation a new element. It is a proposition to allow the Legislature to contract a debt for an unlimited and indefinite amount of money, provided they shall submit the matter to the people, and provided that a direct tax shall be levied sufficient to pay the interest and to cancel the debt in twenty-five years.

There is no necessity for a provision of this kind. My own impression is that when a Leg-

islature comes up here, its members should come well instructed in their business and understanding the wishes of the people upon all subjects of legislation—they should be able to pass finally upon all laws for the good of the people. I am utterly opposed to the idea of requiring a body of the chosen representatives of the people to enact a law which is of no binding force until approved of by the people a second time at the polls. I say a second time, because the people in choosing from their midst men of integrity and ability to represent them, do virtually endorse their action while serving in that capacity, and therefore it is unnecessary to submit their acts for a second confirmation.

When a merchant authorizes an individual to act as his agent in business transactions, and gives notice to community that he is his accredited agent, that merchant is bound by all the business transactions, contracts, &c., which that agent may make. The merchant reposes confidence in his agent, that he will do nothing adverse to his interests. He considers that, being in his employ, it is to the personal and pecuniary interest of the agent to deal honestly and with an eye to his benefit. Shall not the people—do not the people repose as much confidence in their agents, commissioned annually by their suffrages to act for them, as the merchant puts in his clerk or agent? I contend that the people select their agents to represent them in the Legislature because they cannot attend in person, and that they select men in whose honesty and intelligence they have the greatest confidence, and I say that it is useless to require that the acts of these representatives shall be submitted a second time for their approval.

I am further opposed to the section because there is no restriction as to the amount of debt to be contracted; the amount is unlimited. This certainly is proposing to introduce a novel feature into legislation, and one that will result to the injury rather than the benefit of the people.

Mr. KILGORE. I propose, before the question is taken upon striking out the entire section, to amend by adding at the end of the section [above recited] these words:

"And that part of said act which provides for the payment of said debt, shall not be repealed or suspended until the debt is fully paid."

Mr. NILES. I would suggest to the gentleman from Ripley (Mr. Smith) that he should so modify his motion that, instead of proposing to strike out the whole section he should move to strike out all after the word "article," so that the section would simply read:

"No act of the General Assembly shall authorize any debt to be contracted on behalf of this State, except for the purposes mentioned in the—[preceding] section of this article."

Mr. SMITH, of Ripley. I will accept the

modification. I move, then, sir, to strike out all after the word "article."

Mr. BASCOM moved that the amendment (Mr. Kilgore's) lie upon the table.

The question being taken upon Mr. Bascom's motion, the same prevailed.

The question now being upon the motion of Mr. Smith of Ripley?

Mr. RARIDEN moved to strike out all that part of the section which proposed to submit an act for the borrowing of money to the people.

Mr. MAGUIRE. Mr. President: I am not one of those who suppose that the embodied wisdom of the State is concentrated in this Convention, although I think it a most respectable and able body. I think that it is safe to leave something in the people's hands—I think it always safe to trust the people. Now, sir, suppose a great emergency to arise—a famine in the land, or some other great calamity—so that it should become impossible to collect the taxes; if the amendment of the gentleman from Ripley prevail, the Legislature cannot contract a debt for the purpose of carrying on the government. Nor can the State, even if every man in it shall demand it and vote for it, contract a debt for the redemption of any of her Public Works, or for any other purpose. I think, sir, it is good policy, and eminently safe, to leave discretionary power in the hands of the people.

Sir, the subject of corporations has been alluded to in connection with this subject; and it is intimated that those who favor the section as reported by the committee are in favor of involving the State as a partner in works of internal improvements. Now, sir, I have to say for myself that I am utterly opposed to embarking the State in any system of internal improvements, or as a partner in any corporation—other than a State Bank, if the people choose to have one. [Much laughter on all sides.]

Mr. President, the adoption of the amendment of the gentleman from Ripley would, in my humble judgment, exhibit—what no gentleman would be willing to avow—a want of confidence in the capacity in the people for self-government, to the extent proposed, exhibits a lack of belief in the people for self-government.

Mr. DOBSON. I move to lay the amendment on the table.

Mr. DOBSON. I do not know but that the gentleman from Wayne, (Mr. Rariden,) in voting upon this question, may get caught voting wrong, but I trust not. [Laughter.]

But what will be the effect of the adoption of this amendment? Why that the State cannot borrow money for any purpose except to meet a deficiency in the revenue. I have a right as an individual to borrow money when it is to my interest to do so, and why should not



the people through their representatives or the Legislature, or by a direct vote at the ballot-box? I am willing that the State should be involved in debt if the people say so, and vote for it at the ballot-box. This section meets with my approbation as it is, and to test the sense of the Convention I shall call for the yeas and nays upon my motion to lay the amendment on the table.

Mr. TAYLOR. A few words, Mr. President, before the vote is taken.

It strikes me that the pending question is one of much greater importance to the people of Indiana than members seem to be conscious of. It is but a few minutes since that we voted down a proposition very similar to this, and I now ask gentlemen to pause for a moment, and look calmly and carefully at the position we occupy. Can it be possible that one hundred and fifty of the representatives of the people, who have come up here, fresh from immediate communication with their constituents, propose themselves, or are to be led into the support of a proposition, to tie up the hands of those constituents by absurd and unexampled restrictions upon the action of representatives assembled in a legislative capacity? Is it possible that this large and able body around me are willing to bind up the will of the people, until the calling of another Convention: are they indeed afraid to trust the people with what is peculiarly their own business—the amount of debt they are desirous to incur, and the rate of taxation they are willing to bear? If the latter part of this section is stricken out, the result would prove it the most unwise and ill-considered acts that could have been committed. By taking that step you actually declare that if the people of the State desire at any time hereafter to contract a debt of half a million of dollars for any purpose whatever, they shall be prohibited by their organic law from carrying out that object.

Sir, I am prepared to take no such step, and I will not. I have as much confidence in the people as I have in this Convention—we are only a portion of the people, temporarily entrusted with the performance of business, for the accomplishment of which they cannot assemble in mass, and shall we dare to say that the people shall never contract a debt except for a specified sum, and that too for a specific purpose? It would be an unwise act than I am yet willing to believe a majority of this Convention can be induced to commit. It is in fact against the whole theory of the government of this country. Our most boasted principle is that the people are the source of all power, that their will is supreme, and the majority shall declare that will. A provision of the kind, supported by the other side, is in direct contravention of those broad principles which lie at the foundation of our form of government. The restriction proposed is palpably subversive

of the self-evident principle that the will of the majority must govern. And if we have that laudable ambition to frame an instrument that shall be approved by the majority, and that shall prove worthy enough to endure long after we shall have passed from the stage of action, let us beware how we attempt to fetter the free will and tie up the hands of the people, by refusing to allow them to be the judges of what is the best for their interests under the new combination of circumstances, with which the ever changing future will surround them; let us shrink from an attempt to render impotent the will of the majority of that people fairly and deliberately expressed through the great channel of their communication with their servants—the unmistakable ballot-box. Under such ample guards and restrictions as are provided in the different sections of this article, can there be any danger of the people running madly into debt, and in a collective capacity, rashly commit a financial suicide? Is there so much danger that the people of Indiana, that I had supposed so intelligent in the principles of government, so deliberative in action, will commit self-destruction if left to themselves, and that too with the warning wrecks of 1836 strewn everywhere before their eyes? I cannot believe it; I still have faith that they will exist as a people, and will continue in the steady march to honor and prosperity, even though this Convention should not stake out the narrow road, indicate the points of stopping, and forbid the least divergence from the line marked for them to follow for a century to come. Why, sir, we have been told about the "lights" in this Convention; but great as is my respect for the ability and the foresight of gentlemen, I tell the Convention it cannot see so unerringly into the coming time, and judge so accurately of the interests and wants of this people in that future upon which we can only theorize and speculate, as to declare that it can judge better of the policy to be pursued by the next generation than that generation when it shall come into the busy theater of life. We are not omniscient, and if we rashly venture to declare in this Constitution that a majority of the people shall not be allowed to contract a debt for which they may vote at the polls, we shall find that we are not omnipotent.

Let us not say then, that the people shall not borrow money if they see fit to create a debt; a thousand contingencies may and will arise, that may make it not only necessary, but positively a money making business, for the Legislature to borrow money.

SEVERAL VOICES. What is one instance?

Mr. TAYLOR. I will answer gentlemen. It may be that in the event of abundant capital in Eastern or European markets seeking safe investments at low rates, the State could borrow money at two per cent. less rate of interest than she is now paying the majority of her

bondholders. Would it not then be to the interest of the State to borrow the amount of her public debt at this lower rate of interest and cancel the debt in its present shape and save thousands of dollars annually to the tax-payers of the State by the lessened amount of annually accruing interest? Many times men are saved from bankruptcy by such a policy.

Perhaps it is thought that the people will not have as able and as careful men in the Legislature as they have fortunately secured in this Convention. If there was any danger of this being the case in the future, I think the State ruin might be averted by prevailing upon some who were in this Convention to accept of a seat in the Legislature! [Laughter and applause on all sides.]

I hope the amendment will not be adopted.

Mr. RARIDEN. I may be mistaken, Mr. President, but I apprehend that in voting upon the pending question we are deciding a greater question than appears upon the surface. I apprehend that this is no less than the question whether or not we are to have a State Bank and branches or free banks.

If I am right in this, and I suspect I am, I wish to say that I am utterly opposed to any proposition having for its object the prohibiting of the State from having the right to control so as to correct the currency of the State. I will never vote to put it out of the power of the State to correct an unsound currency when circumstances may demand that interference. Whatever goes to help the financial condition and increase the financial power of Indiana helps her to control the paper currency of the State, and this, in my opinion, is a proposition that would make her impotent to control that paper currency.

The PRESIDENT. That is not the question before the Convention.

Mr. RARIDEN. This is a proposition forever to prohibit the State of Indiana from borrowing money to exceed the sum of one hundred thousand dollars, and that to be applied to the specific purpose of meeting a deficit of revenue for paying the interest on the State Debt.

The PRESIDENT. That is the proposition now before the body.

Mr. RARIDEN. Yes, sir; but how was the foundation laid for the State Bank except by the State borrowing upwards of two millions of dollars, as the capital upon which to bank? And, sir, if this proposition carries, the people of the State will hereafter be at the mercy of those who, unchecked by a powerless State Government, will be able to control the currency.

I tell you, sir, that there are influences operating upon votes that may not be generally enough appreciated. [Several voices—"that is right; that is true."] I am told by those around me that I am tracking right. [Laughter.] I am opposed, then, to any prohibition that will

forever restrict Indiana, as a State, from entering the financial field with a State's resources and correcting a vicious currency. The time may come when the credit of the State may be absolutely necessary to drive such a currency out of her borders. It would not be acting the legitimate part of a Government, which is framed for the good of the governed, if the State was powerless to protect its citizens from the enormous financial frauds that might be practiced upon them with impunity. Those frauds will come just as sure as the State Bank is put down, and the independent banks get unchecked control of the currency of the State.

I have no objection to allowing men of capital to associate their wealth for banking purposes, but I do not want them to acquire a power paramount to the State.

Mr. OWEN. I hope that the amendment of the gentleman from Ripley (Mr. Smith) will prevail, and that the latter portion of the section will be stricken out; in other words, that we shall, by Constitutional provision, interdict the Legislature, even in connection with the people, from again following out the ruinous policy of 1836.

Few men have more confidence in the people than I; but it is not my opinion that the people never decide wrong. Unquestionably they do sometimes. In 1796 the people rejected Thomas Jefferson as President, and elected John Adams; while in 1800 they rejected Adams and elected Jefferson. They could not very well have been right in both cases.

In the sober second thought, in the well considered judgment of the people, I have complete confidence; but they are often impulsive, and sometimes mistaken, as may happen to each one of us. In a time of excitement they may do, in haste, that of which they will repent at leisure. This would be assuredly the case, if the people were ever again to involve the State in an enormous public debt, for the prosecution of a system of internal improvements.

It is said that the people have a right to do as they please. Not always. There are things which the people themselves have no right to do.

A VOICE. Name them.

Mr. OWEN. One generation of men have no right to impose burdens upon the succeeding. One generation of men have no moral right to contract a public debt so vast that the next generation, and perhaps that which follows it, shall be loaded down with taxes, to discharge the interest and repay the capital. They may, indeed, do this thing. They may obtain the money and spend it. Many States and nations have done so. But it is not morally right on that account. Wherever it has been done, it has been done wrongfully.

The question of a State Bank in which the State shall become a stockholder, is not, as the gentleman from Wayne (Mr. Rariden) seems



to take for granted, necessarily involved in the pending proposition. We have been officially informed, that, at the expiration of the present State Bank charter, there will be a School fund, of some million and a half dollars, at the control of the State. • That must be invested, in some way, to bring an annual revenue ; and the State may, if she see fit, make bank stock of it. Few gentlemen, I think, who are in favor of a State Bank, would propose that the State shall take stock to a larger amount than that. I am, for my own part, opposed to all connection between the State and any bank. But I do not see that gentlemen who differ with me in this, need vote against the present amendment on that account.

We do not, and we cannot, by this amendment, debar the people from contracting a State debt, if they should be absolutely resolved, and should continue resolved, to do it. There will doubtless be a mode provided in this Constitution, by which, at any future time, separate amendments may be proposed by the Legislature to the people. The provision may be, perhaps, that if two successive Legislatures concur in recommending the same amendment, it shall then be submitted to the decision of the popular vote. If, then, there be, at any time hereafter, an enduring desire on the part of the people to run into debt, they can do so. I am opposed to any easier and more hasty mode of reaching the matter ; and shall therefore vote for the amendment of the gentleman from Ripley.

Mr. READ of Clarke. I must express my surprise to see the discussion upon this question take the course it has. I had supposed that this question of allowing the Legislature to involve the State in debt, was as firmly settled in the negative as was the principle of biennial sessions.

As to banks, I desire to see the State have no connection with banks. But whether or not the gentleman from Wayne is right in his intimation that the bank question is involved in this proposition in favor of restricting the Legislature from contracting a debt of more than one hundred thousand dollars, and that for the specific purpose of paying the interest on the present public debt, I am clearly and unequivocally in favor of restriction. That was one of the particular purposes for which we were sent up here. The State was, and is, laboring under the most serious financial embarrassments, resulting from the abuse of this debt-making power in the memorable year of 1836. Gentlemen may talk to us as did the member over the way, (Mr. Hall,) about the certainty of paying off our enormous public debt in eighteen years, but I must say, that in my humble opinion, it will be five times eighteen years before that most desirable consummation will be realized.

Suppose that the Convention of 1816 had adopted a Constitutional provision similar to the one now in debate, what a prosperous and a

happy people might we not have been ? A simple poll-tax would have paid all the annual expenses of the State. In our part of the State this is one of the main questions of Constitutional reform, and the people there had in view a prohibition against the incurring of future debts by future Legislatures, when they voted for the calling of this Convention. Therefore, I say, I am surprised to find that it is even a mooted question whether or not we shall restrict the Legislature from borrowing money except to meet a deficit in the revenue, for the payment of the interest on the State Debt. Nor do I take this position because I think all wisdom is in this Convention, and that future Legislatures will be less wise and less patriotic. No, sir ; I left at home many smarter men than myself, [laughter,] and it is possible, though it may not be true in the case of other gentlemen. [Cries of "yes, it is so with more of us."] If we adopt the pending amendment, future generations may get into the same difficulties from which we have not yet escaped ; but now that we have been delegated with power for the express purpose of prohibiting future Legislatures from accumulating an incubus of debt upon the tax payers of the State, let us do it ; let us do it in the name of the people whose will we must not dare to disobey. I am in favor of the section as it is proposed to be amended by the gentleman from Ripley, (Mr. Smith,) and I am confident that there will be found two-thirds of this Convention who will vote with me.

Mr. LOCKHART. I hope that we shall adopt the section as it came from the committee. During the canvass preceding the election of delegates, this question was discussed from every stump, and the result of discussion, at least among my constituents, was that they declared in favor of the provisions of this section as reported from the committee. I can say that in both of the counties which I represent here, there was not a single dissenting voice against such provisions ; public sentiment there is unanimous in favor them. They do not insist to be prevented from creating a public debt by a vote at the ballot box. I hope that the section as reported will be engrossed for a third reading.

Mr. READ of Monroe. Mr. PRESIDENT : We have before us just the old question of a public debt. For my own part I am not of that school which believes a public debt a public blessing.

Sir, if there is any question settled by the people of Indiana, it is this, that they will pay off the debt which now hangs over them, and by this new Constitution forever prohibit the contracting of a new one, except in the single case of insurrection or invasion by an enemy. This I believe to be distinctly the voice of the people of Indiana, and until this evening I had not supposed that there were five men in this Convention who would vote for the power of

creating a State debt in any manner, or under any form, or for any purpose.

Sir, we have just passed a tremendous crisis. Now is the time for us to look around and reflect. If we learn no experience from the past, if we now fail, in this period of calmness, to place upon ourselves the restrictions which will in all time to come save us from similar wide spread ruin and calamity, I hold that this Convention has been called in vain.

Look, sir, to other States. State after State has called Conventions to reform their Constitutions. All around us Constitutional Conventions are in sessions, or just about to be in session. If there is a single cause more than any other, which has produced this general movement, it is the desire, on the part of the people, to cut off from themselves and their representatives the power of creating public debt.

Had this great attribute of sovereignty, this precious right of creating public debt, claimed here as one of the dearest rights of a State, been utterly denied to the nations of the world, what a different picture would they have presented. Public debt all over the world is one of the great instruments of oppression—one of the engines by which men are made “hewers of wood and drawers of water” for other men. Through this exercise of a sovereign right Great Britain has her four thousand million dollars of debt, and her people are ground down in the dust of oppression, while the owners of the debt are their masters, without the obligation of even supporting their slaves.

I trust, sir, the motion to strike out will prevail, and that Indiana in all coming time will, by constitutional provisions, be prohibited from selling herself to bond holders. No increase of State debt through any agency whatever is safety, policy, and wisdom.

Mr. BARBOUR. I hope that the pending amendment will not prevail, and after hearing the discussion I am impelled to ask if it can be possible that gentlemen are serious in their intention to forbid the majority of the people from borrowing money if they are disposed to do so, and to tax themselves for the payment of the interest and the liquidation of the whole debt in twenty five years? Have we no confidence in the people? Shall we not believe that they will send up able men, and men of integrity to represent them in the legislature, who can judge of their interests and who should have the power to execute their will?

I will not make a speech at this late hour, but I trust that the section will be adopted without amendment.

Mr. PETTIT. I have risen, sir, to call the attention of the Convention to a canting phrase which has been used and already worn threadbare since the opening of the session; the term is “confidence in the people.” If we had perfect confidence in ourselves as a people, we should have called no Convention at all at an

expense of forty or fifty thousand dollars to frame restrictions for the future. If we possess the unlimited confidence in the people of whom we are a part, if we always do right and never go wrong, why have the restraining influence of organic and statute laws? Sir, we have not that perfect confidence in ourselves, nor have the people outside of this chamber in themselves, and we take our cool and calm moments to bind and restrict ourselves—to protect ourselves against the sudden and dangerous impulses of passion and prejudice. Gentlemen rise here and propose a restrictive clause in one thing, but upon every thing else, upon every other restriction than the one he proposes, he has great confidence in the people and declaims against the idea of restricting clauses, and another gentleman will rise in his place and offer an amendment, the effect of which is to restrict the natural liberty of the people in another direction, but he, also, will tell you that it is from no distrust of the people that he takes that course—far from it.

Now, if we repose unlimited confidence in ourselves as a people, we should do nothing more in this Constitution than to provide for a legislative department. Yes, sir, one, short simple clause of five words is sufficient. “There shall be a legislature,” no more is needed unless to mention that there should be two branches, one to consist of one hundred the other of fifty members. We might have met in the morning of the first Monday in October and in an hour’s time been prepared to adjourn *sine die*. This implicit confidence in human nature does away with the necessity of all checks and guards and Constitutional provisions. Representatives would come up here and whether calm and deliberate and uninfluenced by any extraneous circumstances of feverish and excited, and swayed by the powerful influences always brought to bear upon the almoners of power, their laws will be binding, the people have elected them and the people can do no wrong. Sir, this gross flattery of a collective body which no individual member of it would be vain and silly enough to take to himself, is not correct—it is not the language that should deter us from patiently investigating every subject that comes before us, and from endeavoring to provide every wholesome restriction which time and the experience of a great people in self government, show us to be necessary and politic. Self government is no longer a theory, it has been demonstrated, it has passed the ordeal of the severest test and it stands out as a recognized practicability among men, as glorious in its results, as it was beautiful in theory. But, Mr. President, the experience of men in self government has not yet intoxicated them with the idea that they are immaculate; it has only shown that under wisely framed restrictions, adopted in times of calmness and in the absence of excitement, it is the happiest and



the best form of government. And, sir, it is to prevent the evils resulting from excitement and passion, that we take our calmer and quieter hours to bind ourselves and our fellow man. Otherwise, there is no need of the present organization of government. You create a legislative department only and it will have all the power you need. That legislature could create an executive, to execute its will, a judicial department to construe it, for they have all law-making power. It will be as omnipotent as the British Parliament. Why not create such a legislature? We have, it is said, unlimited confidence in the people and in ourselves.

Sir, the song to which we have listened from the gentleman from Gibson, is an old one, and its voice of syren tones is that which allures to ruin. The beginning is a profession of unbounded confidence in the never erring judgment of the people—the end is entanglement in the meshes of an enormous public debt. Let me refer that gentleman to the last message of Governor Noble, who has now passed from the stage of action, and I shall therefore only speak of those of his acts, which are a part of the documentary history of the State. In his last message, he told the people that the resources of the State were sufficient not only to complete the public works then commenced but to construct those works projected and provided for in the bill generally known as “the calf bill” without taxing the people a farthing. I cite it to show how terribly the people have been deceived and as a warning that we should guard well the debt making power for the future.

Tell me not that the impending State debt will be cancelled in eighteen years. Any statement of this kind must be based upon the calculation that the population of the State will double and threble in a few years, and that the taxable property of the State will double every year.

Mr. President, I believe that this clause of the section should be stricken out, and indeed the whole section might be stricken out, but for the purpose of greater definiteness I am willing to vote for it. The previous section provides that the Legislature may borrow money, specifies the purpose to which it must be applied, and fixes the amount.

Upon the score of principle, I should vote to strike out the following clause which is the portion to which I particularly object:

“Unless provision be made therein to levy and collect an annual tax sufficient in amount to pay the interest thereon, and to discharge the debt within twenty-five years; nor shall such act take effect until it shall have been submitted to the people at a general election, and shall have received a majority of all the votes cast for and against it.”

We came here to frame organic law that should be the rule of action of the people until by them amended, and I shall vote for no propo-

sition to submit the acts passed by a Legislature to a separate vote at the annual election. The people, for whose benefit it is said to be, do not want it; they choose men from their midst to make laws, not to recommend bills. A Legislature is a law-making power, not a mere meeting of men to advise the people to do this and that.

Of all the curses upon the people is the demagogueism which proposes that the legislative department shall merely recommend the passage of laws and submit them to the people, and only be in force if voted for by a majority at the polls. It is all contrary to the principles of our institutions. We create an executive department to execute laws, a judiciary to construe them, but a legislature to make them. Otherwise, why go through the mockery of forms? Elect A. and B. to draft laws and submit them for adoption by the people at the annual election?

I am utterly opposed to the creating of a public debt which was contracted under an excitement unparalleled in the history of the country. And, if you leave this door open, as proposed in the latter clause of this section which I have cited, it will be so again. By producing a state of feverish excitement, a measure can be carried at the polls, for borrowing any amount of money. I am for restriction. A burnt child dreads the fire—and this State has been most dreadfully burned in this regard. What is the position of Indiana to-day. She has scarcely a locality upon the political diagram of the earth. She has no name except for an almost abandoned public faith and ruined public credit. She has walked to the brink of repudiation and lasting disgrace.

Instead, then, of allowing any opportunity for a future Legislature to contract another public debt, insert a positive Constitutional prohibition against it in every possible form and shape; redeem the honor of the State, free her from the disgrace abroad and the embarrassment at home, of a public debt of twelve millions. This is what the people demand.

Mr. MOWRER moved that the Convention adjourn, but objection being made, the motion was withdrawn.

Mr. NILES. I should feel no solicitude as to the fate of the motion now pending, and should make no remarks upon the subject except for the indications of the vote taken a few moments since.

It must be admitted that a public debt is, in itself, an unmixed evil. The history of the world is full of lessons to that effect. It is, doubtless true, that in a very few instances, the accumulation of a debt, and the expenditure of money, raised upon the strength of the public credit, have proved useful, both to the State and the people. The construction of the Erie canal by the State of New York, is perhaps, the most memorable example of the kind upon

record. But it should not be forgotten that such instances are the exceptions rather than the rule. In a large majority of cases, similar experiments on the part of governments, have resulted only in disastrous failures. The history of our own attempt to make ourselves rich and prosperous, by borrowing money to improve the State, is but too fresh in all our recollections. I am no enemy to public improvements. I class them among the most valuable characteristics of the age in which we live. But I believe that all works of real importance can be effected by means of individual or associated wealth and enterprise. And with that view, I have earnestly endeavored in this Convention, to secure to associations formed for such purposes, all the facilities consistent with justice and a perfect equality of rights. I hold that a government should confine its operations as far possible, within its own necessary and appropriate sphere—throwing its protection over all alike—encouraging every useful enterprise, but leaving to the people, in their private capacity, whatever they are capable of doing.

There are strong prudential reasons why a government should not engage in enterprises, which can be accomplished by the people themselves. A government can act only through agents, who are far removed from their principal, and who can seldom be held to a strict accountability.

It seems now to be admitted, that one generation has no right to impose a public debt upon another. This is a great truth, and a principle of justice which the world has been slow to learn, but which, among us, is fully established. It is equally plain to my mind that, except for the immediate necessities of the government, a majority should never be permitted to impose a public debt upon a minority without their consent, and against their will. Each is equally inconsistent with the purpose for which governments are formed. Whether the debt be contracted for twenty-five years or for all time, it is to me equally objectionable. While I am unwilling that such a burden should be imposed upon my own and my neighbors children, I am equally unwilling that it should be forced upon myself and my neighbors, whether composing a large or a small minority of the people of the State.

I therefore, can but hope that the motion now pending will prevail and that these sections will be adopted in such a form, as, at once and forever, to preclude the possibility of a greatly increased burden of taxation. Let us take warning from our own past history, and from the present condition of almost every nation in Europe, and effectually guard against accumulated public burdens.

If it be said that my views upon this subject indicate a want of confidence in the people and are inconsistent with the doctrines for which I have earnestly contended, that according to the theory of our government, we should, as we

may safely trust the people in the management of their own business, such as whether they shall elect one man or another to an office, or whether they shall elect a man only once or a dozen times to the same office, I answer that the one is inseparably connected with the preservation and conduct of the government, while the other has no such necessary connection with it. The difference is much the same as between a man's meddling with other people's business or attending to his own.

Mr. FOSTER. I have but a few words to say, sir, but in what I do say I shall be in earnest. It sounded singular indeed to hear the distinguished gentleman from Laporte (Mr. Niles) say that the majority had no right to tax the minority,—that, in a word, the majority shall not rule in, and control the government. Why, sir, that is not only contrary to the whole theory of our government, but it is in direct contravention of the ground assumed by the gentleman throughout the session, thus far.

Gentlemen profess great love for the people, and yet they are afraid to trust them in the matter of creating a public debt if they should ever choose to do so, and express their will by a direct and separate vote.

With all due deference to the Convention, and to Legislatures, I beg leave to say that I have more confidence in the people than in their representatives. The people do not always select their best men to represent them; they sometimes fail and elect demagogues. [Cries of "consent!"] Give me the judgment of the people; I have unlimited confidence in their decisions.

I am pledged to go against any provision for the contracting of a public debt, unless the law for that purpose shall, before it goes into effect or is binding upon them, be submitted for their adoption or rejection at the next annual election after its passage by the Legislature.

The proposition now under consideration, to strike out all the latter part of the pending section, is really a proposition for preventing the State to borrow money, whether or not the people shall ever desire to borrow. This I shall oppose.

I am opposed to banks, but, sir, when it comes to a choice between the State Bank and a system of free banking, I pledge myself to go for the former. And my colleague knows that this will be acting in conformity with the sentiments and expressed will of our constituents.

It has been observed that we are a progressive people, and that we have progressed in democracy.

Sir, I belong to the old school and cannot follow where some of my younger brethren seem disposed to lead; and I shall not vote for a constitutional restriction that will forever prevent the people from borrowing money no matter how pressing the emergency, and notwith-



standing a great majority may be in favor of borrowing, and deliberately express themselves so at the polls.

As I remarked when I rose, I had at this time but few words to say, and those in earnest, but when the subject comes up hereafter I shall endeavor to give certain positions claimed to be democratic, a review that will show what is democracy and what is not.

A motion to adjourn was made and disagreed to.

**SEVERAL VOICES.** Question! question! **Mr. TAYLOR.** I hope that gentlemen will not demand the question and prevent debate when many gentlemen upon the opposite side have not been heard.

**Mr. WATTS.** I was not aware that the gentleman desired to speak.

**Mr. TAYLOR.** When I was addressing the chair before in opposition to the motion to strike out, several gentlemen called for the question.

I am sorry to see gentlemen so excited as they appear to be upon this question of borrowing money. It is a simple question of whether or not we will do our duty to the people who sent us here. Whether we strike out this clause or not is a question of no importance to me personally, but I see no cause for haste or heated feeling. And I call upon gentlemen who a few minutes since voted in favor of allowing the counties to incur a debt when a majority of the voters demanded it, to stand up to the support of this section which proposes to allow the State to borrow money when a majority of the people of the State deliberately vote that they deem it good policy to incur a public debt, and especially when that money is to be borrowed under the ample guards and checks provided in the same section. I say, sir, that I call upon those gentlemen to be consistent and support this section as it came from the committee. Why not forbid the counties to do that which you say is wrong in the State? For my own part, I voted against allowing the counties to run in debt, but I was overruled and yet I have no disposition to indulge in any excited feelings because I was overruled.

I have no doubt of the power of the Convention to adopt such restrictions as it may see fit, but I do think that it would be a very unwise act to strike out the latter part of this section, which, as I before remarked, is virtually saying that the people shall not be allowed to judge of the necessity and policy of loaning money.

I shall vote to retain the section as it came from the committee; and allow me to say to those who hold similar views to my own, that I trust they will not be intimidated by the excitement and the disposition to press this matter to a vote which has been exhibited by the friends of the pending amendment. This excitement is another argument for submitting the question of incurring a debt to the people, to be sepa-

ately voted upon; for the Legislature may become as excited as this Convention now is.

**Mr. PEPPER of Ohio.** I am willing to stay here and debate the question as long as it is the pleasure of the body to hear discussion. I came here to represent between three and four thousand "burnt children," as the gentleman from Tippecanoe has aptly termed the people of Indiana in regard to the State debt and public works. And, sir, I do not believe that among the whole number there are five persons who would stand up and publicly avow their willingness to see the state contract another public debt, and who would, if they were here, tell me to vote against the proposition to strike out the latter part of this section, which provides that the Legislature may pass laws for incurring a State debt, by submitting the same to a separate vote of the people.

**Mr. SMITH of Ripley.** I came here not to restrict the people in their liberties any further than they have instructed me to restrain them. They have instructed me to vote for such a provision as is really effected by my motion to strike out the latter clause of this section. They wish thus to restrict themselves in their time of calm deliberation. I think, therefore, that we should be allowed to vote to carry out the plainly expressed will of our constituents, by opposing any provision leaving it in the power of the Legislature to contract another public debt, without having it continually thrown in our teeth that we are "distrusting the people," and that we dare not and do not repose confidence in them.

We come here for the express and sole object of representing and carrying out the will of the people; and I know that there are many delegates here who feel instructed to vote against the incurring of another debt, whether or not submitted to the people.

The present embarrassments of the State have come upon us because the representatives went ahead of the people and succeeded in leading them astray. Now, what the people want is a constitutional provision that shall make it forever impossible that the scenes of 1836 should be re-enacted. It was represented to the people of that day, by the political leaders, that they might go on with that gigantic system of internal improvements without incurring any additional tax upon themselves; in fact, the proposition was made that the State could borrow money to construct these public works, and never have any tax to pay thereon out of their own pockets—that the debt, in other words, would pay itself. I say that of such propositions the like was never known in any other country before or since. The people listened to these propositions; they plunged madly into the system of internal improvements, and the gulf of financial ruin into which they landed holds them in its almost hopeless depths to this day.

And, sir, the same thing may occur again, unless we now place constitutional barriers that cannot be overleaped, in opposition to the contracting of a public debt for any purpose except that named in the preceding section—the payment of interest on State debt.

I hope that the Convention will agree to strike out the latter clause of the section.

On motion by Mr. HOVEY,

The Convention adjourned.

THURSDAY, Nov. 21, 1850.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. CRESSY.

#### ABOLITION OF THE COMMON LAW.

Mr. TAGUE asked and obtained a suspension of the rules, to enable him to offer the following:

*Resolved*, That the committee on laws and law reform report an article to this Convention as soon as possible, for the purpose of abolishing the common law of England.

Mr. RARIDEN. That might leave the English government in a horrible position. [Laughter.]

The PRESIDENT. The resolution lies over one day.

#### NEGROES AND MULATTOES.

Mr. FOSTER made an ineffectual motion to suspend the rules for the purpose of taking up the consideration of instructions to the select committee on the rights and privileges of negroes and mulattoes, offered by himself on yesterday.

Mr. BORDEN. It will be recollected, that, some time since, I presented a couple of petitions upon the subject of the rights of negroes, and that they were laid upon the table, with the understanding that they might be taken up again and referred, at any proper time. I ask now for a suspension of the rules, in order that these petitions may be taken up and referred to the select committee which was created yesterday.

The petitions were accordingly taken from the table and referred to the select committee on the rights and privileges of negroes, by unanimous consent.

#### PROHIBITION OF A LICENSE LAW.

The PRESIDENT having called for the presentation of petitions and memorials,

Mr. HAWKINS presented the petition of sundry ladies of —, asking the Convention to insert a clause in the amended Constitution similar to that contained in the new Constitution of the State of Michigan, prohibiting the Legislature from passing any law of license for vending intoxicating liquors: and upon his motion, it was

*Ordered*, That said petition be referred to a select committee of one member from each judicial district of the State.

#### POLL TAX.

The PRESIDENT having called for reports from select committees,

Mr. McCLELLAND, from the select committee to which was referred the petition of sundry citizens of Randolph county, praying for the abolition of all laws for the assessment of a poll tax in the State of Indiana, reported the following section, recommending the same to be adopted as a part of the amended Constitution, and asking that they be discharged from the further consideration of the subject:

"SEC. —. No poll or per capita tax shall hereafter be levied, either for State or county purposes."

The committee were discharged accordingly; and the section passed the first reading, and was ordered to be read a second time on to-morrow.

#### PUBLIC DEBT.

The PRESIDENT. The first thing in the order of the day is the consideration of the second section reported from the committee on the State debt and public works, which was engrossed and ordered to be read a third time on yesterday.

The section was now read by the Secretary as follows:

SEC. —. The General Assembly may contract debts to meet casual deficits or failures in the revenue, for the purpose of paying the interest on the State debt; but such debts shall not, at any time, exceed the amount of such deficits: *Provided*, That the State may contract debts to repel invasion, suppress insurrection, or, if hostilities are threatened, provide for the public defence.

Mr. RARIDEN. Are these sections subject to amendment now?

The PRESIDENT. No, sir.

Mr. RARIDEN. I move to re-commit the section with instructions to add these words:

"*Provided*, That nothing herein contained shall prevent the State from using its credit to found a State Bank."

A VOICE. That subject will come up in the consideration of another report.

The PRESIDENT. Does the gentleman withdraw his motion?

Mr. RARIDEN. It looks to me that such an amendment would be appropriate here. It will be a test question at all events, and might as well be taken now as at any other time.

A VOICE. Consent.

The PRESIDENT. The gentleman will send up his instructions in writing.

Mr. DOBSON. I think the gentleman need have no apprehensions in regard to this matter. The Legislature have now all the power which he asks for; and we may authorize them to go further. The question may come up in connection with the consideration of the very next section.



tion. Every government should possess within itself the power to perpetuate its own existence—to carry on its own affairs with its own means, or upon its own credit. The meaning of the language of that section is, that the Legislature may contract debts for certain purposes, and we may go on further and say, for other purposes. But with respect to the sections now before us, they are all right as they stand.

Mr. RARIDEN. I do not wish to divide the friends of the proposition by interpolating in an improper place. All I want is to secure the adoption of the principle.

The PRESIDENT. If the gentleman will examine these sections, he will find that they refer exclusively to the power of providing for the revenue.

Mr. RARIDEN. If that is the case then, I withdraw the motion.

Mr. BORDEN proposed to re-commit the section with instructions to strike out the words inserted yesterday upon the motion of the gentleman from Lawrence, (Mr. Helmer,) namely: "the amount of such deficits," and insert in lieu thereof, the words "two hundred thousand dollars;" and he explained and showed the necessity of this amendment.

Mr. B. said, it seems to me, sir, that this section ought to be re-committed for amendment. In my opinion the section as it now stands is very imperfect, and prevents the borrowing of money for any other purpose than to meet a deficit which may occur in the taxes levied for the purpose of paying the interest on the State debt. It strikes me that the General Assembly ought to be permitted to borrow to a limited amount in case of failures in the revenue for the ordinary purposes of the State Government. And I further think that they should be permitted to borrow for any cases that may occur, and which cannot now be foreseen, some one or two hundred thousand dollars. But as the Convention has decided against this, I am not at all disposed to resist the action of the body.

My principal object in desiring to see this amendment, and without which I cannot go for the section, is that the amendment of the gentleman has made very uncertain that which before was definite; for the section as reported by the committee, limited the borrowing to one hundred thousand dollars. It seems to me that the section as it now stands, offers an inducement to those administering the government, to use the revenue of the government set apart for the purposes of paying the interest on the State debt, and then supply the deficit by borrowing. And as the interest on the debt, may in time when we come to pay full interest on our State indebtedness, amount to nearly a half million, they have only to use the revenue, and borrow to that amount; and thus the State officers would be enabled, and even tempted to do that by an indirection, which the Constitution would not allow them to do directly. It seems

to me, therefore, that the section ought to be re-committed with instructions to fix a limit beyond which they should not go for any purpose. And also it would be well to authorize borrowing in cases of failure of the ordinary revenue, to a very limited amount, and also for contingencies which cannot now be foreseen; but in no event, for any and all purposes, to exceed the sum of two hundred thousand dollars.

The motion to re-commit was rejected.

The PRESIDENT thereupon directed the Secretary to proceed (under the standing rule) with the call of the yeas and nays, upon the third and last reading of this section; and the Secretary reported—yeas 111, nays 6—as follows:

YEAS.—Messrs. Alexander, Allen, Anthony, Badger, Balingall, Barbour, Bascom, Beach, Beard, Berry, Biddle, Blythe, Bowers, Bracken, Brookbank, Bryant, Carr, Chapman, Chenowith, Clark of Hamilton, Coats, Cole, Colfax, Crumbacker, Davis of Parke, Davis of Vermillion, Dobson, Dunn of Jefferson, Duzan, Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Gootee, Gordon, Graham of Miami, Gregg, Haddon, Hall, Hamilton, Harbolt, Hardin, Hawkins, Helm, Helmer, Hitt, Hugin, Hovey, Howe, Huff, Johnson, Kent, Kendall of Wabash, Kinley, Lockhart, Logan, Maguire, March, Mather, Mathis, McClelland, McFarland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Moore, Morgan, Morrison of Marion, Mowrer, Murray, Nave, Newman, Niles, Nofsinger, Owen, Pepper of Crawford, Pettit, Prather, Rariden, Read of Clark, Read of Monroe, Ritchey, Schoonover, Shannon, Sherrod, Sims, Smiley, Smith of Ripley, Smith of Scott, Steele, Stevenson, Tague, Taylor, Todd, Trimble, Walpole, Watts, Wheeler, Wiley, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President.—111.

NAYS.—Messrs. Borden, Conduit, Crawford, Dick, Kilgore, and Robinson—6.

So the section was passed to a third reading, and ordered to be referred to the committee on revision, arrangement and phraseology.

The PRESIDENT. The next thing in order is the consideration of the section last but one of the report from the committee on the State Debt and Public Works, presented by their chairman on the 26th of October, upon which the gentleman from Posey (Mr. Hovey) is entitled to the floor.

Mr. HOVEY said, if there is any one class of principles within the broad scope of Constitutional reform in reference to which I consider myself instructed, it is that class embraced in the sections reported by the committee, and one of which is now under consideration.

Throughout the whole of the county which I in part have the honor to represent, the question of involving the State in debt was canvassed, and every candidate, so far as I can remember, advocated the adoption of sections similar in all

respects to those reported by the committee. I am certain that I heard from neither candidates nor voters one single dissenting voice. I advocated the adoption of these principles *there*, and I shall advocate them *here*, because I feel myself *instructed and pledged* to do so, unless some strong reasons shall be given that will convince me to the contrary—reasons so strong and overwhelming that they might not only govern my mind, but the minds of my constituency.

Let us consider, Mr. President, what cause gave rise to the proposed reform. What was it? Where did it originate? It was the immense State debt fastened upon the people by the Legislature a few years ago. And now, sir, I ask if it is probable that the people at that time would have agreed to that grand legislative scheme had they enjoyed the right to have vetoed that law? I know they would not. Had the same Constitutional sections now proposed been at that time a part of our organic law—had it then been necessary as it would be under this section, that the same act that authorized the loan should have provided by taxation for the payment of principal and interest within the short space of twenty-five years, the "Mammoth Scheme" of 1836 never could have become the law of the land. It is a well known fact that that odious law was fixed upon the State of Indiana by a most infamous system of bargain and intrigue, of log-rolling and corruption. You *may* corrupt a few men, but you *cannot* corrupt the masses—you cannot succeed with political log-rolling with the people at large.

And now, sir, let us examine the reasonableness of the section under consideration. In the first place when a debt might be proposed under a section like this, it would be the subject of discussion before the people when electing their Representatives and Senators. The Legislature thus chosen would then have to act upon the question, and if they should enact a law authorizing the borrowing, it would then be submitted to the people for their sanction or rejection. Thus it may be truly said that the people would three times deliberately pass upon every law contemplated by this section; first, in electing their representatives; secondly, by the act of the Legislature, and thirdly by the final vote given before it could become a law. Some time must necessarily elapse during these operations, and the public mind, if it should happen to become excited, would have time to cool, so that there would be but little to apprehend from dangerous or mischievous impulses.

Again: as the section provides that the law authorizing the debt must provide by taxation the means to pay both principal and interest within twenty-five years; a period less than a single generation; it compels the same men who caused the debt to be contracted to pay it themselves, and does not entail it upon future generations.

We have also in favor of this section the experience and sanction of other States, and I think we should never turn a deaf ear to the voice of experience. What has New York done in reference to this subject? The section in her Constitution with regard to State debts agrees almost verbatim with the section before us, except that their limit is one million instead of one hundred thousand dollars. What has Kentucky done? Her Constitutional section on this subject is the original from which the section under discussion was taken. It is a literal copy with the exception that their limitation is five hundred thousand dollars instead of one hundred thousand dollars. Iowa also has a similar provision in her Constitution.

The amendment offered to the section would indeed be a radical reform. Throughout this broad Republic no State has as yet gone the length which this amendment proposes. No State has as yet dared thus to tie her hands. No; it has been left for Indiana and her bold reformers to take this broad leap in the dark. It seems to me to be truly dangerous thus to bind and fetter the energies of our young and prosperous State. I ask gentlemen to pause and examine the section and amendment—I ask them to hesitate before they thus shackle her, without reference to coming events which may make it necessary to exercise that power which she now possesses and of which they wish to deprive her. What is the duty of the Constitutional Reformer? Surely not to try experiment—surely not to try in how many ways he can impose checks and restrictions upon the people. He should leave the people as free and untrammelled as a due regard to their prosperity and happiness will admit. Every unnecessary restriction that he imposes on the people is but an additional link in the chain that deprives them of their liberty. This wild course of adopting untried restrictions seems to me to be striking at the very root of government.

In favoring this section and opposing the amendment I do not wish to be misunderstood. I am not in favor of the section because I wish the State to borrow money to embark in internal improvements or banking. Far from it. I believe the true duty of the State is to attend to her internal police and see that her laws are fully and fairly administered.

But I contend that it is wrong in principle to impose this restriction upon the power of the people, embraced within the amendment to the section under discussion. I think it is taking away a right that pre-eminently belongs to them, and which may eventually result in great injury to the State.

And now, sir, suppose you adopt the amendment and vote down this section, what is it, in effect, saying to your sovereigns the people? It is, in effect, saying to them, "You cannot act with sufficient deliberation, and although we know that all power belongs to and ema-



nates from you, still you might do wrong in borrowing money; you might bankrupt the State and ruin yourselves, and therefore we will deprive you of that power." That people must be "gloriously intelligent" indeed who would submit to such an argument as this. That people that could not be trusted under the restrictions in the section under discussion, would be truly in a lamentable condition—not to be trusted, sir, even though they should three times decide unanimously in favor of a law! Surely this is the day of progress and reform.

But we have been told by the gentleman from Tippecanoe (Mr. Pettit) that such arguments are demagogueical; that this referring laws to the people for their adoption savors of demagogueism. In reply, I would say, that that sentiment, as expressed by him, savors more of dogmatism than the submission of any law to the people does of demagogueism. I, sir, for one, shall not be driven by such charges to pin my faith to any man's skirt. I think I heard that gentleman, in his manly, stentorian voice, but a few days ago, say that the people should have the right at all times to elect their own officers, without restriction being imposed in regard to eligibility; that they should be untrammelled, and stand boldly forth in the exercise of every attribute of sovereignty. Here is his language:

"Sir, I despise and spurn the principle. I maintain that you will have better officers by holding out the assurance that if their conduct shall undergo the proper scrutiny of time, their services shall be appreciated. Sir, if you prevent the eligibility of your officers you take away their amiability and stifle their better feelings, and you curtail the rights of the people. To such a principle I never will give my sanction."

He never would curtail the rights of the people, yet here, by the action of this body, he proposes to cut off the power of the people to borrow money, and that too under restrictions which would assuredly prevent injury.

The course of the gentleman from Laporte (Mr. Niles) is also very singular to me. A few days ago we heard his voice raised in the most eloquent strains, setting forth his entire confidence in the people, and his readiness to trust them in the management of their own affairs. He said, in substance, that the more we trust the people the more they will be worthy of being trusted. I admired his arguments then, and acted in conjunction with him to carry out his views, but now he seems to have entirely cast off his former opinions in favor of the people's capacity, and thinks, in this case, that they should not be trusted. He and the gentleman from Tippecanoe seem to apply the principle before referred to like an old coat, which is cast aside when it is no longer useful. Where is the consistency in applying the principle in the one case and not in the other? Gone.

"Gone glimmering with the dreams of things that were,  
A school-boy's tale, the wonder of an hour."

But now, sir, let us ask if these restrictions in the amendment are adopted, what will be the probable consequence? The Legislature of the State would be restricted from borrowing money, even with the unanimous consent of the people, except in four cases: first, to supply the casual deficits in the revenue to pay the interest on the public debt; secondly, to repel invasion; thirdly, to suppress insurrection, and fourthly, if hostilities are threatened, to provide for the public defense.

She cannot borrow a dime for any other purpose, no difference what the emergency might be, or however important the call.

Suppose there should be another commercial convulsion such as was experienced a few years ago, what would be the effect upon the treasury of the State? If we look back upon the tax books in the different counties from 1839 to 1843 we shall easily be prepared to answer. Look at the delinquencies; more than half the lands in the State returned delinquent, and your State treasury more than empty. Let but such another revulsion take place under our present embarrassment, and unless we are permitted to borrow, where will be the money to move the wheels of State?

Again: suppose the public buildings should be consumed by fire, where would the means be found to re-build them? We would have to wait until we could accumulate from our annual revenue a surplus sufficient for that purpose.

Look at this in another point of view. It might be desirable to change our public creditors. Suppose we could borrow money at four per cent. to purchase our State bonds, which are now drawing six, would it not be a most desirable operation? Yet nothing of that kind could be done; no such advantages could be acted on by the State; she would be tied down, hand and foot, and must submit to her fate. I have given these instances to show that the amendment to the section might materially injure the best interests of the State. How many emergencies may happen in the course of time in which credit might materially benefit us, no human eye can foresee.

It seems to me to be impolitic and unwise to shut the door against all the contingencies that may happen. I think, in all such cases that may hereafter arise, we ought to have the power to help ourselves.

There is still another contingent event which might happen which would call for the exercise of the full sovereign power of this State. I approach its consideration reluctantly and with diffidence. I allude to the dissolution of our glorious Union. The storms and black clouds that seem hovering over the Northern and Southern horizon, may break upon us much sooner than we anticipate. I hope and pray

that such will not be the case, but unless a better state of feeling shall calm the phrensied passions of the madmen of the South and the fanatics of the North, such a result is not to be classed among the impossibilities. And now, sir, in that event Indiana would resume her sovereignty with a Constitution prohibiting her borrowing, if necessary, the means to sustain it. If the dissolution should be peaceable, no invasion threatened, no war, no public insurrection even though the people in mass should feel disposed to fortify our frontier, not one cent could be borrowed to do it. For these reasons and a thousand more, that time may teach us, I think we should reject the amendment, and adopt the section in the form in which it came from the committee.

Mr. SMITH of Ripley. I wish to inquire into the state of the question—whether the next question is upon my motion.

The PRESIDENT. Yes, the question is upon the gentleman's motion.

Mr. SMITH. I suppose then, that I have a right to modify or change the motion which I have made.

The PRESIDENT. Certainly.

Mr. SMITH. I move then to strike out the entire section, and insert in lieu thereof the following:

"There shall not be established or incorporated in this State any banking corporation or moneyed institution for the purpose of issuing bills of credit or bills payable to order or bearer; but nothing herein contained shall prevent the General Assembly from establishing a State Bank and branches, not exceeding one for any three counties, to be established at such places, within such counties, as the Directors of the State Bank may select; provided there be subscribed and paid, in specie, on the part of individuals, a sum equal to thirty thousand dollars; and for the purpose of establishing such Bank, the Legislature shall have full power, on the part of the State, to create the stock of said State Bank and branches, on loans made on the credit of the State, or upon the existing Bank funds of the State; and for that purpose the Legislature may extend or renew the existing loans for Bank purposes on the part of the State."

Mr. S. then said—Mr. President: I suppose that having made this motion to amend, it will, at least, be necessary for me to give some kind of an explanation. I take exceptions to this section. I am opposed to the principle of submitting propositions of law to the people; they ask no such power or provision at our hands.

When I made this motion at first the idea of a State Bank, or of banking powers, did not occur to me at all. I moved to strike out the section because I was opposed to it. But unfortunately, that motion seems to have excited a feeling upon the subject, which I was not

aware of. The gentleman from Wayne, (Mr. Rariden,) seemed to discover that it was, perhaps, an insidious intention on my part, to destroy the present banking system of the State of Indiana. But I really had no such intention. I was induced to make the motion simply on account of my opposition to the principle laid down in the section.

But now, since I discover that upon this article of the amended Constitution, the question of Bank or no Bank must be mooted,—let me remark, that when the first section came up, the gentleman, (Mr. Rariden,) discovered that it was adverse to the banking system of the State; so the gentleman proposed banking powers as an amendment to the first section. The gentleman's proposition was, however, withdrawn, it will be recollected by the express understanding that it was to lie over only, until the question should fairly come up. In view of this fact also, it must be apparent, that I did not understand that this section had any reference to banks or banking powers. But, as I remarked before, it is as important now as at any other time; that we should meet this question.

And here, Mr. President, let me explain that in taking my position before the country, I took ground in favor of the bank power in the present Constitution.

Mr. President, I wish to redeem the pledges which I have made to the country with reference to this subject; and for this reason, I would like to know the mind of the Convention in regard to it. Because if it is the intention of the Convention to refuse to grant this power, I desire to know it; because, then I shall be enabled to regulate my position by that which may be taken by the Convention. For this reason, I desire that the question should now be taken in regard to the continuance of the State Bank power of Indiana.

But, sir, allow me to say a few things in regard to the section proposed to be stricken out. As I before remarked, I am opposed to the section, without reference to the question of banking powers. But the gentleman from Wayne seems to think that if we pass upon this article without providing for a bank, we shall foreclose and cut off our power to act upon this subject hereafter. But, sir there is a separate article which we have yet to consider with reference to banking powers and the establishment of a bank: and when that subject shall come up, we shall have the power to declare the manner in which the necessary funds shall be raised for this purpose, and the amount (as it may be) which shall be borrowed for that purpose. Surely, when we shall come to consider the question of banking alone, we shall have the power to say, in that article, the manner in which we will raise the necessary funds for that purpose: and if we do pass these sections as they are, it cannot follow that we conclude



our powers with reference to making a bank, or granting all the necessary means for carrying it into effect. But, in regard to the matter to be stricken out—I have said that I was opposed to it—and why? Why, I ask, should we leave any question open, which we propose to consider and adopt? Why should we submit any questions separately to the people? I agree with the gentleman from Tippecanoe (Mr. Pettit). If that gentleman ever made a good, strong, stirring remark—and he never makes any other kind—it was his remark which was directed to this point on yesterday. I agree with him fully, that the doctrine of this section is calculated to promote the feeling of demagoguery in the State, and that agitating and unimportant matter will always be kept open before the people by demagogues. But it was insisted by the gentleman last upon the floor (Mr. Hovey) that if this salutary and wise provision had been in the constitution of the State of Indiana at the time of the adoption of the internal improvement system, which he designates as a corrupt system and as being passed corruptly at the time,—if this wise provision had been in the constitution at that time, the system would not have been adopted.

I have some recollection of those times and of the adoption of that system. I was here at the time, and the gentleman on my right (Mr. Kilgore) was here, and some five or six others were also present, here, upon the passage of that internal improvement bill. I think the gentleman (Mr. Hovey) was not quite correct in the data which he has assumed, upon this subject, nor in all his conclusions. I am of the opinion that if this very clause had been in the constitution at that time, that still the system would have been adopted. The gentleman may be somewhat mistaken in regard to the getting up of this system and its progress to the final passage. I was here at its inception—but the bill itself was passed a year afterwards. The great battle for internal improvement was fought a year previous to the passage of the internal improvement bill. I shall be sustained in this assertion by my friend (Mr. Kilgore) on the right. In the session 1834-'35 this great battle was fought here, in the old Court House. It was sprung upon a proposition to appropriate funds to carry on the work of the Wabash and Erie Canal. My friend on the right (Mr. Kilgore) was a leader upon that occasion. They undertook to tack the general internal improvement system upon that bill, and they spread their net very wide and laid it very artfully, extending their system by lines drawn over all portions of the State: especially over such portions as would be likely to gather up and enlist in its support all the speaking and influential members of the House at that time.

I was a young man at that time, and gentlemen will recollect that I almost tread the "wine press" of opposition to the system alone,

upon that occasion. But the lazy and agricultural members of the House came to my relief, and we voted down the manmouth bill, as it was called. But gentlemen were not content with that. They understood the system of log rolling very well, and they understood the people. After the first bill was voted down, they proposed and carried a simple survey bill, and sent out their surveyors, and corps of engineers, and marked out the lines of the projected works; and the next year they brought up to the Legislature a sentiment in its favor that was perfectly overwhelming: and, sir, if you had sent out a tax bill for twenty millions of dollars at that time the people would have voted for it. And might not such a thing come up again? Might not certain systems and projects of public improvements, or other matters of great absorbing interest, be presented to the people at some future time. Any such excitement as this, begets a feeling of passion and interest amongst the people, and you may send out a bill paying interest annually, and in twenty-five years redeeming the principal and all that, and the people themselves, will be found willing to tax themselves for the sake of establishing a system of this kind, or something else.

Sir, I object to the principle laid down in this section, and the idea that we are limiting the power of the people. I can see no sense in this at all. We grant to the Legislature the power to make laws; not the mere power to make propositions for laws, for the people to decide upon through the ballot box. They ask no such power; they think it trifling with the high function of law-making.

When I made the motion to strike out, as I have before intimated, I had no other object in view than to cut off the section. But for the purpose of setting myself right and defining my position, I beg leave to say, that having declared to the people that I was in favor of preserving the present State Bank power, and that I should sustain it; (and if I know myself, I have never yet in all my life made a declaration to the people in a representative capacity, which has not been redeemed) and I have concluded, for the present, to support the present Bank power of the State; and when that shall be voted down, as it may be, I shall be able to select another system by the proper exercise of a sound judgment and discretion, in regard to the best interests of the State with reference to this matter.

Mr. President, what I have presented to the Convention, by way of amendment to this section, is a copy of the present Banking power, granted under the present Constitution, with the addition of a new provision to this effect: that for the purpose of creating stock, the Legislature shall have full power to make loans of a sufficient amount; that is, that the Legislature may renew the present Bank laws for the

purposes of creating stock. This is all the new provision which I have offered.

Mr. President, I am well aware that this is not a perfect proposition, and doubtless might be amended if it should be taken as a provision of the Constitution. I admit that it may be bettered, but it is not my province to suggest anything more. For myself, I am under obligations to sustain the present Banking powers. As I have before said, I have placed myself under this obligation to my constituents, and I shall be certain to fulfill it. But that does not preclude other gentlemen from offering amendments and proposing restrictions. I know it is the wish of the people whence I come that the present State Bank power should be sustained.

Permit me to remark here, that I am one of those who have not a very great affection for Banks at all. I was present, however, in the Legislature when the present State Bank charter was passed; and I am proud, upon this occasion, that I can say, our State Bank has maintained a high credit, not only at home, but in all the surrounding States. And if it has inflicted no injury upon the people of Indiana, the institution is certainly entitled to a great deal of credit; for I apprehend that this fact forms an exception in favor of our Bank amongst most of the Banking institutions in the United States. This institution having operated well, and sent out a salutary influence upon the people of Indiana, I am, for this reason, reluctant to let go our hold of it. I have my doubts in regard to the independent free Banking system. If you should break down the present Bank, and allow the people to issue their paper *ad libitum*, under the free Banking system, I have little doubt but that in a short time there would be an universal failure all over the State of Indiana. I would like, of course, to avoid any contingency of that kind. And now, that we have come to understand the present system thoroughly, and because it has identified itself with all our commercial and business interests, I do not know, and I rather think, it would be the wisest course to continue it.

My friend on the left, (Mr. Read of Monroe,) takes this ground: that the State authorities should have nothing to do with the business of making money; I would like to know whence he got that idea for I hold the opposite idea, that it is one of the attributes of the sovereign power to fix the standard and declare the value of money. But my friend on the left, (Mr. Read of Monroe,) is of the opinion that money should have no connection with the sovereign power, but this business should be left wholly to the management of individuals—but of this more hereafter.

Mr. President, I have not come up here to day prepared to make a speech upon banking matters. My only object, in rising, was to set myself right with reference to a matter of great

public interest. As I have before stated, when I first offered my proposition to strike out, what I honestly conceived to be objectionable in the proposition proposed to be inserted in the Constitution, I had nothing, with reference to the subject of banking in my mind's eye. I had not that subject in view at all, but I find myself compelled, this morning to come up with the proposition, which I have now made, for the purpose of setting myself right before my constituents and the country; and I do hope now, since the question is fairly broached, that it will be met and decided upon, and that without delay, so that we may understand ourselves. If the Convention are determined to vote down the present banking powers, it is time we should know it, in order that we may set ourselves to work in the business of devising, if possible, a better system. I know that there is a very large proportion of the people—(notwithstanding the highly respectable operations of our State Bank) who are opposed to all banks. But, the fact is, we are a commercial people as connected with the union and our interests require that some system of banking should be maintained. Therefore, it is, that I have said, the sooner we know the purpose (if indeed such be the purpose of the Convention) to strike down the present system the better it will be for us, in order that we may set about immediately and fix upon some other system, which may accord better with the wishes of the whole people of the State of Indiana, and which may be better calculated to promote their interest.

Mr. TAGUE moved to amend the amendment by striking out the words "one for every three counties," and inserting the words "not to exceed two in one county."

Mr. STEVENSON. I regret very much, Mr. President, that this section has been brought up for consideration at this time, because I do not believe the Convention is ready to take up the bank question, and discuss its merits at the present time. I look upon it as a loss of time to investigate this question now.

If I thought I had any influence with my friend from Ripley, (Mr. Smith,) I would request of him to withdraw his motion and settle this question when the bank question comes up for consideration. Settle them both together. If he is not disposed to withdraw it, I do not know whether I can be induced to vote against it or not, although I am anxious to see the Convention take a vote upon the question now properly before them, that referring to State debts. The question now before us is whether the State can, under proper restrictions and limitation, be trusted with the power to borrow money or not.

Now, sir, we are very much disposed to run into extremes; when we find that we have committed one error, we frequently go to the extreme and commit another error of greater magnitude. We know that the State has committed



a great error in incurring the great debt hanging over us, for internal improvements, and then we run into an opposite error when we declare that we will not contract debts under any circumstances whatever. These are the extremes, sir, into which we run, which we should, I think, avoid; the proper course to pursue is to take the middle ground.

It has been stated that the system of internal improvement was brought about by a system of log-rolling. It may be true that the bill was passed in this way. But the people were brought to sustain it in a very different way. The principal error by which they were deceived, was the supposition that the system could be completed mainly without taxation. It was urged that loans could be made to complete the works in a given time, and, that the loans could be made to complete the works in a given time, and that the interest could be paid out of the money borrowed, and so soon as the work could be completed they would then pay the interest on the loans made to complete them.

Thus were the people induced to give their continued support to the system, when a very different result would have followed, if a tax had been levied to pay the interest as it accrued from year to year.

That the people may not deceive themselves nor be deceived by others, it is wisely provided in the section under consideration that no law shall be passed by the Legislature authorizing a loan without providing at the same time that a tax shall be levied to pay the interest. This will prevent any deception hereafter upon this point, and the people will be brought to consider carefully their ability to pay. A provision of this kind in the old Constitution, would, in my opinion, have saved the State from its present indebted condition.

But the section under consideration does not trust the Legislature here; but provides that a tax shall be levied equal to one twenty-fifth part of the principal, so that the whole, both interest and principal, may be paid in twenty-five years. Is it to be presumed that money would be likely to be borrowed under such restrictions? Yet this is not all. The section provides further that no such law shall take effect until the question is submitted to a vote of the people, and has received a majority of all the votes cast for and against it; so that it is made the direct act of the people, with a full knowledge that they must pay the interest with one twenty-fifth part of the principal annually, to check their improvident action.

Now, sir, who need fear that under such restrictions as these the people would be in any danger of contracting any unnecessary indebtedness. But it is said that it is safer to prohibit them altogether, and for all purposes (except the one in the next pending section, and which is provided for). Who can tell what necessity may present itself? Who can compre-

hend the future and determine that there are no causes there that may not imperiously demand of us means that we have not? It is not at all necessary that I should specify what may occur in the future to demand a loan. It is enough to know that the future is full of uncertainty—and that we should not bend ourselves before we meet its dangers.

Having provided, as this section does, that the Legislature shall not borrow money unless authorized by the people at the ballot box, under all the restrictions here provided for, it would seem to me unnecessary and unwise to go further. It is manifesting a distrust in the capacity of the people to govern themselves which is contrary to all the principles of self-government.

Believing the provisions of this section entirely safe, I am prepared to vote for it. It will prevent the evils heretofore experienced, and leave the State in a condition to meet any unforeseen emergency that may await it.

Mr. PEPPER of Crawford moved to lay the pending amendments on the table.

The motion was agreed to.

Mr. HALL said, that he desired to state how this section was brought before the Convention. At an early period of the Convention, several resolutions were referred to the committee that reported this section, suggesting the propriety of adopting the proposition contained in it, and as one of the resolutions was imperative in its character, the section was reported as it now stands.

He should not have said anything if this section had not been looked upon by some members as giving authority to the Legislature to involve the State in debt. If gentlemen supposed that the committee desired by it to involve the State in debt for any internal improvement, they were entirely mistaken; and if they would refer to the report of the sixteenth article of the Constitution, which came from the same committee, they would find that the objections referred to by gentlemen opposed to this section were thereby obviated.

The sixteenth article provided—

SEC. — The General Assembly shall not engage the State in the construction of any internal improvement or public work, without having first obtained the consent of a majority of the voters of the State, at a general election, upon a distinct and separate proposition submitted to them at such election, stating the nature of the proposed work—its probable cost—its utility or public benefit when completed, and how it is to be paid for, whether by taxation or otherwise: *Provided*, That this provision shall not interfere with the right of the State to rebuild or repair the State House, or Penitentiary, or to build or repair buildings for scientific or beneficent purposes: *Provided, also*, That not more than one proposition relative to

internal improvement or public work shall be submitted to the people at any one election.

Mr. ALLEN moved to strike out all after the word "article," in the third line of the Section.

Mr. ALLEN said—

MR. PRESIDENT: I do not rise for the purpose of making a speech, but merely for the purpose of placing myself right upon this question. On yesterday, Mr. President, I was disposed to go for the section as reported by the committee, with some slight modifications, as the report of the committee very nearly embodied the amendment contended for by me before the country, and which was sanctioned by the people. But, Mr. President, I am satisfied, upon further reflection, that further restrictions are necessary and ought and will be adopted by the people. Sir, the question is not whether we will tie up the hands of future legislation, nor whether we can or ought to trust the people, as gentlemen contend; but it is the simple question, as I conceive, whether we will insert a provision in this Constitution prohibiting the Legislature, or the people through the Legislature, from taking or appropriating that which does not belong to them, and which is not a proper subject of legislation. Sir, when the Legislature contracts a debt which is to be paid by those that are to come after us, do they not virtually appropriate the revenues and tax the resources of posterity, and that, too, for purposes which may or may not be of any value or importance to them? I ask if the Legislature that contracted the present State debt, which now hangs over us, and which will continue to hang over our posterity for generations to come, did not virtually levy a tax upon and appropriate the resources of those that are to come after us, and what benefit can they hope to derive from it? What advantage is likely to result to them, or even ourselves, from such taxation? Sir, the right of the Legislature of a State, or of a people, as a State, is to levy taxes for the purposes of State government, and for the purposes of repelling invasion or self-preservation, and for the faithful administration of the laws; and beyond this, they should not be permitted to go. Whenever they go beyond this, and contract debts for other purposes, they virtually appropriate the revenues and resources of those who are to come after us, and, I contend, take that which does not belong to them. Sir, their duty is to transmit to posterity a government free from incumbrances—unclogged with debts or liabilities—her revenues unappropriated—her resources untrammelled. This I conceive to be the legitimate end of government. If I am correct in my position, then the question is simply, whether we will or will not incorporate a provision in this Constitution prohibiting the Legislature from taking that which does not belong to them, and which, I contend, they have no right to take. Mr. President, it does seem to me, that, if there is any principle in the

world, which ought to be incorporated in the organic law of the State, it is this. It does seem to me that this principle is as well settled, and its land-marks as well defined, as any principle in the world, and is, therefore, a proper and legitimate subject of constitutional law; and, sir, I do hope will be incorporated into the Constitution which we are about to form.

Mr. DOBSON stated that he should not have made any remarks but for the observation made principally by the gentleman from Posey, and reiterated by others. The doctrine laid down by the gentleman from Posey was, that they had no right to incur debts for future generations to liquidate; that they had no right to bind those who might come after them.

The gentleman from Monroe takes the ground that a public debt was not a public blessing. Now, he proposed to consider these statements briefly.

If it was not right to bind future generations, he would ask if the legislators of the people had any right to appropriate the revenues of the State, or if they had a right to say to the people that they should not appropriate a dollar of the revenues during the next ten years? If they had no right to say to the people that they should not appropriate a dollar of the revenues during the next ten years, had they any right to say to them that they should not contract a debt during ten years from the present time? It appeared to him evident, that, if they had no right to anticipate the revenues of the people, they had no right to dispose of the standing revenues.

Again, with regard to a public debt being a public curse, he would say that a public debt, wrongfully contracted, would be a public curse. A just public debt was just like a debt made by an individual. An individual might contract to pay a certain sum a year during ten years, for an improvement on his land, to another person. Now, these improvements, at the end of that time, either the individual or his descendants would get the benefit of. This right which he (Mr. O.) had been contending for, then, he believed, should be inserted in the Constitution of the State, of course under suitable restrictions. He regarded it as one of the fixed facts of the day.

He had been very much surprised to find the gentleman from Ohio (Mr. Pepper) in favor of striking this principle out, and that, too, after he had, not long since, submitted a resolution, imperative in its character, on which this very section had been reported.

Mr. PEPPER of Ohio remarked, in explanation, that he had offered the resolution referred to, supposing, at the time he offered it, it was the best that could be presented on the subject; he now thought they could adopt something more advantageous in its results.

Mr. DOBSON considered that the proper course to pursue was to strike out all after the



word "article" in the third line of the section. By the section, it was provided that the General Assembly could contract debts to meet deficiencies in the revenue, and then the section went on to state the manner in which other debts could be paid off. Now if that part of the third section after the word "article" was stricken out, then all difficulty would be obviated. If it was desired by the people that the Legislature should pass other laws for the construction of works of internal improvement, whereby new debts would be incurred, he was willing to delegate that power to the Legislature. A section embodying this principle had been reported by the gentleman from Gibson, (Mr. Hall,) and he thought it would be adopted. If this provision was made, the evils that some gentlemen had apprehended would not probably overtake them.

He would here remark, that in a purely democratic government, all the people would unite in making provisions and pass laws; but in this country that power was delegated by the people to representatives of different classes. He was in favor of approximating as near as possible to this characteristic of a pure republic. He desired that this question of constructing public improvements should be left for the action of the Legislature, and that their action should be finally submitted to the people for their approval or disapproval.

Mr. READ of Monroe said:

Mr. President, I must claim the indulgence of the Convention for a few moments. I impugn the motives of no gentleman upon this floor. I will presume that every member of this body acts from a high and honorable sense of duty, and under a sense of responsibilities which, upon considerate minds, are calculated to produce staid action, prudent councils, and sober words.

While I accord this to others, placed in circumstances in no way of my own seeking, and to which I will make the least possible allusion, it will not, I trust, be deemed personally indelicate, to show what have been my uniform declarations on the subject before us, well known in the district I have the honor to represent, and much beyond it.

If there is, sir, a gentleman upon this floor who, above others, stands irreversibly pledged before the people of his district, and before the people of the State, to opposition to State debt and to all alliances and connections calculated to create a State debt, I am that man.

Happily I am not left to uncertain recollections of the declarations of opinion which I made on this and on other subjects. They were published months since in the Bloomington papers, in the Constitution published at New Albany, and transferred into newspapers in different parts of the State.

In a circular addressed to the people of Monroe county, bearing date June 4, I use the following language:

"What is the voice of bitter experience in regard to those laws called PLUNDER LAWS, that is: 1st, laws for constructing works of internal improvement by the State; 2d, laws for banking by the State; 3d, laws for loaning the credit of the State to individuals, or forming partnerships with individuals. Under one or the other of these classes of laws, the debts of the States are now the enormous sum of two hundred millions, costing the several indebted States an annual interest of ten millions. Experience says, the State has no capacity for any of these departments of business, and is always cheated and plundered; while the State agents and partners amass vast fortunes. Experience says, let all such powers, and all power to contract debt for any purpose, except in case of invasion, be stricken from the Constitution."

My action in this body conforms itself exactly to this declaration. I oppose the power of the State to contract debt except in the case of invasion. But I went further than this, and in the same circular, use the following language:

"There should be restrictions upon counties, cities, and towns, in regard to the power of creating debt or loaning their credit."

I stated to the people of my district, that the following were the very words which I would propose and support in carrying out this principle:

"The Legislature shall never authorize any county, city, town, or township in this State, by a vote of its citizens or otherwise, to become a stockholder in any company or association whatever, to raise money for, or loan its credit to, or in aid of, any such company, corporation or association."

Again, in the same circular, I declared I would vote for no man who went for that part of the *plunder system*, which consists in the State government banking on borrowed capital in company with individuals. I say that from voting for any such man, I am precluded by the most solemn convictions of my mind.

But there is another address to the people of Monroe county. It was copied in several newspapers of the State, and I have it before me, re-published in the Franklin Democrat of Brookville, and will read an extract:

"To the Citizens of Monroe County:

My opinion has been requested in regard to the propriety of retaining our present State Bank provision in a new Constitution.

A provision of this kind is not incorporated in a single State Constitution formed or changed since the fall of the State credit system; and is, in my view, simply a remnant of an obsolete policy. It belongs to a condition of things and a state of public sentiment, not any where existing to a considerable extent, and found, as I think, with few of any party in the

year 1850. It is of a family, upon which is broadly and boldly written, *tekel, tekel*.

State debt, State road and canal making, the loaning of the State credit to companies, and State partnership with corporations, are either twin sisters or part and parcel of State Banking. They belong to the same ruinous system of public policy.

The very first step towards a State Bank is a State debt. The very second step is State partnership with individuals.

The State has no money to bank on. Then in order to bank, the people must be taxed, or run in debt for the capital. That would be a bold man, who would propose taxation to raise money for banking! State debt is the alternative, and is accordingly chapter the first in State banking. This too is the actual history of Indiana banking. The State, in order to start the Bank borrowed not only its own stock, but that also for the individual stockholders, taking mortgages for re-payment; and the debt of the State for banking is, at this moment, two and a half millions, thereabout. Let it be here noted, as a part of the experience of this operation, and as strongly illustrating the beauty of State borrowing, that the State lost at one fell swoop a million of money in bonds issued, for this very purpose of increasing the bank stock, to the ever memorable Morris Canal and Banking Company. This million so lost, forms a heavy item in our State indebtedness."

But in the same article I express doubts as to the constitutional power of a State to create a State bank, in the following words:

"In this view, I have not adverted to the impropriety of introducing into a State Constitution doubtful powers. The clause in the United States Constitution prohibiting States from omitting bills of credit is believed by very many of our wisest and ablest lawyers and statesmen, to extend to bank bills issued by the State; nor has the decision of the Supreme Court settled the public mind on this subject to a different conclusion. In framing a State Constitution, it is surely a consideration which should have weight with those disposed to a careful construction of constitutional principles.

Against the State Bank, I utter no syllable of reproach. I trust it will honorably fulfill its mission, and in its own full time, be suffered to depart in peace. It is with the principle of State Banking as existing in the Constitution of 1816, and the question of retaining that provision in the Constitution of 1850, that I have to do. I here say to the praise of the Bank, that it is a prodigy of discretion and honesty, that its funds have not long since been plundered and squandered, as in the case of most State Banks, and the State left, as elsewhere, to pay or repudiate. If in the final winding up, we as a people shall be saved harmless for the debt incurred for bank stock, let pillars of stone and brass be raised to the memories of its man-

agers; and as an enduring memorial of our escape, let similar powers forever be blotted from our Constitution."

In an article published in the Constitution at New Albany, and also at Bloomington, I express my approbation of the following provisions: The State shall not become a subscriber to the stock of any corporation or joint stock company. The credit of the State shall not directly or indirectly be loaned in any case. In order that both of these principles may go into our Constitution, I moved the amendment (which I supported by some remarks on yesterday) to the reported section which embodied one of them. When the section and the amendment are called from the table, I shall support both, and in doing so, I am but carrying out my well known views.

To my friend from Ripley (Mr. Smith) I would say, I may hereafter have occasion to speak of that attribute of sovereignty which consists in coining paper credits into money; and to my friend from Owen (Mr. Dobson) I may or may not have occasion to speak of the blessings of a public debt.

But my present purpose has been, to show that the views which I advocated prior to my election to this body, and since I have been a member of it, are precisely the same; and that no man was elected to this Convention with a position more unmistakable and more clearly defined as to all public debt, as to State partnership with corporations, and as to State Banking, than myself, and that from that position I have not in the slightest degree swerved.

[Messrs. Ritchey, Owen, and Walpole here addressed the Convention; their speeches will be published hereafter.]

Pending the question,

On motion, the Convention adjourned.

#### AFTERNOON SESSION.

The PRESIDENT. When the Convention adjourned, the pending question was upon the amendment of the delegate from Ripley, (Mr. Smith,) to strike out all that part of the section under consideration which provides that the General Assembly may contract a public debt by a law to take effect after a majority of the people had voted in its favor at an annual election, at which the question had been submitted. As amended the entire section would read as follows:

No act of the General Assembly shall authorize any debt to be contracted on behalf of the State, except for the purposes mentioned in the — section of this article.

Mr. ZENOR. As I am not a public speaker, Mr. President, and as it may be the last time I shall occupy the attention of the Convention, I ask the indulgence of gentlemen while I endeavor in a brief manner to express my views. I remarked that it was the only time I should probably address the Convention, and, sir, after this Convention shall have closed its labors



my voice will no longer be heard as a representative of the people. I therefore desire to speak in behalf of the people whom I now represent upon this question, for I have considered it one of the greatest importance to the whole State.

I represent a highly intelligent portion of the people, a people that take a great interest in all that shall be done here, and I should be wanting in my duty to them if I neglected to express their sentiments here.

I have the honor to be one of the committee which reported the article in debate, and, sir, I heartily subscribe to the provisions of the sections of that article. I thought it would meet the views and wishes of my constituents, as well as those of the people of the State generally; but, believing that the amendment of the delegate from Ripley, which has been stated by the Chair, to be better than the original section, I shall support it.

Mr. President, many allusions have been made in the course of this debate to the system of internal improvement projected and undertaken by Indiana in 1836. I was a member of the Legislature at that eventful period in the financial history of the State; I was here when the "mammoth internal improvement bill" was fought through, and I am proud to say that I was one of the Spartan band who opposed it at every inch of its progress from its first introduction until the final vote. But did its friends give us a fair fight in the matter? What were the circumstances of the case? That bill was got through both Houses, not upon its merits, not because a majority of the people wanted it, but by a system of "log rolling," which bore down all opposition. One member voted for the bill on condition that his constituents should have a portion of the benefit, and so on until enough votes were secured to pass the bill through both branches. I had no participation in the system, but I know that the bill was passed by a combination of interests too strong for successful resistance. I believe that I fired the first gun in opposition to the bill, for when it first came up I made a motion to commit it to a committee of the whole; but that motion was very decisively voted down. But the majority did not quite dare to pass the bill. I am now speaking of the mammoth bill, as it was called. They did not quite dare to pass it the same day that I moved to commit it to a committee of the whole, but they laid it over for one night, for the purpose, perhaps, of hugging it once more. [Laughter.] But, sir, the next morning when the bill came up the previous question was sprung upon us, and the bill was forced through, and became the law of the State; and as such we were bound to yield to it.

There are several gentlemen now in this Convention who voted with the minority, and some who voted with the majority, on the pas-

sage of that bill. There are five here who voted with me upon that occasion, and I will give the minority vote on that occasion:

Smith of Ripley, Nave, Edmondson, Carr of Jackson, and Zenor.

I allude to this matter to show the fallacy of that doctrine which declares that the people can do no wrong under any circumstances. For one, I deny that doctrine, and I deny the right of a majority to tax, without restriction, a dissenting minority—a majority should never be allowed to put their hands in the pockets of a minority, and draw therefrom what money they please.

In the case of the passage of the mammoth internal improvement bill in 1836, it was not only the representatives who did wrong; it was the people who instructed them to do just what they did do. And, sir, what were the scenes enacted in this city of Indianapolis immediately upon the passage of that bill? Why there was a general rejoicing; every pane of glass in the city was illuminated; and the population turned out on the streets as upon a great holiday. And I think that upon the occasion of the exhibition of fire-works in different parts of the State, in honor of the passage of the mammoth bill, two or three persons were killed.

A MEMBER. Three persons were killed.

Mr. RARIDEN (in his seat.) A sacrificial offering!

Mr. ZENOR. A few days after this a grand ball was given here in honor of the passage of the bill, at which there was music, feasting, and dancing.

Now what has happened may occur again. It will always be possible to raise such an excitement, and to induce the people under its influence to do that which in more sober moments they would condemn.

The next year the gentleman from Posey (Mr. Owen) and myself, came up to the Legislature, and while we condemned the passage of the mammoth bill, we were obliged, in order to satisfy the people of our district, to ask for an extension of the system to them, and to other parts of the State, not included in the great bill. Our constituents were opposed to the system, but inasmuch as they were taxed for the appropriations expended in other portions of the State, from which they received no benefit, they instructed us to ask an extension of the system to their part of the State. In accordance with their wishes, and in conjunction with members whose constituents were in the same position with ours, we got up what is now known as the "calf bill." As is well known we failed in securing its passage. At the succeeding election I endeavored to place the matter distinctly before the people. Two candidates were running that year for governor. One of them, Mr. Dumont, was a candidate of the classification party, who were in favor of commencing and finishing one of the public

works at a time. The other candidate was the gentleman whose seat is just before me, (Ex-Governor Wallace,) and who was in favor of the simultaneous prosecution of all the public works; and he was comfortably elected. Thus I have shown that the people fully endorsed the internal improvement system in all its breadth and width. And it is in view of this experience that I say the people are capable of doing wrong. They have made fatal errors in the past, and under the same circumstances may err in the future.

The second year after the passage of the internal improvement bill, public opinion underwent a change, and the representatives in the Legislature were instructed to vote for a classification in the construction of the public works; that is that the energies and resources of the State should be concentrated upon the construction of one work at a time. A proposition to this effect was made by Mr. Smith, of Wayne county. Upon that immediate proposition the yeas and nays were not called, but upon another occasion where the principle of classification was involved, Mr. Owen and myself both voted for classification.

Now, sir, in conclusion, I have to say that I am most decidedly in favor of "putting up the bars for the future." I never wish to see the State again involved in the embarrassments and in the financial ruin which has so long hung over her. To prevent the possibility of incurring another State Debt, I am in favor of restricting the Legislature, as will be done by the sections of this article, after the adoption of the pending amendment, the effect of which was stated by the Speaker at the opening of my remarks.

I am a State Bank man, but at the same time I am decidedly opposed to the creation of another State Debt for any purpose whatever. I desire that we should at least get one benefit from all the immense sums of money squandered by the internal improvement system, and that benefit is the lesson dearly bought to be sure, and but well applied if it has the effect to place in the amended Constitution the strongest restrictions upon the power of the Legislature to contract a public debt. And I want that restriction so strong and so broad in its operation that the Legislature cannot contract a debt even by first submitting the proposition to the people and obtaining for it a majority of all the votes cast at an annual election. The provisions made in a preceding section for incurring a debt to meet a deficit in the revenue, or for the payment of interest on the State Debt, are ample enough.

I have made these remarks in haste, but I trust that I have made myself understood.

The gentleman from Hancock (Mr. Walpole) has remarked that the position I support is democratic ground. Sir, I cannot help it; if it be democratic it is the right position, and I shall

not be deterred from maintaining it because democrats may also support it. We are not acting here as whigs or democrats, but as Delegates of the people, laboring solely for their good, and the happiness and prosperity of our posterity.

I have said thus much to set myself right, and explain the position I occupy and my reasons.

It may be that I shall be denounced by some of my constituents, but, sir, I must do my duty as I understand it; and I believe that I am acting for the best interest of the people of Indiana in supporting this section as proposed to be amended by the Delegate from Ripley (Mr. Smith).

I am obliged to gentlemen of the Convention for the attention with which they have listened to me.

Mr. KILGORE. I have been an attentive observer of the debate upon this section, and I have observed gentlemen rise all over the Chamber, proud of the opportunity to declare that while they were members of the Legislature which passed the mammoth internal improvement bill, authorizing the survey of routes for contemplated public improvements, they voted against it. There are gentlemen enough to proclaim their opposition to a system which has now become universally unpopular. It is much safer and more politic for them (and I do not particularly refer to the gentleman who last addressed the body) to do this than it would be to state the real reasons which operated upon their minds in 1836, and prevented them from supporting the system of internal improvements. I shall, however, in a few remarks, make a simple exposition of the real facts of the case, which may be useful as a codicil to the speeches of some gentlemen who are proud to say that they voted against the mammoth internal improvement bill.

As I remarked the other day, I appear to be the last survivor of all the members of the Legislature of 1836 who voted for that bill. Although I know there are many still living, they seem to have been afflicted—perhaps in judgment for their political sins—with a loss of their memories. [Laughter.]

Mr. GREGG (in his seat). I was in the Legislature and voted with the majority.

Mr. KILGORE. I am rejoiced to hear the able Delegate from Jefferson admit that he voted with me. It looks manly to see gentlemen stand up and plead guiltily when the minds of the jury are so prejudiced against the case.

The unfortunate results of the projected improvement of 1836 seem to be an argument, in the minds of some gentlemen, why the Legislature should forever hereafter be prohibited from borrowing money for any purposes or under any circumstances. For my own part I am willing that the people should be governed in the future by the experience of the past. I am not carried away with this general cry against internal improvements, and against the power of



a Legislature to contract a debt. If, with the light of the past to guide them, with the heavy burthens of the present to remind them of past errors, the people coolly and deliberately decide at the ballot-boxes to again borrow money, I shall aid to place no Constitutional barriers in their way to prohibit them from carrying out their will; *provided*, sir, that at the time they give the Legislature authority to contract a debt they provide by direct taxation for the payment of the interest, and the canceling of the principal, within twenty-five years. Right here, sir, and nowhere's else, was the great error committed by the people and their representatives in 1836. Gentlemen may confine themselves to the simple assertion that the people of that day were mad; I shall not deny it: they were mad, and very mad; but, Mr. President, had a provision been made before the public debt was created that a direct tax must be levied, high enough to pay the interest and to wipe out the whole debt in eighteen or twenty-five years, all would have been comparatively well. A provision of this kind, sir, would have brought the people to their right senses, and my word for it, before State Bonds to the amount of four millions of dollars had been sold, they would have risen and denounced the whole system as projected.

But what was this mammoth bill relative to which so much has been said? We provided in that bill for a general survey in different parts of the State in order to ascertain the most practicable routes for the lines of public improvements then contemplated. The bill directed that examinations should be made with a view to construct those works through such portions of the State as would be likely to give the greatest amount of satisfaction to the people generally.

It never entered into the minds of those who voted for the bill directing those surveys that all the public works therein contemplated should be carried on simultaneously. We sent out engineers, chain-bearers, and workers, to get useful information of different routes and localities upon which to base a good and practical system of internal improvements. But, sir, the very fact that those surveys were made in different parts of the State, made the people lose their mental balance; every neighborhood became so intoxicated with the idea that a railroad or canal was to pass near it, that the people became mad, as it were, and were unable to judge of the propriety or impropriety of any measure for the prosecution of the system, or of the amount of taxation they could safely impose upon themselves. And added to this, certain political leaders in different parts of the State aided in misleading the people in this regard; but, Mr. President, I can say without fear of successful contradiction, that I was not one of them. I told the citizens of Indiana, whenever I addressed them, either individually or collectively, that

we might talk about internal improvements and the prospect of their paying for themselves as much as we pleased, but there was no escaping the conclusion that ultimately the burthen of that enormous public debt would fall upon the shoulders of the people, and that they must prepare for the most onerous taxes if the system was urged to completion.

But such counsels were not listened to, but the declarations of leading politicians, who openly told the farmers of the State that to bear all the additional taxation that would result from finishing all the public works in the State, would only require the profit derived from an additional hen and chickens!

Gentlemen in the course of this discussion have talked as though the Representatives and Senators who voted for the mammoth bill were actuated by their own excited feelings or by motives of personal interest. Sir, I could point to men who now glory in declaring that they opposed the internal improvement system in such a manner that they would be fain to retreat in haste from the imputation of wrong motives upon those who voted for the Survey bill, and who are still frank enough to admit their participation in that matter.

And for the purpose of placing this matter properly before the country, I propose, Mr. President, to briefly review the course of those who were members of the Legislature at the inception of this mammoth system of internal improvements, as well those who opposed as those who favored it; and in doing so, I must be pardoned for speaking plain in relation to the motives which influenced the action of certain gentlemen who now claim the credit of having possessed political sagacity which enabled them to foresee the result of that system; and hence their opposition to it. With all the facts connected with the original survey bill, as well as the bill which provided for the commencement of the system, I am perfectly familiar. And a brief history of those matters may not be uninteresting to some gentlemen in this Convention, and may enable some other gentlemen here (who seem to have forgotten that they were here then) to bring to mind the peculiar part they acted upon that memorable occasion.

At the sessions of the Legislature of 1834, 1835, the members of that body, believing that it was high time for Indiana to engage in some system of internal improvements, set about the work of devising a plan for action upon the subject. A bill was introduced in the House of Representatives having in view that object. The bill, as originally introduced, was not such as met the approbation of the majority. The objection to it was, not that it contained *too much*, but that it did not contain *enough*. And some of those who are now most loud in their denunciations of the *system*, were amongst the foremost in adding amendment to amendment until we had literally checkered the whole

State with imaginary canals and roads of different kinds. That bill, sir, became too ponderous to be carried by its original friends; and those who were the true friends of the State and her best interests, by common consent, laid it upon the table to sleep the sleep of death. But they did not abandon the hope of adopting some system that might, in the end, prove beneficial to the people. As yet no provision had been made for the further prosecution of the Wabash and Erie Canal, which had been commenced some years before; and to the friends of that work other portions of the State looked for aid in the commencement and prosecution of a well digested system of improvements. And for the purpose of securing that aid, we were unwilling to see that work provided for alone. A proper feeling was evinced from that quarter towards other interests. And although, as I before remarked, we had laid what we then called the mammoth survey bill upon the table, we had not given up all as hopelessly lost, but expected, with the aid of the friends of the Wabash Canal, and those of the Central and Eastern Canals, and one or two other works, to be able to provide for the necessary surveys and examinations preparatory to the commencement of a proper system—such a one as we could reasonably hope to prosecute to a successful completion. But whilst we were devising some safe and proper plan for such a system, to our great astonishment, a messenger from the Senate announced the passage of a bill through that body, providing for the further prosecution of the Wabash and Erie Canal. This, sir, was unexpected, and produced that confusion in our ranks that might well be expected under such circumstances. All knew full well that if that bill passed, it would take from us many votes upon which we had been confidently relying to aid us in what we conceived to be an important and laudable undertaking. What is to be done? was the first inquiry made by every man who felt an interest in the matter. All knew, sir, that whatever was to be done must be done quickly in order to be successful. Now, Mr. President, for the information of gentlemen who have been so free in charging the friends of that system with bargain, sale, and corruption, (terms, sir, which I seldom use, and never apply unless I am properly posted up on the subject,) I will say that I never in my life used more untiring industry than I did on that memorable night, in order to secure strength enough to amend the Senate bill so as to provide for the survey of other works. I well recollect calling upon the lamented James H. Wallace, then a Representative for the county of Jefferson, at a late hour in the night, to see what strength he could bring to the bill in case we would provide for the Madison road. He gave me the desired information, and pledged the support of a certain number of members who were interested. And this secured to the citi-

zens of Madison and Indianapolis, and the intermediate country, that important work which, costly as it was, has proved so useful and profitable to all concerned. From him I passed to other gentlemen; still leaving each to propose a short description of his favorite work; until, with my tally paper in hand, I could count sufficient strength to amend the Senate bill, and thus prepare for a general survey. And, sir, upon the reading of the message from the Senate next morning, containing the bill before spoken of, the rules were suspended, the bill read a second time, and to the astonishment of its friends, a sufficient force was there organized to amend or defeat it. I offered the amendment which was subsequently adopted, providing for this ruinous system of internal improvements. Sir, it had for its object the obtaining of useful information, such as would afford a proper basis for the commencement of just such a system as the people of the State, in their cool moments, would have been satisfied with, and in the end could have completed without serious injury to themselves or their posterity. The true friends of the State's best interests did not at that time contemplate the prosecution of more than some three or four works: the Wabash and Erie Canal, the Central Canal, the White Water Canal, and perhaps one Railroad. And here, Mr. President, let me remark, that if those gentlemen who are now so clamorous about the misfortunes of Indiana, and seem to glory in their opposition to *the system*, had come forward at the proper time, and instead of laboring as they did to add MILLIONS to our public debt by increasing the number of works, given us their aid, no other works would have been commenced, and Indiana would this day have been one of the proudest States in the Union, and her people independent and happy.

I have, Mr. President, briefly passed over the history of the survey bill; I have disguised nothing. It was carried by a union of interests; it could be carried by no other means; and the same means, sir, would have given it the aid of every man then in the Legislature. It would have secured the support of my venerable friend from Ripley, (Mr. Smith,) who was then a member. It would have secured the support of my friend from Posey, (Mr. Owen,) had he been a member, which I think I shall be able to show before I close my remarks, by his subsequent acts as a representative of the people of Posey county. As I have said before, sir, the survey of the various works, designated, unsettled the public mind, dethroned reason for the time being, and prepared the people for their own ruin. The next session found each one of these various projects amply represented; and each Representative urging the superior claims of his favorite work. We had sought information, we had obtained it, and we were by force of public opinion, required to use the information



most profitably, as was supposed, by commencing a SYSTEM, embracing *every* practicable work which had been surveyed. We were not only required to commence, but each interest being jealous of the others, all had to be prosecuted simultaneously. Then, sir, those who now profess to have foreseen the disasters that followed, were again invoked to stand forward as the true friend of the people, and aid us in the adoption of a proper system. But they turned a deaf ear to our calls, disregarded our earnest entreaties, and refused to come unless we would increase the system by additional works for the benefit of their immediate constituents. That, sir, I again repeat, would have secured their support to the system, which they now tell us they then knew could never be completed, and would ultimately bring ruin upon the whole people. These, sir, are the friends of the people who have been so vigilant of their interests, according to their professions, but who by their acts would have made their ruin more complete.

It was not a system of internal improvements, Mr. President, that *these gentlemen* opposed. It was *the* system. I mean, sir, the one that made no provision for their constituents. I know, sir, such was the case with my friend from Ripley (Mr. Smith); he voted for adding other works to the system; and this he surely would not have done unless he was for the measure. And so with my worthy friend from Harrison, (Mr. Zenor,) for whom I entertain the highest respect. He, sir, voted for additions to the amount of one and a half million of dollars. If, sir, those measures had been adopted, he too, would doubtless have given it his support.

I have then briefly, sir, attempted to show that the opposition of those gentlemen to this system, was not because it embraced too much, but because it did not embrace, as they thought, enough. So it was with the gentleman from Posey (Mr. Owen). His far-seeing eye enabled him to penetrate the veil of the future and behold the ruin and oppression of the people, that would ultimately follow this mammoth system. But unfortunately for the people, they had not the advantage of his sagacity to aid their counsels, until this system was riveted upon them. He came upon the political stage the year after its adoption. And unfortunately for that gentleman when he did come, his vision did not seem so vivid and clear as it now is, until the scales of self-interest were removed from his eyes, by a refusal on the part of the Legislature to pass his favorite measure, providing for additional works to the amount of something like three millions of dollars, as a part of that odious system. Its adoption was strenuously urged by that talented gentleman, with more than his ordinary zeal, and not one whisper was he heard to make against the extent of the system within the legislative hall, until his darling project was voted down; then, sir, for the first time, the ruin and bankruptcy of the State seemed to

stare him in the face, and has been haunting his imagination ever since. And for my life, Mr. President, I have never been able to see how the addition of three millions to our indebtedness, as proposed by the gentleman, would have lightened our burthen or saved our character.

I have now passed over the history of the great source of what gentlemen are pleased to call our misfortunes. I have spoken of things as they are; I have disguised nothing; I have aimed to render every man his due, and to give each man's true position, and the motives by which he was governed. I have shown, sir, that both the bills, of which I have spoken, were passed by a union of interests which we were forced to ingraft. Fewer interests, however, would have sufficed if the high-minded and *disinterested* gentlemen, who are proud of their opposition to the system, had come forward with the spirit and magnanimity of statesmen and patriots, and given us their aid. This, however, they failed to do, and of that failure they boast. Sir, they are welcome to all the honor and glory their acts and motives merit when properly understood. Allusion was made by my friend (Mr. Zenor) who preceded me, to the scenes that occurred in this city on the evening after the passage of this bill, and to similar scenes all over the State when its passage was made known. I very well remember those scenes, and many other circumstances connected therewith. I well recollect the brilliancy with which the city was illuminated, and not only this city, but towns and villages throughout the State. All of which tend to prove what I before stated, sir, that the system was forced upon the people by their own action; and that if blame is to attach any where, it should attach to the people themselves, without regard to party or party politics.

I do not like, Mr. President, to speak of myself, but I hope I will be pardoned, sir, for referring to a conversation had on the evening after the passage of this mammoth bill, between the distinguished gentleman who represented the county of Vigo, and myself. We were, I believe, alone at my room, and whilst others were enjoying the glee and hilarity of the city, we calmly reviewed our action, and the state of public feeling in relation to it. We looked to the future with fearful forebodings. We, sir, there predicted all that has followed; we agreed, and that too without the spirit of prophecy, that in less than five years the joy of the people would be turned into mourning, that they were then looking at the bright side of the picture only, and that they would soon learn by experience, their precipitate and inconsiderate action. I am not certain, sir, that we did not also predict that there would be a great shifting and shuffling of responsibility upon the part of members of the Legislature, about the time public opinion began to react. A few more words, sir, in relation to this matter, and I am done with this part

of the subject. Although, sir, I am not one of those who consider a public debt a public blessing; yet, sir, disastrous as our public works have proved, I have no doubt that in many respects we are at least twenty-five years in advance of what we would have been, had our system of internal improvement never been commenced. By our misfortunes our people have learned by dear experience what they could not otherwise have known so well. Individual enterprise has been pointed to proper objects, and individual capital has found proper investments, which in the end will redound to the wealth of the State, and the general prosperity of the people. I hope you, Mr. President, and gentlemen of the Convention, will pardon me for having, traveled out of the proper line to say what I have in relation to this system of internal improvements. I should not have done so had not almost every gentleman who preceded me, traveled out of the way to attack it, and all those who were connected with it in any manner, whatever. What I have said seemed necessary in self-defense. And I do think, sir, if some gentlemen who are now so violent in their denunciations of that measure, and the men connected with it, would occasionally recur to their own acts in the premises, they would find enough to seal their lips forever in relation to it. Now, sir, to the subject properly before us, with the lessons of experience which the people have had in relation to public debt, I do think we may safely trust their discretion in the matter, and should not deprive them of the power of deciding for themselves.

Mr. President, it has been remarked that some delegates opposed the pending amendment [to strike out all that part of the section which provides that the Legislature may contract a public debt by first submitting a bill for that purpose to the people at an annual election] on the ground that it would prevent the re-charter of the State Bank.

My own position in this regard, I will briefly state: I am no friend to a State Bank. I am one of the fourteen who stood in opposition to that Bank when it was created. I rose and moved to reject the bill for its charter when it was first read at the Clerk's desk, and I fought it at every inch of its passage until it finally became a law. I am no friend of Banks—I would go almost as far to kick one as John Randolph said he would to kick a sheep [laughter]. But, sir, suppose the people shall hereafter decide that they desire a State Bank. With the restriction proposed by the pending amendment, the State would be prohibited from borrowing money for the basis of the capital of such an institution. Opposed as I am to a State Bank, I still say that they have an undoubted right to charter such an institution whenever a majority of the people express themselves in favor of it. And I will lend my support to no Constitutional provision which will restrict the

people from borrowing money for such a purpose, whenever they declare their desire to assess a direct tax upon themselves sufficient to pay the accruing interest, and to pay off the whole amount borrowed in twenty-five years. I believe in deferring to the will of the majority; and a public debt can only be created, under the provisions of this article as it came from the committee, by a direct vote of the majority of the people of the State. The restrictions upon the debt-making power are abundant.

Gentlemen have complained of the hardship there is in allowing a majority to rule the minority. Why, sir, ours is a government founded upon the principle that the majority governs. Unless this principle be clearly recognized, you can never pass a law having for its object the taxation of the people for the wants of the State; for there always will be, in every community, a minority who will object to being taxed at all. And, sir, it must be admitted, that it is also a hardship not to be endured, when there is a remedy, in being subject to the will of a factious minority.

Although I make it a principle to submit to the will of a majority clearly and fairly expressed, it is not because I have never had occasion to be dissatisfied with the decisions of majorities; far from it. Not long since, a majority of the people of the district in which I reside, decided that another man was better qualified to represent them in Congress than myself. [Laughter.] I did not believe a word of it, sir, [renewed laughter,] but I submitted quietly to the will of superior numbers.

I have no time to remark upon other topics that I had desired to, but I will say that when this anxiously looked for Bank question fairly comes before the Convention, I shall have occasion to refer to the opinions of the same distinguished man (Gen. Jackson) from whose message the gentleman from Monroe (Mr. Read) read us an interesting extract a few days since. But I shall read from another portion of the written opinions of that statesman with regard to State Banks.

I shall also refer to the journals of the Legislature which chartered the State Bank of Indiana, for we shall there see whether this is a whig or a democratic Bank. I have no disposition to allude to party distinctions on this floor, but it has been called a whig Bank, and I wish to examine into the truth of the statement.

Mr. CHAPMAN. We democrats have progressed since the charter of the State Bank.

Mr. KILGORE. Ah! and so has the Bank progressed. [Laughter.]

If the Bank was democratic when it was chartered, it is democratic now. For myself, I can exult in the fact that I am not and never was under any obligation to any Bank, and never will be. I never asked for any money at



a moneyed institution, nor endorsed a note for any one to be put into the Bank for discount.

Notwithstanding all this, I might be induced to vote for the re-charter of a State Bank, on account of the difficulty (perhaps the impossibility) of having a good currency in Indiana without such an institution, owing to the circumstances by which we are surrounded.

Mr. MORRISON. Mr. President, I should have been content to let this matter pass with a silent vote, had I been permitted to vote in silence; but, from the course taken by members on this floor, I am compelled to give my reasons for the vote I shall give upon the pending question.

In addition to this, I feel called upon, by what has been said, to set myself right with regard to personal matters.

On yesterday, in calling the attention of the Convention to another section of this report, I declared that, for myself, I should always be found on the side of the people in opposition to the encroaching spirit and influence of corporations; and if, for saying that, I have drawn down upon me the personal indignation of gentlemen, I beg pardon for unintentionally rousing their anger; but I cannot take back the sentiment.

It is very seldom indeed, sir, that I am at all personal in my remarks. I have always more important and more pressing work before me than indulgence in personalities with any member. Still I do not hold myself under that responsibility to any gentleman here, that I should quietly submit to be catechised for my public acts, or to be assaulted for my political conduct.

As to my connection with the system of internal improvements projected and commenced by the State in 1836-7, I never had anything to do with that system until after its inception, and considerable progress made in the construction of the public works.

I was then called upon to serve in the Legislature, not because I was a run-mad "internal improvement" man, but because the people considered me conservative upon that subject. In the winter of 1837-8 I was a representative of the people in this Hall. I was never in favor of the extensive system of internal improvements into which the State had plunged, but was anxious to curtail the gigantic proportions of that system so as to enable the people to carry out and perfect some part of it, rather than have a total wreck of the whole scheme, already entered upon. I was here, the representative of a peculiar interest, but was opposed to the profuse squandering of the public treasure upon detached portions of the public works, and upon such works as the Whitewater Canal and the Madison Railroad.

I labored to secure the completion of the Central Canal, because my constituents wished me so to act. Sir, I never dodge a responsi-

bility, and shall freely declare what my course was. And I say that the history of those years of our State will bear me out in asserting that the prudent course which I took, after the whig Fund Commissioners had almost exhausted the funds of the State, and after I was called upon to act in an executive capacity in the Board of Public Works in the years 1839 and 1840, I saved a very large sum that would otherwise have been lost. I took the responsibility of expending ninety thousand dollars in finishing and bringing into use a valuable portion of the Central Canal, and was the man under whose authority the first water was let into that canal by which it was put into operation. That work was partially constructed, and I was directed to proceed to its completion. Did I, or do I seek to shun responsibility?

Acting as a member of the Board of Public Works, I expended the public money for the purpose I have described, took legal and proper vouchers for all my disbursements, and got an honorable acquittance from the State for all the monies that I ever handled in the discharge of my duty.

But gentlemen do not seem to be satisfied to let the matter rest here—they desire to make some political capital out of the matter. An attempt has been made to fix an odious responsibility upon the members of the Board of Public Works, because that Board did not spread upon its records a special order of appropriation to each work, as the progress of the work demanded expenditure. The law of the State was supreme—the order of the Board was only secondary, and was not generally regarded as at all obligatory, but was frequently disregarded as being merely formal. Long after the suspension of the works, in consequence of the inability of the State to furnish further means, and in the face of the wrath of the people which was impending over the heads of those reckless politicians who had so wantonly and thoughtlessly brought bankruptcy upon the State, a band of political stock-jobbers, in the Senate of the State, undertook to digest a scheme to hide their own political deformity, and to screen their favorites from public reprobation. They organized a "scape goat" committee, with inquisitorial powers, to interrogate, by written questions, the members of the Board, whose duty it had been, under the law, to expend the money on the works. These questions were propounded in a Jesuitical spirit, and with lawyer-like technicality, implicating in the premises, every member of the Board. The members of the Board, conscientious of the legality of their actions, and the correctness of their official conduct, promptly and fully responded to these malicious interrogations. Their answers were honest, and should have been conclusive; but to drop the matter then, would have defeated the designs of the originators of the farce; so, therefore, they, in order to escape from their dilemma in the

smoke of the battle, ordered the commencement of suits on the part of the State, for an alleged illegal disbursement of the public monies. Notwithstanding this great flourish of trumpets, no suits were brought against the members of the Board, for it was easily found, on legal examination, that the expenditures were made in accordance with the law of the State, and that the Legislature had legalized the expenditure. Thus exploded and fell dead this attempt to manufacture political capital, and to shift censure from those who were actually culpable, to be borne by those who had faithfully and honestly discharged their duty in pursuance of law.

Although, often invited, these suits never were brought—never will be brought—and never can be brought or sustained.

I regret, Mr. President, to digress thus much from the immediate question in debate, but the gentleman from Hancock (Mr. Walpole) has traveled out of the way to call up this personal discussion upon personal matters, and I am forced in self-defense to take notice of it. It is sometimes much easier to show talent in a strain of personal invective and in the stirring up of political animosities, than calmly and patiently to discuss a subject in its legal or philosophical bearings, or in a statesmanlike manner. I seek nor envy no such notoriety.

I said not, in reply to what has been said, deny, that I am a democrat, in the original sense of the term, But I am entirely averse to arraying party against party in this Hall. But notwithstanding my indisposition to excite party strife, I cannot go back to that old federal doctrine promulgated by Alexander Hamilton, that a "national debt is a national blessing;" and I must say, that if the whig party consider the gentleman (Mr. Walpole) as their organ, and the exponent of their political creed, I shall join issue with the gentleman and his party upon that ground. We hold different sentiments here from those entertained in England with regard to a national debt. There it is one of the strong pillars of kingly power, and there it may be good policy, for the interest which the higher classes have in the debt constitutes one of the strongest ligatures which bind together the colossal British Empire, and the nobility and men of influence defend their own purse when they defend the existing government—a change would destroy them and their fortunes.

It is not so here. If we incur a public debt, the people are taxed directly to pay the interest on that debt. This is not necessary to attach them to their country—they labor for their support, and are not dealers in stocks and government bonds, but the interest paid by them as is well known, generally goes into foreign purses.

The people of this State, have, since 1836, expressed themselves as strongly opposed to the creation of another public debt.

Mr. HALL said, if the gentleman thinks that the whig party, as represented in this Hall, are in favor of the creation of an additional public debt, he is mistaken; and I will further say, I have authorized no man to speak my sentiments for me. The section under consideration was reported to the Convention in accordance with instructions embodied in the resolution offered by the gentleman from Ohio (Mr. Pepper).

For myself, and so far as I know, gentlemen of the political party with which I act when at home, there is anything but a disposition to bring partisan politics into the discussions in this Chamber.

Mr. MORRISON. I am happy to hear the gentleman disclaim such doctrines, and I am confident that there are other members of the whig party upon this floor, who will not subscribe to the doctrine that the Legislature shall be left free to contract another State debt. I only spoke of this matter as a whig principle so far as the gentleman from Hancock assumed to be the organ of that party.

Mr. WALPOLE. I did not say that it was whig policy to incur another public debt.

Mr. MORRISON. The gentleman charged me with supporting the opposite doctrine, and with saying that I did so as a democrat. I did not say in the course of my former remarks that that opposition to the incurring of another State debt was the democratic side of the question, but I can say so, if the gentleman wishes to drive me into a declaration upon that subject.

The gentleman from Hancock also delivered us a lecture upon the doctrine that the people are capable of self-government, he asserted repeatedly that he recognized the omnipotence of the people in whose judgment he reposed the fullest confidence, and that we, who are in favor of restricting the Legislature from borrowing money or contracting a State debt, set ourselves up here for thinking machines for the people. There is no assumption of that kind among those who are in favor of a strong restrictive principle in this regard—on the contrary, we are simply and faithfully representing the solemnly and often expressed will of the people. I know that those who have chosen me to represent their opinions in this Convention desire the Legislature to be restricted by means of a constitutional provision forever, from contracting a public debt except for the purposes specified in the section which was ordered to be engrossed yesterday. They wish effectual constitutional protection against the recurrence of the events of 1836. This being the case, I do not know what becomes of the splendid figures as to the exalted position of those who have too much confidence in the people to wish to restrict them. I, too, respect the will, and repose confidence in the judgment of, the people, and I will say, that "he that knoweth his master's will and doeth it not, the same



shall be (or should be) beaten with many stripes."

Mr. RARIDEN (in his seat). Amen.

Mr. MORRISON. No, sir; I am not through yet.

Mr. RARIDEN (in his seat). I was only saying amen to the gentleman's sentiments; not as the conclusion to his speech.

Mr. MORRISON. The rightful duty of delegates in this Convention is to stand here and protect the interests of the people, by guarding against the encroaching tendency of all combinations, of an unholy character, which may extend their potent influence into the legislative halls. It is a notorious fact, mortifying as it may be to our pride, that hitherto the agents of corporations have been able, in the capacity of lobby members, to carry through the Legislature almost any measure which their principals deemed of sufficient importance to expend money enough to carry. Corporations and combinations of wealthy men, have this immense advantage over the people: they can act as an unit; they concentrate all their power under the direction of one will; the objects to be accomplished are of such financial importance and are sure to bring such abundant pecuniary returns, that they can afford to bring all their influences to bear, first in the formation of the Legislature, by the selection and election of their friends, and then to influence and control the Legislature after it assembles here. And, therefore, I desire so to frame this new Constitution that future Legislatures will not be subject to such influences, brought to bear by corporations and combinations of men of wealth, to secure special privileges and partial legislation. I wish to have it explicitly declared in our organic law, that the Legislature shall have no power, under any circumstances, to contract a State debt, except for the purpose specified in the following section, which has been passed to a third reading:

"The General Assembly may contract debts to meet casual deficits or failures in the revenue or for the purpose of paying the interest on the State debt, but such debts shall not at any time exceed the amount of such deficits: *Provided*, that the State may contract debts to repel invasion, suppress insurrection, or, if hostilities are threatened, provide for public defense."

As to the question of a State Bank, which has been introduced into this debate, I cannot now discuss it because the half hour rule would cut me short before I had fairly begun. But I will remark, that I have heard no democrat propose to make the State bonds of Indiana the basis of a banking capital. I believe that no democrat wishes it. I certainly do not. Nor do I know that any whig will make such a proposition; but I am unwilling to allow the gentleman from Hancock to charge such a design upon the democratic party or upon the

members of that party upon this floor, for the sake of the resulting political capital.

Were I disposed to recriminate upon the gentleman, I should not have far to go for abundant materials for his discomfiture. I could easily point to the loss of four millions of dollars lost to the State of Indiana, by the Agency of whig Fund Commissioners, and through the agency of, and by means of, the United States Bank—that beau ideal of banking of the old whig party. In the investment by which the State lost that four millions, no democrat had any part—it was solely and exclusively managed by whigs, from its inception to its final catastrophe.

If party politics are to be drawn into this discussion; if the speech of the gentleman from Hancock is to be clearly understood as the tocsin of his party, I am prepared to go into the war, to go through the campaign and, as it will probably become necessary, carry it into the enemy's country. When in the board of public works we acted under the laws of the State, we acted in accordance with the will of our constituents, and were severally representing local interests, the board being organized on the representative principle and no party lines were drawn. But whenever gentlemen wish to take a tilt at me in regard to my political acts or the policy of the party with which I act, when outside of this Convention, let those who live in glass houses beware how they rashly throw stones.

I am decidedly in favor of the proposition of the gentleman from Ripley (Mr. Smith) to strike out all the latter part of the pending section, so as to positively prevent even an attempt to impose, in the future, a State debt upon the people of the State.

Mr. WOLFE said he was opposed to this political discussion. In his opinion delegates were not elected to the Convention with reference to party lines, but rather for their good looks if not for their good principles.

In order to put a stop to this discussion, which had degenerated from debate upon principles to personal allusions, he would demand the previous question upon the adoption of the pending motion to strike out the latter part of the section.

Mr. OWEN hoped that the motion would be withdrawn, to give the delegate from Hancock the privilege of speaking.

Mr. WOLFE. If it is the pleasure of the Convention, I shall not insist upon the call for the previous question.

Mr. DUNN. I rise, sir, for the purpose, if possible, of bringing this debate to a close. If any gentleman wishes to make a personal explanation, however, I will yield the floor.

Mr. OWEN. If the Convention will indulge me for a few minutes, I shall be glad to make one or two remarks.

And first, sir, I wish to offer the following amendment: to insert, after the word "article," the words "and for the discharge of the existing debt of the State."

Upon looking carefully over the whole subject in debate, I do not see any contingency likely to arise which is not provided for in the section, save the one which is the subject of the amendment I have read. I am not sure that this provision is really necessary, still it may be wise to provide against a possible contingency by inserting the words of the amendment.

While I am upon the floor, I will say, because I think it useful not only at the present time, but useful for the future, that I hold him to be no true friend to the interests of the people of Indiana, who suborns, in this Chamber, in support of some proposition which he despairs otherwise to carry, the spirit of party. [Applause.] I came here as a delegate to the Convention of the people of Indiana. I am a democrat, as all the world—our world here in Indiana, at least—well knows; but while I am, and always have been, a member of the democratic party, there is another position which I hold—a position more important at the present time than a membership in either of the two great political parties that divide our country. I am a citizen of the State of Indiana. As such I came here. As such I act here. When I entered this Convention I left partisanship behind.

The gentleman from Hancock (Mr. Walpole) remarked, that he hoped no whig would be found supporting a provision restricting the people from incurring a public debt, whenever, through the ballot-box, they expressed a desire to do so.

I do not now see the gentleman from LaPorte (Mr. Niles) in his seat, but it was only yesterday that he (no undistinguished member of the whig party) made a most decided speech in favor of restriction, and expressed the hope that no provision would be adopted giving the Legislature, under any circumstances, the power to contract a debt on behalf of the State, except for the specific purpose of providing for a failure in the revenue and for paying the interest of the State Debt. And so have other whigs expressed themselves. With what show of reason, then,—with what chance of success,—can the gentleman sound the rallying cry of party, and cast upon all who go not with him, the reproach that they distrust and condemn the people?

It is unparliamentary to impute unworthy motives to gentlemen, and I shall therefore impute none to the delegate from Hancock. This I will say, however, that since the gentleman began his speech, I have been in search of a good motive for the course he has pursued, and that, after using due diligence, I have been wholly unsuccessful in finding one! [Laughter.]

A few words now, sir, in reply to the remarks of the gentleman from Hancock relative to my course in the Legislature in 1837-8. His excuse for alluding to such a subject is remarkable. Some of my friends, he said, thought me infallible, and he desired to prove to them the contrary. I am sorry any of my friends should have been so far mistaken. The gentleman added, that he desired to show, that, for once in my life at least, I had been in error. A useless labor, sir! If he had asked me before he commenced his speech, I should have confessed, not to once only, but to fifty times. [Laughter.]

As regards the internal improvement system I have this to say, that, with the lights now before me, I should not have supported what was called "the calf bill." Yet there was much to be said in defense of that move. If the State is to undertake internal improvements at all, their benefits ought to be as diffusive as possible. Otherwise, certain portions of the State are taxed for the construction of works from which they derive no benefit. At the time those public improvements were commenced, the feeling among the people of Posey and the adjoining counties was: if we must be taxed for the support of this system, let us, at least, have a share in its benefits.

But again, sir. We who came into the Legislature after the system was adopted, considered it already fixed upon the State beyond recall. Since the gentleman has read passages from one speech of mine, I may be permitted to quote a few words from another. He will find it on the files of the "Democrat" for February, 1838:

"It is too late to talk of receding now. That was the question before you, sir, and before those who served with you in the session of 1835-6. You assumed the responsibility. You decided that question. Be your decision for good or for evil, it is made and cannot be recalled. We have put our hands to the plough, and may not look back. We have spent, not hundreds, not thousands—we have spent MILLIONS already. The system is fastened on us, in spite of ourselves. You remember, perhaps, sir, the old story of Sinbad the Sailor; how, deceived by his humanity, he took a deformed old wretch upon his back; how the creature twined its legs about its victim; and when the luckless sailor sought to cast it off, clutched him by the throat, till he was fain to desist. Sir, Sinbad's case is ours, &c."

I have a word, now, in reply to the gentleman from Delaware, who spoke of those living in counties not benefited as assuming to themselves undue credit for their opposition to a system that has turned out so ill. In proof that I have claimed no such credit, I read a few words from a communication of mine printed in the "Indiana Statesman," in May, 1845:

"I pray you to observe, that I am laying no claim to especial merit for my opposition to this



system, however confident I am, that classification would have saved from reproach and temporary insolvency, our State. I resided in a county not immediately benefited by that system, and therefore, to some extent, out of the blinding atmosphere," &c.

And, finally, if, even as a classifier, I too much leaned towards the internal improvement system, the crime, if as crime it is to be imputed, was one of which every single individual of the hundred and fifty who composed the Legislature, was guilty equally with myself.

I should be glad to hear from the chairman of the committee who reported this section, his opinion as to the utility of the amendment which I have suggested.

MR. HALL (doubtfully heard). Certainly, I can conceive of no harm at all that can result from the incorporation of this provision into the Constitution; and if it would be to the interest of the people so to do, I have no objection to offer.

THE PRESIDENT. The Chair would say to the gentleman from Posey, (Mr. Owen,) that, as matters now stand, this proposition would not be strictly in order.

MR. OWEN. I withdraw it, then.

MR. PEPPER from Crawford. Would it not be still in order to amend?

THE PRESIDENT. It would be in order to amend the original section.

MR. PEPPER. I had intended to offer some remarks upon this subject, but I will defer them, I believe, and offer the following amendment to the original section, as embracing my views:

Add the words "*Provided, however, That the State shall never engage in any internal improvement system or systems.*"

MR. WALPOLE said—

MR. PRESIDENT: My remarks to-day, on the question now under consideration, were not intended by me to give offense to either the gentleman from Posey, (Mr. Owen,) or the gentleman from Marion (Mr. Morrison). So far as these gentlemen were alluded to by me, it was to show and satisfy this body that the policy of the State, in her system of internal improvement, which they now so loudly deprecate as being the extreme of folly and imbecility, they at one time thought and acted quite differently from what they now do, in regard to it; and that, while they have attempted, in the course of this debate, to insinuate, if not expressly to declare, that they had ever opposed it from its inception to its explosion, that in truth and in fact, the one (Mr. Owen) was for an extension of the system, and the other (Mr. Morrison) was a devotee to the original system.

The gentleman from Posey, (Mr. Owen,) in his replication, has attempted to avoid the implication. At the time I addressed this body this morning, I spoke from verbal memory alone. I had not consulted the history of his course upon the system for years, until after the adjourn-

ment this morning, and I am now happy in having it in my power to fortify all I have said by written history. I assumed that he was not opposed to the system of internal improvement at the session of the General Assembly, after its passage—that he was not then for classifying the system, but was for an extension of the same, to a large amount. Such were his views until he was overwhelmed in his efforts to extend the system. That the Convention may know which of us is in the right, I refer to the Journal of the House of Representatives, for the session commencing in the month of December, 1836. On page 252, will be found the following proceedings and resolutions:

"MR. OWEN, after having obtained leave, offered the following resolutions:

"*Resolved, That, in the opinion of this House, it is expedient to extend the system of internal improvement entered upon last year, to an amount of, not exceeding one million and a half of dollars.*

"*Resolved, That a committee of two from each Congressional district, be appointed, with instructions to prepare and report to the House, without delay, a bill embracing such works, not exceeding a million and a half, (as above,) as shall, in their opinion, give the most general satisfaction to the disaffected portions of the State, having reference—first, to the probable productiveness of the works embraced; secondly, to their being located, so far as practicable, in such portions of the State as have been heretofore unprovided for in the general system."*

Upon the adoption of this resolution the yeas and nays were recorded, and among those who voted for the resolution, I find upon the journal the names, among others, of John P. Dunn, Abel C. Pepper, Joseph A. Wright, and Robert Dale Owen,—the total who voted in the affirmative being 39. In the resolutions I have just referred to and read, you find the emphatic declaration, as well as the vote of the gentleman, that it was expedient to extend the mammoth system of 1836, to an amount not to exceed one and a half million of dollars. But, Mr. President, the hasty remarks that I made this morning, in relation to the gentleman's internal improvement proclivities, are sustained further. On the 14th day of December, 1836, Mr. Eggleston introduced in the House of Representatives, a bill to extend the system. The extension, all admitted at the time, to approximate to near three millions of dollars. Mr. Owen was found to be in favor of the bill. It was understood, at the time, that it was prepared under his counsels. He addressed the House in a speech of much plausibility if not of persuasion. I will read some extracts from it. It may be found printed in the *Democrat*, published at the time by Bolton & Livingston, under the date of the 23d December, 1836. I had the pleasure of seeing a copy of the paper to-day at

the Sentinel office, in this city. Any gentleman who will take the trouble, can see it. I will here read a few extracts from the speech, to show this body that he favored an extension of the system:

"Mr. OWEN said: I never rose, sir—I never expect again to rise, to address a legislative body on a subject more vitally important than is the subject before us, to the State of Indiana. Were my opinions thereon less decided, or were the duty I owe to my constituents to express these opinions, less imperative, I should give a silent vote.

"The subject, sir, naturally resolves itself into two great questions. Last year, an internal improvement bill passed, appropriating ten millions for State works. Now, the first of the two questions, is, 'shall there be any addition to the system of last year?' and second, 'shall this bill be that addition?'

"First, sir, as regards the propriety of any addition, have you ever calculated how many counties had the benefit of our ten millions worth of improvements last year? Thirty-nine counties out of eighty-five: leaving forty-six unprovided for;—say one-half. What does this neglected half ask for? An equal appropriation to that of last year!—or eight millions!—aye, six, or three? Two millions is the amount of their moderate—their modest equitable demand.

"What is the reply? That, to grant such a request, is to endanger the safety of the State. Indeed, sir, we are richer, by a million and a half of surplus revenue, than last year we were; and because we propose to appropriate this God-send—this wind-fall, with one poor half million more, to satisfy the demands so just, we must needs have this cry about the ruined credit of the State rung in our ears.

"Look at our bill, sir. Is it not a moderate—ay, an humble one?—do we not deserve credit for our moderation? Was there not temptation to over-step the limits of prudence?—yet have we done so? Have you never thought of the possibility of demands being raised until the whole system was broken down? For myself, I will lend my aid to no such plan."

Again, he says:

"Can you expect, sir, to move on?—I say not without consent and harmony of action. But can you expect to move on, without finding the wheels of government clogged at every step, if you deny to us such common justice as this?

"Consider, sir, what questions are coming up—The surplus revenue question—the three per cent. fund distribution—the specific appropriation to meet the interest of the mammoth debt. Are gentlemen prepared to vote on these? I, for one, will oppose every measure that goes to tax my constituents, until this or some similar bill passes.

"Think of the wide-spreading gratitude that will spring up through the land, to bless you, if this bill pass,—gratitude, not ostentatiously ex-

pressed, perhaps—not loudly obtruded on your notice—but yet not less deeply felt or warmly remembered on that account."

I need not comment upon the extracts I have read. His argument went to establish that justice demanded the extension, and that we were a million and a half richer than when the system was adopted; that the proposition to extend was a modest one; that, by their proposition for two million more, they had not overswept the limits of prudence; that he would never lend his aid to break down the mammoth system; that, if the system should not be extended, the wheels of government would be clogged at every step, and that common justice demanded the additional improvements.

Such, sir, were the views of the gentleman on the 23d day of December, 1836. And, connected with this scrap of history, is this additional proof of his desire to augment the public indebtedness: On the 16th January, 1837, Mr. Vandever introduced the following resolution, which may be found on page 254 of the journal of that session, in the following words:

"Resolved, That it is inexpedient, at this time, to add any new works to the system of internal improvements."

Upon the question of the adoption the vote is recorded, and I find the gentleman voting in the negative, and thereby declaring, on the 17th January, 1837, that it was expedient to add works of internal improvements to the mammoth system; and not until every effort was exhausted to increase the system, did the gentleman enlist in the opposition, in which he has attempted to avoid his connection with.

As to the gentleman from Marion, (Mr. Morrison,) I will read, in support of my position as to his identity with and support of the system, the following extracts from the report of the Senate's committee, at the session of 1841 and '42. It may be found in the legislative documents of the session of 1841 and '42, commencing at page 144. The committee was composed of Joseph C. Eggleston, Nathaniel West, Thomas D. Brenel, Samuel W. Parker, and E. M. Chamberlain, and their duty was to inquire into and report upon the official acts of those who were charged with the prosecution of our system of internal improvements; and the gentleman from Marion, (Mr. Morrison,) having been a member of the board of internal improvement, the committee report of him as follows:

"Mr. Morrison was limited by the board, and without due regard to the ability of the State to pay, as indicated in the order of the board, proceeded to make unauthorized lettings to the amount of \$91,000 or \$92,000. If all the members of the board had acted in the same manner in the exercise of lettings, over and above the probable means of the State, in that short period of six months during which he



acted, would have amounted to \$828,000, or \$1,756,000 in one year."

"These lettings were not harmless in their consequences, as they added to the amount of the indebtedness of the State to contractors, and resulted in an increased emission of treasury notes, which are stopping the resources of the State revenue and operating injuriously on the currency of the country."

In reading these extracts, I do not wish to be considered as at all implying that the gentleman wantonly done wrong, but to remind gentlemen that we all are apt to commit error in public matters—that, while we are afraid to trust the people with power, we are not safe depositories of power—that, when the gentlemen from Posey and Marion assume that they can settle the question, and, therefore, the people should not exercise the power—that they themselves are the creatures of error. I say this without design of giving the least offense to either of the gentlemen, both of whom I believe would do no intentional wrong to the public interest.

Mr. DUNN of Jefferson. From the very wide range which this discussion has taken, I think that we should all be admonished hereafter to resist the very beginnings of this evil. We have had here a very good illustration of that ancient and venerable sentiment: "Behold how great a matter a little fire kindleth!"

I regret, as much as any gentleman upon this floor, that there has been any allusion made to parties in this debate. I say this in no spirit of rebuke whatever. I do not attack any man's sincerity at all; but, for myself, I would just as soon think of carrying a political party question into the sacred pulpit, as I would think of introducing such a question upon this floor. [A voice—"Consent."] And so long as I may be called to remain in my place in this Convention, I shall be very careful not to utter one word which may indicate even the existence of two such parties in this country as the whig and democratic parties. I do not know so much as one question which has been, or is likely to be, brought before this body, upon which we can be divided as partisans. Even upon the subject of banking, which would be most likely to divide, I find many whigs who are in favor, and many who are against a State Bank. I find, also, among whigs and democrats, many of the most ardent friends of banking; therefore, I can see no propriety, whatever, in bringing party distinctions into this body. But because there has been ultra and irritating matter spoken upon both sides of this question, and by men of both political parties, I do not think the Convention is now in a situation to come to the vote with that calmness with which it is desirable they should approach the adoption of a measure of such importance as that before us. I do not think gentlemen are prepared as they should be to act upon this question.

Mr. RARIDEN (in his seat). Yes, they are.

Mr. DUNN. I never saw a man who was excited in my life, but what he was ready to act—

Mr. RARIDEN (in his seat). I am not excited at all.

Mr. DUNN (continuing). And for that very reason, sir, I say we ought to wait, and forget our excitement before we come to the vote. This question naturally connects itself with banks, and we have already postponed the consideration of the first section because we considered that we were not ready for a division upon the subject of banking. The section now under consideration, in the opinion of many, is just as intimately connected with this important subject; and so far as this discussion has progressed, it has at least produced one useful result—that of directing the minds of the members to the important points embraced in these amendments. Let us now take time for their consideration. Let us lay the subject upon the table for a short time—a few days, at least—and proceed with the consideration of other business. I should prefer that the subject should lie over till we come to the consideration of the principal report upon the subject of banking, and that no vote should now be taken which would commit the body for or against the State Bank. For these reasons, I move that the section and pending amendments be laid upon the table.

The motion was lost.

The PRESIDENT. The question is upon the amendment proposed by the gentleman from Crawford (Mr. Pepper).

The question being taken upon this amendment, it was rejected; and again the question recurred upon the amendment of the gentleman from Ripley, (Mr. Smith,) striking out from the section all after the word "article" in the third line.

The yeas and nays upon this question were now demanded, and seconded by ten members.

Mr. STEELE. Before going into this vote, I wish to state a few impressions of my own mind, and report myself to my constituents. It is my impression, Mr. President, that our constituents have only required at our hands that we should restrict the power of their representatives to borrow money. But we are called upon by this section, since the latter clause was stricken out, to take out of the hands of the people, the exercise of the right to borrow money. I want gentlemen to mark my consistency here. It will be recollected that some days past, I refused to vote so as to sew up the rights of the people at the ballot-box. I refused to go for a section, the object of which was to deprive our fellow-citizens from the exercise of the right to vote for whom they please. And now let me say, once for all, that when we undertake to restrain the exercise of the sovereign power of the people at the ballot-box, we strike

a blow at the very foundation of our republicanism—the very foundation of that great fabric of freedom which I have been endeavoring to sustain for the last forty years. I am well aware that the people of Indiana have sustained a great loss on account of their imprudence, or the imprudence of their representatives, in the matter of borrowing money; and I well know that the people in my section of country have learned something from this lesson of experience.

I was surprised to hear my friend from Posey (Mr. Owen) affirm his belief that the people of the State in 1836, were so much under the influence of the internal improvement excitement of that day, that they would have voted for the mammoth bill if it had been submitted to them.

Let me say to my friend from Wayne, (Mr. Rariden,) that during a portion of the time of which I am speaking, I was before the people, and one of their servants here; and that I was uniformly opposed to borrowing money to carry on the Wabash and Erie Canal, and I was opposed to borrowing money for the purpose of banking. I was for shielding and protecting the people against these measures, and this has been the principle which has guided me in every act of my public life. [Laughter, and cries of "question," and "go on! go on!"]

Mr. President, if gentlemen want the question, they shall have it. [Cries of "go on!"] I am only telling my experience, sir, and I have had a great deal of experience, and if I have exhibited some humble share of patriotism, I had supposed it might not be amiss to tell it. I thank God to-day, Mr. President, that none of the fire-brands of partisan strife have ever offended me. No gentleman upon this floor shall be the exponent of my opinions in regard to the rights of the people. They are all the product of my own experience, and the reflections of my own mind. I will go for no restrictions of the people, at the ballot-box; but I am at all times ready and willing to restrict the agents of the people—I am ready to deprive them of the power of borrowing money, because I believe that the exercise of this power has already made the most dangerous inroads upon the rights of the people of Indiana.

With reference to the idea of borrowing money to pay the interest on the public debt, it is my opinion that we can rid ourselves of debt much easier than by direct taxation; and I have long wished that this course might be taken, so that our politicians would no longer have occasion to make a hobby of this idea of borrowing money.

I have only to say in conclusion, that I am extremely sorry to-day, that we are expending so much time uselessly in this Hall. Let us pass upon the business before us with more expedition. Let us have less contention, and more voting. Let us in no case vote as partisans. [A voice—"consent."] Let us vote

what we honestly believe will subserve the highest interests; and, as God is my judge, with my hands uplifted, I do most solemnly profess that my vote shall not go upon the journal, neither to gratify any evil feeling, nor to support any measure which I may not believe, conscientiously to be right, and for the best interests of the people of Indiana.

The Secretary now proceeded to call the yeas and nays upon Mr. ———'s amendment—striking out from the section after the word "article" in the 3d line, the following words:

"Unless provision be made therein to levy and collect an annual tax sufficient in amount to pay the interest thereon, and to discharge the debt within twenty-five years; nor shall such act take effect until it shall have been submitted to the people at a general election, and shall have received a majority of all the votes cast for and against it."

And the vote was reported—yeas 64, nays 53—as follows:

YEAS.—Messrs. Allen, Anthony, Bascom, Beach, Berry, Biddle, Borden, Bracken, Bryant, Carr, Chapman, Coats, Colfax, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dunn of Perry, &c., Duzan, Fisher, Foley, Gibson, Graham of Miami, Had-don, Hardin, Hendricks, Johnson, Kent, Kendall of Wabash, Kindley, Mather, Mathis, May, McClelland, McFarland, Miller of Clinton, Miller of Fulton, Miller of Gibson, Morgan, Morrison of Marion, Niles, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Read of Clark, Read of Monroe, Richey, Sims, Smiley, Smith of Ripley, Smith of Scott, Spann, Tague, Trimble, Watts, Wheeler, Wiley, Work, Wunderlich, Yocum, Zenor, and Mr. President—64.

NAYS.—Messrs. Badger, Balingall, Barbour, Beard, Blythe, Bowers, Brookbank, Chenowith, Clark of Hamilton, Cole, Conduit, Crawford, Dobson, Dunn of Jefferson, Farrow, Frisbie, Garvin, Gootee, Gordon, Gregg, Hall, Hamilton, Harbolt, Hawkins, Helm, Helmer, Hitt, Hogin, Hovey, Howe, Huff, Kilgore, Lockhart, Logan, Maguire, March, Milligan, Milroy, Moore, Murray, Nave, Newman, Prather, Rariden, Schoonover, Shannon, Steele, Stevenson, Taylor, Todd, Wallace, Walpole, and Wolfe—53.

So the words were stricken out, and the question recurred upon ordering the section to be engrossed.

MR. RARIDEN. I move now to amend the section by adding the following.

"Unless provision be made."

MR. MORRISON of Marion, and Mr. PEPPER of Ohio. That is the same which was stricken out.

MR. RARIDEN. No, sir. Widely different from that.

MR. MILLER of Gibson moved to lay the amendment upon the table; which was agreed to.



**Mr. HALL.** We might as well now, as at any other time, I suppose, insert a provision authorizing the State to engage in banking; because the section, as it now stands, excludes the State from borrowing money for the purposes of banking.

**The PRESIDENT.** The Chair would suggest to the gentleman that the committee has already laid the first section upon the table, in order to amend the Bank question.

**Mr. HALL.** This section, as it now stands, leaves the State without the power to borrow money for any other purpose than those prescribed in the second section. Therefore, I offer the following proviso to be added to the section now under consideration:

*"Provided, That nothing in this section shall be so construed as to prevent the General Assembly from taking stock in a State Bank, and providing the means therefor."*

**Mr. BERRY.** I move to lay the amendment upon the table.

**SEVERAL VOICES.** "Yeas and nays."

And the demand was seconded by ten members.

**Mr. RARIDEN.** I would like to have a call of the House before this vote is taken. It seems to me there must be nearly fifty members absent from their places. I move a call of the House.

But the Convention refused to second the demand.

**The PRESIDENT.** The Secretary will proceed with the call of the yeas and nays.

The yeas and nays being taken by the Secretary, the vote was reported—yeas 65, nays 55—as follows:

**YEAS.**—Messrs. Alexander, Allen, Anthony, Bascom, Beach, Berry, Biddle, Borden, Bracken, Bryant, Chapman, Chenowith, Coats, Colfax, Crumbacker, Davis of Parke, Davis of Vermillion, Dick, Dunn of Perry, Duzan, Fisher, Foley, Gibson, Gordon, Graham of Miami, Gregg, Haddon, Hardin, Helm, Hendricks, Hovey, Howe, Johnson, Kent, Kendall of Wabash, Mather, Mathis, May, McClelland, McFarland, Miller of Clinton, Miller of Fulton, Milroy, Morgan, Morrison of Marion, Niles, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Read of Clark, Read of Monroe, Ritchey, Sherrod, Sims, Smiley, Smith of Scott, Taylor, Trimble, Wheeler, Wiley, Wolfe, Work, Wunderlich, and Yocum—65.

**NAYS.**—Messrs. Badger, Balingall, Beard, Blythe, Bowers, Brookbank, Carr, Clark of Hamilton, Cole, Conduit, Crawford, Davis of Madison, Dobson, Farrow, Foster, Frisbie, Garvin, Gootee, Hall, Hamilton, Harbolt, Hawkins, Helmer, Hitt, Hogin, Huff, Jones, Kilgore, Kinley, Lockhart, Logan, Maguire, March, Miller of Gibson, Milligan, Moore, Mowrer, Murray, Nave, Newman, Prather, Rariden, Schoonover, Shannon, Smith of Ripley, Spann,

Steele, Stevenson, Tague, Todd, Wallace, Walpole, Watts, Zenor, and Mr. President—55.

So the amendment was laid upon the table; and the question again recurring upon ordering the section to be engrossed—

**Mr. NILES.** I beg leave to remark, that I have been engaged in the argument of a case this afternoon, in the court sitting below stairs. I was exceedingly desirous of recording my vote upon the question decided a few moments ago; and I had made arrangement to be sent for, but it was overlooked. I would be glad if I could be now permitted to vote upon that question.

**SEVERAL VOICES.** "Consent," "consent."

**Mr. NILES.** I vote "yea," if I can have the privilege.

So Mr. Niles was permitted to record his vote as above, by unanimous consent of the Convention.

**Mr. WATTS.** I now give notice that on to-morrow I will move so to amend the rules that any member shall be allowed to record his vote, if he shall be any where in the Hall when the vote is taken.

**Mr. KILGORE.** I move that the Convention do now adjourn.

But this motion was lost.

**Mr. PEPPER** of Ohio. I rise for the purpose of inquiring, what is now the section under consideration?

**The PRESIDENT.** The section remains as it was reported by the committee, only the Convention have stricken out all after the word "article" in the third line.

**Mr. PEPPER.** I move that the section be now ordered to be engrossed for a third reading.

**The PRESIDENT.** That has been a standing question, without motion, for the last three days.

**Mr. MILLER** of Gibson. I demand the previous question.

But the Convention refused to second the demand.

**Mr. DUNN** of Jefferson. As there appears to be a disposition to bring the Convention to an immediate vote upon this section as amended, I desire to say a few words, that the reasons for my vote may not be misunderstood. I shall vote against the section as it now stands, without any reference to its effects upon the future banking operations of the State. And it may be proper for me here to say that if I am compelled to take my choice between a State Bank system and a well regulated Free Bank system, I expect to be found voting with the friends of free banking. [Cries of "good, good."] Nor, sir, shall I vote against the section out of any desire that the State should hereafter engage in works of internal improvement. I oppose the adoption of the section upon the broad principle that it is an extraordinary,

unreasonable, and unnecessary restraint upon the free will of the people of a sovereign State.

It is the nature of man to fly from one extreme to its opposite, and this propensity of our nature is now being fully developed and illustrated in the action of this body. Since this question has been under consideration we have had the old system of internal improvements dug up from its grave, and day after day its dry bones have been kept clattering about our ears to frighten us from our propriety. And now, sir, a majority of this Convention appears to be ready to vote that it is unsafe to trust the people with the power of ever contracting a debt of a few thousand dollars for a temporary purpose, for fear they may "ruin themselves by their extravagance." This course, in my humble judgment, betrays an unjustifiable want of confidence in the intelligence and prudence of our constituency. Sir, I never indulge in the cant referred to by the gentleman from Tippecanoe (Mr. Pettit). I have never been a flatterer of the people. I know that they often err, but I would not therefore deprive them of the exercise of their free will under such reasonable restraints as prudence may dictate. I regard the principle that they are capable of prudently managing their own affairs as laying at the foundation of all systems of free government, and I cannot therefore vote to deprive them of a power which the unknown exigencies of the future may render necessary for their good, for fear they may unwisely exert that power to their harm. Sir, every useful power may be abused, and if for that reason it must be withheld, there is an end of all government.

Let us look at the effect of the adoption of this section as amended. It provides that "no act of the General Assembly shall authorize any debt to be contracted on behalf of this State, except for the purposes mentioned in the — [previous] section of this Article." The previous section, as adopted, reads as follows: "the General Assembly may contract debts to meet casual deficits or failures in the revenue, for the purpose of paying the interest on the State Debt, to an amount not exceeding such deficits; *provided*, that the State may contract debts to repel invasion, suppress insurrection, or, if hostilities are threatened, provide for the public defense." Under the operation of these two sections the General Assembly will have the power to contract debts for the purpose of paying the interest on the State Debt, to repel invasion, suppress insurrection, or, if hostilities are threatened, provide for the public defense, and for no other purposes whatsoever. Are these all the cases we know of, or if so, do we know that these are all the cases that can possibly arise in the future history of a great and growing State, wherein it would be proper or necessary for her to contract debts? Is this the full extent of trust and confidence that we think can be safely reposed in the people for the prudent man-

agement of their affairs? Shall we go to them as an anxious mother to her thoughtless child and say, this power to contract debts is a dangerous toy; pray let us have it that we may place it beyond your reach?

Now, sir, it is the furthest possible thing from my wish that this State should ever contract another dollar of debt except under the most imperious necessity. I consider a national debt a national calamity, and I regard the debt of Indiana as a very great misfortune to the people of the State. I do not wish to make it an easy matter to increase our indebtedness. I would throw around the power of contracting debts every reasonable restriction, and would give to the people the amplest security against the imprudence of their representatives. I would place it absolutely beyond the power of the General Assembly to contract any debt, except for a very limited amount for a temporary purpose, without the consent of the people being first obtained on a submission of the whole subject to them. But, sir, I would not in this Constitution lay a constraint on the people which no prudent man would lay on himself. What prudent man, though out of debt, and possessing an abundance of this world's goods, would be willing to enter into an obligation that he would never again contract a debt under any circumstances whatever? In a night his dwelling may be consumed, or his barns may be laid in ashes. Shall his family be homeless and his grain be permitted to waste in his fields until he can accumulate the means of restoring his losses? When his neighbors surround him and offer to advance him money or labor, shall he be compelled to refuse their assistance because he has entered into a foolish obligation that he would not contract a debt? And yet, even such a restraint is now proposed to lay upon a sovereign State. This stately edifice in which we are now assembled, erected at an expense of some seventy or eighty thousand dollars, may, before we meet again, be laid in ashes! The Legislature, under such circumstances, ought to borrow the money to re-build it, and assess a tax to discharge the loan in such a manner as not to make the burden fall too heavily at once upon the people. But under such a Constitutional provision as is now proposed, they would have no power to make such a loan.

The full weight of this misfortune must fall at once upon the people, and in the course of one or two years a largely increased amount must be raised from them by taxation.

But, sir, suppose it should happen, by some imperfection in your revenue laws, or for any other cause, that the revenue of any year should be insufficient to discharge the current expenses of your State government; must the wheels of government be stopped, or must your Governor, your Executive, and Judicial officers, your Legislators and all who serve the State, no matter in what capacity, be put upon short allowance



until the deficiency can be supplied by taxation? And we must be subjected to all this inconvenience because, if the people retain the power to contract debts for useful and necessary purposes, they may run wild in extravagance!

Sir, I have now less fear of the people of this State unwisely contracting debts, or of their entering upon wild schemes of improvement than if they had no previous experience on this subject. Experience is a hard school, but it is a good one. Its lessons are not easily forgotten. The people of Indiana have learned a lesson in this school that will not be forgotten for many generations yet to come. Whatever other follies they may commit there is but little danger of their recklessly running into debt.

Since the abandonment of internal improvements by the State, private enterprise has been appealed to to undertake that which the State had failed to accomplish. It was necessary that the people of this rich agricultural State should be supplied with facilities for reaching the markets with their surplus products. To induce capitalists to embark in these enterprises liberal charters of incorporations have been granted, and in some instances, valuable donations have been made. Here is this National Road, constructed at the expense of the General Government, and extending from the eastern to the western limits of the State, that has been parceled out to corporations, without demanding from them a farthing for the vast expenditures upon that road. The Michigan Road, extending from the southern to the northern limits of the State, opened from the proceeds of lands liberally granted by the Indians, for that purpose, has been parceled out in like manner. We have railroads, and plank roads, and canals now, extending in all directions, being constructed by private enterprise combined in charters of the most liberal character. The number of these works is rapidly increasing. The volumes of your local laws are filled with acts of incorporation—acts granted under the pressure of circumstances, made liberal to induce their acceptance, and containing privileges, the value of which, were not properly estimated when they were granted. In a few years toll-gates and toll-collectors will meet you wherever you go, and soon there will arise as great a clamor against the exactions of these corporations, as ever existed against the mammoth internal improvement system. And when the people turn to their common mother, the State, and ask for relief, they must be told that she is powerless. They will then learn, that in many of these acts of incorporation, the State reserved the right of taking again into her own possession, and under her own control, these public works, upon paying to the corporations a specified amount, but that her Constitution forbids her to borrow money, and therefore the value of that reservation is lost. And thus a power, the

very possession of which might operate as a wholesome check upon the charges of corporations, even if it should never be used, is surrendered out of an extreme timidity—a groundless fear of the common sense and common prudence of the people. [A voice, "We will take away their charters."] You will take away their charters! I know, sir, there are men who would trample vested rights in the dust, and walk boldly over any legal obstacle that might oppose their progress. But I regard a contract made between the State and her citizens, as sacred and obligatory as a contract between one citizen and another. A State that keeps not her own faith sacred, sets a most pernicious and corrupting example to her citizens.

Mr. President, I wish now to direct the attention of the Convention to the effect which the adoption of this section will have upon the rights reserved to the State, in the act incorporating the Madison and Indianapolis Railroad Company. It may surprise some gentlemen to hear me refer to this subject, and to receive from me a suggestion that the State has some rights under that act of incorporation, which this Convention ought to consider. Repeatedly, upon this floor, the delegates from Jefferson county have been charged with efforts to secure peculiar privileges and advantages to that Company. In answer to all such imputations I wish to say, so far as I am concerned, that I stand upon this floor as the representative of no local or special interest. I have come here with an honest desire to aid in the formation of a Constitution that shall operate beneficially and equally upon the people of every part of the State, and, in my humble way, I shall labor, industriously, to accomplish that object. In the act previously referred to, the right was reserved to the State, to purchase out the interest of the private stockholders in that road, on certain terms, supposed by the Legislature to be advantageous to the State. That purchase cannot be made without money, and the amount necessary can only be raised by a loan. It would, at least, be proper for this Convention to examine into this matter before they part with a privilege that may be of more importance than they imagine. I know, sir, that many persons entertain very extravagant notions of the profits this road yields to its stockholders, and that they set too high a value upon the State's interest in the road. But as it is the great trunk, from which branch roads are now projecting in so many directions, and, as before many years, there must pass over it an immense trade, collected from a widely extending portion of the State, it may become a matter of great importance to the people that the State should have the control of that road. But, sir, if the section under consideration should be adopted as a part of our organic law, so long as it remains in force, it will be impossible for the State to obtain this control, or avail herself of the privileges she retained in the act of incor-

poration, no matter how important the future may prove these objects to be.

I confess, Mr. President, that I was taken by surprise at the result of the vote by which the latter part of the section was stricken out. The section originally stood: "No act of the General Assembly shall authorize any debt to be contracted on behalf of this State, except for the purposes mentioned in the — [previous] section of this article, *unless provision be made therein to levy and collect an annual tax sufficient in amount to pay the interest thereon, and to discharge the debt within twenty-five years; nor shall such act take effect until it shall have been submitted to the people at a general election, and shall have received a majority of all the votes cast for or against it.*" The amendment, by striking out all after the word "article," has converted a section which originally presented the conditions upon which the General Assembly might contract debts, into a prohibition of their contracting debts, except for the purposes enumerated in the previous section. I believe I never, until within a day or two, heard that such a proposition as we are now called to vote upon, was favored by any body. I thought we were all agreed that some stringent restrictions ought to be imposed upon the power of the General Assembly to involve the people in debt, and that they should be made secure in the control of their own purse strings; but that the people themselves could not be trusted on this subject; that they must be deprived of a power which appears to me to be inseparable from the idea of sovereignty itself, the power to use their own credit when they deem it useful and necessary so to do, is certainly something new under the sun. So important a principle of political economy as this, it seems to me, ought to have been announced to the world with something more of pomp and ceremony. It at least deserved a herald to proclaim its approach. Its importance would certainly have justified it in being brought forward as a distinct proposition, instead of its being indebted for its existence to a skillful surgical operation, performed upon a section intended for the very opposite purpose. I had no intention of addressing the Convention on this subject, nor indeed did I think of doing so until by the vote just taken I saw a disposition manifested by its friends to carry it through by a sort of coup de main.

I hope by my remarks to have at least directed the attention of the Convention to the true nature and effect of the measure, and to have divested it of the collateral matters that have been drawn into the discussion. I have suggested such cases as have occurred to me at the moment in which it might hereafter be of importance to the State to have the privilege of using her credit. But if no such instances had occurred to my mind, I should still feel it to be my duty to oppose the adoption of the section as it now stands. The emergencies of the fu-

ture we cannot anticipate, but we know that crises occur in the affairs of States, as well as of individuals, when they must resort to their credit. I would secure this power from abuse by any reasonable restraint not inconsistent with the ultimate right of the people to manage their own affairs in their own way. I would prefer even more stringent restrictions upon the power than are contained in the part of the section just stricken out. But, sir, I would not place in our Constitution a restriction, that is not only not found in the Constitution of any State in the Union, but is not to be found in the Constitution or laws of any civilized nation on the globe. I would not place shackles on that arm upon whose power and freedom may some day depend the welfare, if not the safety, of the State.

Mr. SMITH of Ripley took the floor in reply, but as a disposition to adjourn seemed to prevail throughout the Hall, upon his motion, which was agreed to,

The Convention adjourned till to-morrow morning, 9 o'clock.

FRIDAY, Nov. 22. 1850.

The Convention met, pursuant to adjournment.

Prayer by Rev. Mr. LONG.

RICHARD M. JOHNSON.

Mr. RARIDEN rose and said: I desire to have a suspension of the rules for the purpose of enabling me to offer a resolution, which, I believe, will be heartily responded to by every member of the Convention,—with reference to the decease of the late Colonel Richard M. Johnson, of Kentucky.

The rules being suspended, by consent,

Mr. R. continued: I offer the following preamble and resolutions; and I regret that I have not had time to prepare them with more care:

WHEREAS, This Convention has learned with profound sensibility, that Col. RICHARD M. JOHNSON, late of Kentucky, has departed this life; and Whereas, the service of this distinguished patriot and soldier, as well in the field as in the councils of the nation, has constituted him the property, and justly entitled his memory to the grateful notice, of Indiana, in common with the citizens of the whole Republic; therefore,

Resolved, That, whilst cherishing a just sense of gratitude towards this distinguished citizen for his many important public services, rendered in behalf of his country, during the course of a long public life, as the able, faithful statesman, and brave soldier, we most sincerely condole with his numerous friends and relatives, in the irreparable bereavement they have sustained, in the loss of an affectionate and devoted friend; and with our sister State, Kentucky, in being thus



deprived of his valuable services in her public councils.

*Resolved*, That ——— be appointed a committee, on the part of this Convention, to tender to the relatives of Col. Johnson the expression of our heartfelt condolence on the melancholy occasion, and that the Secretary of this Convention transmit to the Executive of the State of Kentucky, a copy of the foregoing preamble and resolutions.

*Resolved*, That the editors of the several newspapers in this State be requested to publish the foregoing in their papers respectively.

The preamble and resolutions were adopted, by unanimous consent.

#### PUBLIC DEBTS.

The PRESIDENT. The Convention will now resume the consideration of the section last but one, of the report from the committee on the State debt and public works.

Mr. WOLFE. Is it in order to amend the section now?

The PRESIDENT. Yes, sir.

Mr. WOLFE. Would it be in order to strike out and insert?

The PRESIDENT. Yes, sir.

Mr. WOLFE. Then I move to strike out all after the word "section," and insert the following:

"The General Assembly shall never pass any act to create any State debt, except as named in section —, unless said act provides that the interest shall be paid annually, and the principal liquidated in 20 years. Nor then, until it shall have been submitted as a distinct proposition to the people at a general election, and received their sanction by a majority vote."

The PRESIDENT. Does the gentleman from Sullivan propose to strike out the entire section?

Mr. WOLFE. All after the word "section."

Mr. SMITH of Ripley. I would inquire whether this proposition is not identically the same with that which has been stricken out?

The PRESIDENT. It is not. The Convention has only struck out the words of the section following the word "article," in the third line.

Mr. SMITH of Ripley. I understand that; but it seems to me that the gentleman proposes to insert substantially the same matter which has been stricken out.

Mr. WOLFE. I have been somewhat fearful that we were going too far in this matter. At home, and wherever I am known, I have usually been considered rather ultra in my notions. But this section is going a little further than I am willing to go. I voted against striking out the latter clause on yesterday; and, for that reason, and in order to set myself right before the Convention and the country, I desire now to make a brief statement. I shall be very brief, and I hope to have the attention of the body.

The question arises in these premises, whether the people are capable of self-government? That is the question. We have, as a people, long since declared to the world, that all power is inherent in the people, and that they are capable of governing themselves. And now it is proposed to restrain them from the exercise of the power to borrow money. I stand, upon this question, just as I stood with regard to the proposition to make all of the officers of the State elective. I was then in favor of short terms of office, and in favor of restraining the servants of the people—not the people themselves. I think there is a great difference between the servants, or the representatives of the people, and the people themselves. Certainly we have the power and the right, (and, as I believe, it is expedient as in this section, it was originally proposed, and as I now propose,) so to restrain the power of the Legislature, that they cannot merge the people in debt, unless the people themselves consent. And, as we are going to have biennial sessions of the Legislature, I am of opinion that the time which would necessarily elapse before a proposition to borrow money could be passed and become a law, would be a sufficient guarantee against the danger of all hasty action in the premises.

But the question arises, whether it would be good economy to pursue this course? I think that economy which is good in the management of the affairs of a family, is just as good in the management of the affairs of a county or a State. Would it be economical, then, or even proper, to restrain an individual—the head of a family, by saying that he should not do this or that thing, even though he might think it would be for his interest to do it? Certainly it would not. Again, in reference to county affairs—if the people were to deem it proper to do a certain thing, would it be proper, or prudent, or wise, to take the power to do that thing entirely out of their hands? I think it would not. And in like measure, it would be improper and unwise, as I think, so to restrain the people of the State at large, that they cannot come up and vote upon any proposition they please; and I think, also, that if this Convention were to fix upon and establish this principle, the people would finally reject the amended Constitution.

Where, I ask, is the necessity thus to attempt to paralyze the arm of government? I am sure it would be going too far. We have had frequent occasions to borrow money in the history of the State governments of this Union, as well as in the history of the general government; and but recently, on account of the late war with Mexico, we had occasion to borrow money which could not have been dispensed with. And if the people of Indiana have, by the exercise of this power, heretofore brought upon themselves a most extravagant and oppressive debt, is that a good reason for taking away from them the power to borrow money

for all future time? Because the people have done wrong once, is that any reason that they will always do wrong? But in case the people do wrong, upon whom falls the penalty? and who is to judge the people? We all know that it is human to err. And in this case, it is only human judging human. And may not we also err in our judgments? But whenever I look at the history of these errors of the people, in every case where the people have been misguided, I find that it was the leaders of the people that caused them to err. It was so anciently, and it has been so recently, in 1835-6; and so it ever has been, and ever will be, that whenever the people err, in such a case, they are constrained so to do by the inflammatory speeches of their leaders. It has been the few that have always caused the many to err. Let the people alone, and they will always do right; or if they get wrong, (the burden falling upon themselves,) they will be sure to get right again.

We have agreed to extend the elective franchise, so that all officers, those which have been hitherto appointed and elected by the Legislature, shall hereafter be elected by the people; that the people shall elect all their public servants. This, in my opinion, is right. But now, how inconsistent is it to say, that the people are capable of choosing their public servants, and at the same time declare that it is imprudent to trust them with reference to this matter of borrowing money!

But when it comes to looking into the question of restraining the power of the people to borrow money for any purpose of which it is impossible to see the result, we should remember that we are establishing organic law, to reach, we cannot say how far, into the future; that we are setting up rules to guide the people for time to come; and this consideration, I think, should induce us to hesitate and reflect much before we decide.

I voted against striking out last evening, for the reason that the people are capable of righting their own wrong doings. I remembered that in 1796 the people elected the elder Adams to be President of the United States; and it was ascertained by many that they had done wrong in that thing, at the proper time. Upon the next proper occasion, in the year 1800, they elected Thomas Jefferson to be his successor. This is the way the error was corrected, and who would not say that this was a much better way than it would have been for them to have declared, that because the people erred in the election of a President in the year 1876, therefore, they should never elect a President again. Would it have been right and proper for them to have restrained the people in that way? Certainly not. It was much better in the year 1800 to correct their error by the election of Thomas Jefferson. Again: in the year 1828 the people elected Andrew Jack-

son to the Presidency of the United States, and some people thought that to be an error; but no man demanded that, therefore, the people should never elect another President. Again: in the year 1840 Gen. Harrison was elected over Mr. Van Buren, and a great many people thought that to be an error. Since that time, in almost every part of the country, it has been conceded that perhaps that error was best for the country, on account of the events which followed: but in a short time, whether right or wrong, that decision was peaceably reversed in 1844; and again the latter decision was reversed in 1848. Such is the tendency of man to err; and these are good examples of the power of the people to correct their own errors: and they furnish also good grounds for confidence in the perpetuity of our institutions.

But to return to the consideration of this section. I stand here to say that the people can govern themselves. I acknowledge that we have been traveling very slowly over this ground, and our progress has reminded me of the old times of barging upon the rivers from New Orleans up to Pittsburgh; when we would eat our breakfast at a certain point on the river, and after barging it up stream all day, at supper we might sometimes find ourselves very near the same point where we took our breakfast. This seems to me very much like the progress of this body upon many questions before us. In these days of steamboats and railroads, it would seem that we ought not to go back to the times of barging upon rivers for examples of our progress.

Gentlemen should remember that when the half-hour rule was adopted, it caused a great deal of kicking and flouncing, and it was denounced as a gag rule. But, sir, what are we doing now? Are we not considering a proposition to gag the people? But I see around me gentlemen who were opposed to the half-hour rule, making no opposition to the idea that the people shall be gagged.

It is from these considerations that I am induced to say to the Convention, let us be cautious about this matter; and while we assume to know so much, let us be willing to admit that the people know something too. I call myself one of the people. When I am at home I follow the plow. I labor for my living as a tiller of the soil. I have no stock in banks nor in public works. My little property is all in real estate. Nevertheless, I have still a great and abiding interest in this as well as every other question by which it is proposed to modify the Constitution. And I say to gentlemen, let us not go so far in the work of amendment here, that the people will feel themselves called upon to reject our labors.

MR. KINLEY. MR. PRESIDENT: Disavowing any intention of speaking for home effect, I am not only willing, but desirous, that every act of mine may be heard among those whom I rep-



resent. I wish to be brought to the strictest accountability. Gentlemen choose to hold up our constituents as a rod of terror over our heads. It shall always be my delight to obey the wishes of those for whom I act. The agent should be responsible to his principal. It is in view, sir, of this very doctrine, that I intend to say, as far as my vote can effect it, that future Legislatures shall never involve the State in debt, except in certain prescribed and necessary cases.

We are warned against tying up the hands of the people. Sir, we are the people's agents. If they endorse our act, it becomes their own act. It is the people, then, placing restrictions upon themselves. And, though gentlemen regard this provision as calling into question the intelligence of the people, to my mind, the people never present themselves in a more favorable light—never does their intelligence stand out in such bold relief—as when they voluntarily and calmly fetter their power to do evil. The very *existence* of government implies this power of restraint; and every *action* of government is an exertion of this power. But this position is too clear to require further argument.

But there are some subjects on which restraints should be placed in the *organic* law; others which belong, properly, to the State Legislature. To which of these classes does the section under discussion belong? This is the question.

There is one rule, Mr. President, by which I have endeavored to govern all my actions here. It is this: *A political principle, the truth of which is well established, or a political measure, the correctness of which there remains no doubt, may be safely made a part of the organic law.*

Since the adoption of the great system of internal improvement, our State has been deeply involved in debt. Have we profited by this debt? Or, to put the question in another form, had the State succeeded in the whole system, was there a single one of the public works which might not have been better accomplished by private enterprise? We have, it is true, learned a deep lesson of experience. Whether we profit by this lesson or not, is now to be seen. However much I may desire wisdom, Mr. President, I would gladly forego all the lessons our errors have taught us, if, by this means, we could cancel the indebtedness of the State. The very first act to borrow money, in the name of the State of Indiana, was, in my opinion, an error. I believe in the old-fashioned doctrine of closing the books—squaring the accounts—as we go along. Since we are in debt, we must get out; the honor of the State must be preserved. It may be well to prepare for the occasional deficits in the treasury; but, even in this case, it would be far better—safer at any rate—to have a surplus in the vaults, ready to meet these little contingencies.

I cannot see, sir, why the bank question is logged into this discussion. The committee has reported on that subject, and in due time we will have it before us, in its order. I see in this question just what is stated on the face of the report: simply the question of a State debt. And however other gentlemen may be wedded to this monster, that is every year drinking the lifeblood of the body politic, to me, I confess, its features possess no peculiar loveliness.

I know, sir, that the public debt system has extreme tenacity of life; its expiring spasms are terrible. But die it must. I take no savage pleasure in witnessing its dissolution. I am willing to pay to its exit the same honors that ushered it into existence—the beatings of the drum and the firing of cannon. Bury it, if you please, with all the honors of war. But let it die.

Experience has proven that public improvements flourish best under the direction of private enterprise. Let us, then, throw around the citizen the protection of law, and leave an open field and action free.

Mr. SMITH of Ripley. I cannot but think it very singular for gentlemen to come in here, time after time, with identically the same proposition which the Convention had already solemnly voted down, and make speeches upon their proposition, at the same time complaining of the tardiness of business in the Convention, and comparing our progress to the business of barging up and down the Ohio river in former times. It appears to me that this course is most extraordinary. It is very strange that gentlemen will not submit to the solemn and repeated action of this body. The Convention had twice voted down the identical proposition which the gentleman from Sullivan, (Mr. Wolfe,) in his zeal to push forward business, has presented this morning.

The PRESIDENT. It may be substantially, but it is not identically the proposition.

Mr. SMITH. Substantially the same proposition, I mean. I stand corrected.

While I am up, I desire to call the attention of the Convention, for a moment, to the point raised by the gentleman from Jefferson (Mr. Dunn). That gentleman's good sense—his ability, talent, and general bearing here—entitle him to a great deal of attention and respect. That gentleman made an eloquent speech; but, eloquent as it was, I have to remark, that, if there was not before he addressed the Convention sufficient reason, according to my judgment, to strike out the proposition which he advocated, that speech alone would furnish the reasons. If we were going it blind, the gentleman's argument would be sufficient to sustain our position, without any other resource. What was the gentleman's argument. He was opposed to tying up the hands of the people, by this Convention, for the very good reason that we had a large amount of State stocks in the market,

and a favorable time might arise suddenly for buying them up. That is true. I had that in my mind's eye, when I made the motion to amend; but then I saw so many other things connected with this thing of borrowing money, that I felt it would be better to forego this advantage, rather than jeopardize the great interests of the State.

But the gentleman also stated that it might be to the interest of the State, at some future time, to buy out some of the public works, and he referred to the situation of the Madison and Indianapolis Railroad. In reply to this suggestion, I would say that it might become, in process of time, very important to that Company to sell out their road to the State. It might become very important to them for the State to buy; and it is to prevent that, and if they should seek any such thing, to shut down the gate.

The gentleman from Jefferson has a great deal of forecast. He is a most perfect exponent of the interests, as well as the sagacity of the county he represents. He is looking forward to the time when the Jefferson Railroad may so depreciate in value that it would be exceedingly important to the stockholders to turn it over to the State of Indiana by a vote of the people. I would say to my friend from Jefferson that I accord to him the credit of a great deal of sagacity which he has exhibited in this matter, and I thank him for throwing out the hint which he has.

But let us hear my friend from Wayne county (Mr. Rariden) upon this subject. He, too, has been unflinching in his advocacy of the proposition to leave the way open to the Legislature to borrow money. He, also, is the talented representative of the stockholders in that great work, the Whitewater Valley Canal, running along the eastern border of the State, which has exerted such an important influence upon our political history. I understand from that gentleman that this Company is a rickety concern, and would like to sell out to the State—an event which would have been already accomplished if it had not been arrested by the executive veto.

Taking these two public works into the account, without going any further, we might make up a pretty heavy bill of expenses to be thrown upon the State whenever it might become important to the interests of the stockholders so to do.

But let us look a little further. Here is the great Wabash and Erie Canal, extending from the north-eastern to the south-western extremity of the State. And whenever the time shall come—as it will—when this great public work will become unprofitable, here will be a stupendous, & most magnificent operation for the Legislature of the State. Who cannot see what powerful influences the agents of these several companies could exert upon the Legislature, to submit a proposition to the peo-

ple to purchase any one or all of these public works? The stockholders would be willing to give the State most magnificent bargains if the people would only agree to go into it, and take these works off their hands.

What are the interests which would be brought to bear upon propositions of this kind? Why, these gentlemen would say, here is a fine bargain offered; and, as we were told yesterday, by the gentleman from Jefferson, the people themselves would become clamorous in consequence of the taxes imposed upon their travel. They would feel, almost in the language of that gentleman, that they were taxed with toll for going from the kitchen to the smoke-house. Yes, sir, the people would become clamorous against unreasonable freights and tolls. They would clamor against the State, because every road would be presided over by some corporation.

Let us take notice, here, of what a combination of interests would arise on the part of the stockholders to induce the people to buy them out. The onerous system of tolls which might be inflicted by the stockholders on the one hand, and the duty of the State to release the people from this system of oppression on the other hand, while all these companies will come up to the Legislature by their agents, from one end of the State to the other. The people would be tired of paying tolls, and if the stockholders could turn their works of improvement upon the State, the State would then be able to reduce the tolls, and this would be a most desirable result with many, even if the State should have to pay interest upon the money borrowed to buy out these works. Is it possible that the eyes of gentlemen are so blinded that they cannot see this? Do they not know the power and political influence that corporations can and do exert all over the State? and they will be continually making the most strenuous efforts to slough off their unprofitable works upon the State just as sure as we leave this open clause in the Constitution. I will not charge it upon any man that this clause was left open in the section with a view to effect anything of this kind; and such a thing might not be contemplated just now. But the Whitewater Canal has attempted such a thing alone: that is, unaided by other companies; and the attempt was almost successful. In view of this fact, what might not be apprehended in this way, when it shall come to be the interest of the stockholders of the Madison road to combine with the stockholders of the Whitewater Valley Canal, and the Wabash and Erie Canal; and it is easy to conceive what multitudes of little plank roads and turnpikes would come in—all combining and presenting the most exquisite bargains, if the State would only buy them out. This peculiar interest would be awakened all over the State, and it would be continually manufactur-



ing evidence which would convince the people themselves, and beguile them into a speculation upon a new system of this kind which would inevitably soon become even more odious than the old system of internal improvements. I am for shutting the door against this evil. I am for locking the door of State credit, and throwing away the *key*, that this section proposed to leave in the hands of the dear people, and the people will thank us for our wisdom and forecast. If we must borrow money, let it be for specific purposes only. Let us adopt the provision as it now stands. Let us not make an open clause.

Sir, before twenty years shall elapse, broken and unprofitable corporations will be able to influence, if not to overawe, the action of the Legislature. This consideration alone stamps the seal of wisdom upon the action of the Convention. If we have done it by instinct, the effect and result will be sound sense. Sir, the section struck out was warmly advocated by patriotic gentlemen, but in my opinion, in it lurked a most insidious power, when the time should come to involve the people in hopeless ruin again. It would be a god-send to poor failing corporations, by combinations such as could be effected under the provisions of that section, to turn their failing fortunes on the State to its injury if not ruin.

I was astonished, sir, that this proposition—the identical proposition which had been twice before solemnly voted down—should be brought forward again this morning by those men who are so exceedingly anxious to expedite business; thereby forcing upon us a reiteration of the very same arguments which we have already heard and answered, time and again.

Sir, I hope we shall soon get over the stump speech making policy here, and take up the consideration of matters with which we can make more creditable progress and show to the country that we are really doing something.

Mr. RARIDEN. I sincerely hope that the gentleman who has just taken his seat, will yet be convinced that he is mistaken entirely in the reasoning which has fallen from him. I know he is mistaken. And if he cherishes the idea that every man in this Convention who happens to entertain different views from himself, entertain those views for the purpose of carrying them out of this Hall, and using them before the people hereafter for private advantage, he is again mistaken. This idea has got abroad, that certain gentlemen flatter themselves that they are the only true friends of the people and guardians of their interests. I want to meet this idea. It is too much for half a dozen men to appropriate to themselves the character of being the only true exponents of the interests of the people, and that every body else, who happen to entertain different views from themselves, in regard to what powers should pertain to the legislative body, are laying

the foundations of future impositions upon those who are to come after us. Those gentlemen who are eternally telling us that they are to be found on the side of the people when their rights are involved or discussed, not unfrequently have their purposes and views in being thus near them; they may, for aught I know, hug them to their bosoms for individual gain. It will be found that one-half of those men who are always on the side of the people, are quite as much disposed to pick the pockets of the people as any other kind of patriots. They find their advantage by getting into the confidence of the people, and sometimes of so putting their hands into the pockets of the people. And if I wanted to hunt up that kind of persons who were disposed to make money out of the people, I would look amongst that class who are eternally harping about their nearness to the people.

But what is it that we hear in this Hall? Those lovers of the people are ready to charge it upon those who are not of their own way of thinking on questions of great interest, that they love the people not, and that their measures will end in a species of the most infamous fraud ever practiced upon a virtuous community.

Mr. SMITH of Ripley (interposing). Surely I did not use such strong terms.

Mr. RARIDEN. Well, I will not misrepresent the gentleman. I understood him to say that the proposition which I made, and the peculiar principles advanced by the gentleman from Jefferson, (Mr. Dunn,) if they were carried out, would result in the most infamous frauds ever practiced upon a virtuous community, and if adopted in the Constitution would bring about a surrender to the State of the Madison and Indianapolis Railroad, the White Water Valley Canal, and the Wabash and Erie Canal, upon such terms as would bring utter ruin and bankruptcy upon the State of Indiana, and if that would not amount to a fraud—

Mr. SMITH. I simply stated that, if there were to be placed in the Constitution an open clause—such as that which was stricken out on yesterday—the idea of a combination of this kind would be matured and brought about, by which most injurious bargains might be imposed upon the State. I did not say that the gentleman from Jefferson, or those who adopt his opinions, had any interest in proposing any such sale of any public work; nor that they contemplated any such thing; and I stated a fact which is well known, that the White Water Valley Canal Company had proposed a sale to the State.

Mr. RARIDEN. Well, I do not stand here to say anything for the Madison and Indianapolis Railroad; but I will ask the gentleman to be just to that miserable and down-trodden association, the White Water Valley Canal. I will say to him this: that in the charter of that company, the State of Indiana reserved the

right to purchase back the improvement at the expiration of the term of eight years, and make it the property of the State, by reimbursing the Company for the amount of their expenditure for construction; and the corporation did offer to surrender to the State all their right and interest in that work, if the State would give her bonds for only one-half the amount they had expended. The same body also offered to surrender this work to the State without price, if the State would agree to keep it in repair, and that they would look to the liberality of the State for a reimbursement of the seven hundred thousand dollars they had expended upon it. Is that a matter to blame the Company for? They took the work off the hands of the State, at a time when the State had no credit, and when eleven hundred thousand dollars had been irretrievably lost to the State. They took the work when the estimated amount which would be required to complete it was four hundred thousand dollars, the State reserving the right to take it back by paying the amount which might be expended, with six per cent. interest thereon; and when the Company found that the burthen was too heavy for them, they offered to surrender the work without price. And now this is brought up here as evidence of a disposition to defraud the State. Because, as the gentleman said, if we leave the clause open, such and such will be the result—that the people would be easily seduced, and evil would be brought upon the State. Such men, sir, reason from very fallacious standards; first contemplating what a dishonest man might do, and then affirming that so the people's representatives would do.

Mr. SMITH of Ripley (interrupting). I hope the gentleman will allow me to explain, as I discover he has some feeling in the matter?

Mr. RARIDEN. Yes, sir.

Mr. SMITH. I would like to set myself right. I was merely illustrating an argument drawn from the fact that the White Water Valley Canal Company had offered to surrender their work to the State. Surely, I was not wanting in respect to the gentleman from Wayne, or any other individual connected with the concern.

Mr. RARIDEN (to Mr. Smith). I did not understand you in that way at all. Make yourself easy in regard to that. I was not resenting any opinion which may have been expressed against the stockholders of that miserable concern. But there has been considerable misapprehension in regard to them, and I stand here to vindicate humanity and posterity and my children, against the imputations of these gentlemen, who allow themselves to reason here from such a fallacious standard. They proceed upon the calculation, that all those who are to come after us will be influenced by the same considerations with the unworthy, who have

gone before and played traitor by grabbing and filching all they could out of the State.

Let us contemplate this matter calmly and see whether the doctrine is consistent with those principles which have been advocated by the gentleman himself throughout his whole life. Where before did he affect to distrust the people's capacity to take care of their own affairs? Sir, what are we doing here? We are establishing the organic law of the State. We are, it will be said, chalking down the outlines of government. We are establishing those outlines which are to circumscribe legislative action, and of which no power can be exercised even by the people. It cannot by the Legislature, because not granted, and it cannot by the people, because there is no other organization through which they, the people, can speak or act, except the Legislature, upon such subjects. Then would it not be well to consider whether its exercise might not be necessary upon some occasion. Can you pretend to see through futurity, and know just what power will be abused by a legislative body, if entrusted and how much its action should be restrained for the good of the governed in all coming time; or would it be well to leave such things to those who are to come after us and to be affected by the measure. For my part I do not entertain the idea that all wisdom and patriotism will die with the dissolution of this Convention, and that there will be an experience after ours, that the next twenty years will disclose as much as the past and might bring in disrepute our present pretensions to foresight in human events. For my part so far as temporary and pecuniary interests are concerned, I am for leaving every age ample power to direct and control its own. This is a part of the legacy left to us and I will not lessen or attempt to diminish it in the hands of those who are to come after us. If they abuse it, it is for them to do so, and they will be responsible for the abuse; but if we have acted unwisely, is it any reason why our children with our examples and our errors before them will do the same? If they do let it be so. They would have no reason to thank us for saving them from their own folly at the expense of their political freedom.

But I desire now, to take notice of a remark which dropped from the gentleman from Tippecanoe, (Mr. Pettit,) and was taken up by others and used as a legitimate argument. He says, he denies restrictions such as the present, if those restrictions are not to be imposed; why not simply say there shall be a Legislature, and let it do all that may be required, make a Governor, Judges, &c., and do all and what it pleases.

Well, sir, but would that constitute a republic. It would be what the writers upon government call a many headed monster, in whose hands would be concentrated the most absolute power, for good or for evil. There would be no checks and balances which are requisites in



a republic. The government would be absolute—in the hands of this—if it should happen to be an elected legislative body. Such a government would be inconsistent with the genius and spirit of our institutions, and would not be received in the sisterhood of republics.

The gentleman from Posey (Mr. Owen) maintains that all Constitutions limit both the power of the people and the Legislature, and reads the article from our present Constitution, interdicting the Legislature from creating titles of nobility as proof of this restriction both upon the Legislature and the people. I once before denied the correctness of this position and attempted its refutation. I agree that as between the people it is conventional that they will have a government without that element in it, but it is not restrictive of these rights; but to the legislative power, it is a restriction upon the power delegated, if within the power of legislation. In the English Government, from whence we got the idea, a nobility represents a caste of society, and perhaps the landed interest, and is a hereditary element in the Government, and is repugnant to our republican theory. We could not have it and have a republic; therefore, I say that the restrictions in that case and all others in the present Constitution is upon the exercise of delegated power, and not upon the people. The right which they surrender is conventional with themselves and delegated because inconvenient for them to exercise, and the enjoyment of which, in each individual, would be inconsistent with organized society; therefore they are delegated to one common law-making power which they create by this conventional arrangement among themselves.

Now, with reference to this section, I affirm that it is right and proper to leave it for posterity to act for themselves in regard to this matter of money borrowing. One argument which has been brought up against this doctrine is: that we have no right to create a debt, the judgment of which will fall upon posterity. I admit that in this matter we have acted imprudently, extravagantly, and unwisely. But I have no hesitation in saying that the race that are to come after us are our debtors, and not we theirs; for my part, confessing freely our mistakes and miscarriages in money matters, and confessing and charging ourselves with a debt of eight millions which we shall leave posterity to pay, yet I say they have no cause of complaint, and I am ready to compare and settle accounts. We found this whole country a wilderness, and we shall leave it a paradise, except the debt upon it. Let posterity give us credit for what we have done—for our railroads, our canals, our fine meeting houses, and seminaries of learning, and private dwellings, and all the other accompaniments of the highest civilization and internal facilities, and I will go into the settlement and bring posterity greatly debtor to the present age, without taking into account the enhanced

value we have given to the soil. Then do not tell me of the wrongs we have inflicted upon posterity, for we have done it none; we have made a century's travel in less than twenty years.

I beg gentlemen to consider the effect of this restriction upon future policy and legislative action; no matter what may be their views of their own interest, they are to be tied down to our conceptions of it, and we looking and judging through a cloud of twenty or fifty years at it. Why not leave them as our fathers left us, free to choose the course of policy seemed to us proper; and because some gentlemen suppose that we have trifled with and abused our liberty, that we should not trust our descendants with the same freedom of action. Will they not have understanding to profit by our errors and to steer clear of the rocks upon which it is said we have split and foundered?

Then what is to be the effect of this restriction? What do we ask here? We ask you to let those who are to come after us manage their own matters in their own way; and if they should ever think it to their interest to buy out the Madison Railroad or any other improvement, let them do it. Why should we look forward twenty years and say such a thing should not be done by those who are to succeed us? Why should we urge a specific rule in regard to the expenditure of money upon the acceptance of those who are to live after us? I am not the man to do such a thing, because I do not know what will be for their best interests. It is sufficient for me to leave them to their own choice with respect to this matter. I do not wish to tie up their hands from doing whatsoever would be right and proper in their own estimation; nor do I intend to subject them to the necessity of meeting together in another Convention, as we are now met, for the purpose of getting back that power. If the coming age is to be unwise and corrupt, and wholly disposed to do wrong—such a thing may occur—if the people of the coming age shall prefer to follow after evil advisers and prove themselves corrupt and seducible by selecting representatives who will destroy and annihilate every good within their reach, then gentlemen who are in favor of this section, without the amendment, are wise, and their advice ought to be regarded. But if it be possible that the coming generation, twenty years hence, may be as watchful as ourselves; if we can think that their representatives will be as mindful of the interests and wishes of their constituents as we are, then I hold that they will be better judges of their own affairs than we can be, and that they will manage their affairs wisely unless by some mistake. Then I will not undertake to say that in twenty years from this time, it would not be proper for the people to take this matter in their own hands. It may be, and no doubt will be, the case at that day, that every neighborhood will be cut up and

intersected by railroads and plank roads; and, as has been suggested, it might be so that a man could hardly go to meeting or to his spring house without paying toll. In such case the people might become irritated and restive, and such corporations might feel insecure, which would greatly diminish the value of these works in the hands of the stockholders. The people may think it better to pay a general tax in order to buy out these improvements and have the tolls abolished, or reduced at least eight-tenths in amount. I say, sir, that if the people shall come to conclusions like these, in the course of ten, twenty, or fifty years hence, in God's name let them do as they will. Let not me, nor the gentleman from Ripley, after riding in the mud ourselves almost all our lives, say aught against it. Do not let us, frail men as we are, with our limited and restricted knowledge of their wants and interests in the future, interdict their progress by thus tying their hands with this restriction.

The PRESIDENT (striking down the hammer). The Chair is obliged to remark to the gentleman from Wayne that his half hour is out.

Mr. PETTIT. I have not designed to say anything upon this subject, but the gentleman from Wayne (Mr. Rariden) has made an allusion to me, of which I must take some notice.

Mr. President, there is nothing more beautiful, in my estimation,—there is no idea in government so ennobling, purifying, and elevating, than that which results from the contemplation of a free people, assembled either by themselves or by their chosen delegates, to deliberate about what restrictions they will impose upon themselves, in order that they may be controlled as they should be in times of heated excitement, when the political cauldron may be boiling, and when it would be as dangerous to fall into it as it would be to fall into a boiling cauldron of oil. Who restricts the people? as it has been already suggested. Are not we ourselves the people? Can we not—(if we were the only, and all the people in the State,)—can we not contemplate the time when excitement may come upon us, and when we ourselves ought to be restrained, as it were, within these walls which now surround us, prohibiting our further advance in this or the other way? And are we proposing now to do more for others than we should do for ourselves in such a case? Is it not for ourselves, as well as posterity, that we propose this restriction? Has not all experience shown us that restriction is necessary, and that we should restrict ourselves? Has not the political cauldron of Indiana boiled until no one was safe upon its heaving bosom? Have we not seen the time when all was confusion aboard the ship of State—when her helm was broken—when her flag at the mast-head was all tattered and torn?—when distracting winds were blowing from every point, carrying the

ship hither and yonder without rudder or helm; and have we not seen how much it would have been to our advantage then, if the ship had been balanced well and held with a secure and abiding helm, by which she might have been controlled against those tempestuous winds?

One gentleman talks to me of democracy in strains of ladies' love. I am not in the habit of canting upon words. When I use words, their meaning shall not be taken in any canting or catch-penny sense. I do not mean to deceive the community. But let me say, that my love of democracy rests upon a clear and well-defined consideration of its principles and propositions, and thus I have been led to embrace and fall in with its doctrines. It is a term dear to my bosom, whose form I shall ever cherish. What is it, in all its forms and proportions? It is, in appearance and symmetry, like the Church of Zion, as sung by the great King of Israel: without spot, without blemish, above all things beautiful and lovely. But what does democracy teach? What is democracy, or republicanism? It teaches no more nor no less than precise political equality of every member of any political body or society. That is what it teaches. It teaches, Mr. President, that I shall have no political rights above you; that your sons shall have no political right superior to mine; but that all shall stand upon the same broad political platform; to whom it may be said with truth: You stand even; the race is before you; scramble for the prize.

Sir, political equality is contra-distinguished from social equality. Political equality and social equality have no connection with each other; they are not travelers in the same direction. While we admit that all men are equal—that is, politically—all have the same political rights, whether rich or poor. But this is by no means to declare that all men are placed upon the same social platform. Laws may, and ought, to make men political equals, but laws never place men upon a social equality. Every man must obtain his own social position. It is the sympathies, and tastes, and tendencies of men that bring them together and form the social compact. And the protection and enjoyment of person and property are the foundations of the political compact. Sir, it is idle to talk to men and tell them that they can all be placed upon the same social equality—and no thinking man would make such a declaration. It is utterly impossible. The truth is, government can only secure to all men the same political rights, and that no law shall advance the interests of one citizen above that of another. This is all that law should do for the advancement of the interests of the people.

Now, sir, how is it that this restriction is anti-democratic? I have said that democracy consists in political equality. How, then, does this restriction tend to any other result? This is the test to which I bring every question here.



Whenever I am called upon to vote for the establishment of any principle pertaining to the organic law, show me that its tendency is to produce political inequality amongst our fellow-citizens, and then I will be against it, though every other man were for it; and though I should make myself an Ishmaelite, I would pursue that course. But, if I am called upon to vote upon a proposition, and you show me that its tendency is to secure the same political rights to all—though it be restrictive, and the more because of its restrictive character—I will be for it.

The gentleman from Wayne (Mr. Rariden) is mistaken when he says, "If you do not desire to restrict the people, all you would have to do would be to create a Legislature for their government; then there would be no restriction at all." But this is a great mistake. For the Legislature may restrain their own power, or they can create an executive or a judiciary, or they can administer and execute the laws themselves. We have examples of this kind in history, where the same body have enacted, administered, and executed the laws themselves.

But the gentleman says this would be a many-headed monster. Here, however, he is again mistaken. It would be precisely the reverse of a many-headed monster. He asserts again, what is not true in theory or fact, for such a government could have but one head, as it could have but one body. It would have no checks and balances. It is plain to all that it would be wanting in these particulars; however, we do not leave the Legislature to administer and execute these laws, though we might do so with or without restrictions. And still the government would have but one head instead of many. Some gentlemen are desirous of referring important questions, to be decided by the people. I would ask such gentlemen, if a Legislature of an hundred men would be a many-headed monster, how much more so would a million of people be, engaged in the solemn enactment of law?

Now, sir, why is it that this restrictive measure should be called anti-democratic? It has been already demonstrated by the gentleman from Posey, myself, and two or three others, that all our action here is restrictive; and a Constitution is, indeed, all restrictive, from beginning to end. Restriction is the great object of a Constitution. There could be no Constitution without restrictions. And yet, all power is declared to be inherent in the people, by the Constitution: that is, that it would be right for the people themselves to assemble together from the four corners of the State, and prescribe and enforce the law. Such would be a pure democracy; but it would be impracticable. Hence we are obliged to have a representative democracy. It would be inconvenient, impracticable, and impossible, for all the people to convene in General Assembly; hence, they must come by their representatives. In every free government,

there is restriction from the beginning to the end. And every Constitution—the Constitution of the United States, and the Constitution of the several States, are all alike restrictive. In the first place, the people of the State restrict themselves as to the exercise of their right of coming together as individuals, to make laws. It is a restriction of their inherent power to send up delegates to frame a Constitution, and they restrict themselves of their natural rights, by creating a Legislature, an Executive, and a Judiciary; and, having done this, they go on and restrain the power of these officers and functionaries. They go on and declare what they shall do, and what they shall not do. Thus it is, that the people restrain themselves in every step they take in the matter of government.

Now one word in reference to the restriction which the gentleman from Shelby (Mr. Hendricks) advocated the other day. What that gentleman affirmed was all true. The point of difficulty consists in the matter of carrying out the law—in determining where and how you will apply the restriction. But, I believe there is no dissimilarity of opinion here about this matter.

But, how does this question of restriction differ from that which has been placed upon the election of officers? The gentleman from Sullivan, (Mr. Wolfe,) over the way, has been very clamorous upon the subject of the right of the people to elect their own officers, but now, in my judgment, the people have a right to restrict themselves directly in this, as in all other cases—that it should be left to the people wholly, to re-elect their faithful officers as often as they pleased.

But the gentleman from Shelby has said, that the people are more liable to go astray in the matter of financiering for the State, than upon any other account: that the glitter of gold has a charm which would be more likely to lead them astray, than all things besides. I believe this to be most strictly true, for it is upon this very rock that these States have nearly foundered. Then why not restrict the people in this matter as well as in others. What is more deceptive, more illusive, and more likely to mislead the judgment of men, than this subject of money? Is there anything more imperiously demanded than this restriction, by our past experience? Shall we throw away all the schooling which we have had upon this subject? Shall we forget the plain, moral, and political lessons of our history in those times, when we so narrowly escaped the gulf of repudiation? Shall we so far forget these lessons of experience as to leave ourselves any longer in a condition where we are liable to be led again upon the confines of that unfathomable abyss? I hope not. I would prevent such a contingency, if all the people demanded it. I would place it forever out of the power of politicians, by their seducing wiles to

lull the senses of the people upon this subject, and lead them astray again. And there will be no difficulty about their doing so, unless we shall be able to put into the Constitution some such clause as that which is now before us. How infinitely better would it have been for us—how much prouder could we stand up as Indianians, if we could be rid of the burthen and the disgrace of financial bungling which rests upon us now. And, if we had been protected by such a Constitutional clause, we should never have been sneered at as a repudiating people; but we would have been prosperous and happy—healthy, with reference to all of our finances, and proud of our condition. Why, then, should we not put in this clause?

But it has been decided, as the gentleman from Ripley has said, by a solemn vote of this Convention, that the section, as it now stands, should be incorporated in the organic law of the State.

Why, then, urge the substitute upon the Convention, after the whole argument and reasoning has been gone through with, and the question virtually settled? I hope the proposition of the gentleman will be voted down, and after that, if no gentleman particularly desires further to discuss the question, I hope the previous question will be called upon the engrossment of the section.

Mr. McFARLAND. It is not my intention in rising, to detain the Convention with any extended remarks, but I desire to call the attention of delegates to the real question, which, notwithstanding the attempt which has been made to keep it out of the discussion, and concealed from view, is the one which is having the most influence in shaping the final result.

The simple question is, shall we adopt any provision which will allow a future Legislature to contract a State debt? and, sir, upon this naked proposition, leaving out of view, entirely, the questions of currency and a State Bank, there could have been no dissenting voice from the restrictive policy now embodied in the section. We were all ready to declare, in the most emphatic language, "*There shall be no increase of the public debt,*" until the gentleman from Wayne (Mr. Rariden) discovered that the question of the State Bank was involved in the adoption of this section. Prior to the announcement that there was a free bank cat in the meal tub, [laughter,] there was not a single voice raised against the proposition to restrict the Legislature, even in conjunction with the people, from increasing the public debt.

It is true that the gentleman from Jefferson (Mr. Dunn) remarked that he desired to leave the power with the Legislature to contract a debt for certain purposes. He mentioned that it might yet be to the interest of the State to re-purchase the Madison Railroad, or some other of the public works, built in part by the State, and in part by private enterprise.

But, sir, I presume there are few gentlemen who seriously entertain an idea that the State will consider it good policy to repurchase all or any one of the Public works already constructed.

And, if it should ever be considered to the interest of the State to repurchase any of those public works, it is no argument against the adoption of this restrictive policy, because the people, enlightened and made wiser by the terrible lesson of 1836, will make such investments with their own money, and not again with borrowed capital—they will purchase by levying a direct tax upon themselves and not by contracting another State debt.

Certainly no member can advocate a proposition that will allow a future Legislature to run riot in the contracting of public debts, and sustain himself among his constituents. I know that many gentleman would excuse themselves from carrying out the plainly expressed will of the people, and voting for the restrictive provisions of this article, on the ground of the announcement made by the gentleman from Wayne, that in voting for restriction we are voting against the recharter of the State Bank.

Mr. DOBSON. I would not rob any gentleman of his desert, but I must remind the gentleman from Tippecanoe that it was myself who first sounded the alarm that the bank question was hid under the provisions of this section. If the reports of the debates are correct, it will be seen that I am correct.

Mr. McFARLAND. It may have been mentioned by the gentleman from Owen, but the delegate from Wayne (Mr. Rariden) was the first to speak of the matter upon this floor, in my hearing.

The gentleman from Hancock (Mr. Walpole) also sounded the party tocsin, and called upon the friends of the State Bank to rally in opposition to the restrictive policy. He stated on yesterday, that the real question in debate was not merely whether future Legislatures should be allowed to contract a public debt, but whether the people of this State should be allowed to have a State Bank, if they decided in favor of that institution. He (Mr. Walpole) said, "pass this provision and the free bankers have a clincher on the State Bank."

The same gentleman also argued that there could be no State Bank under the provisions of this section, because the Legislature would be restricted from borrowing money to enable the State to take stock in that institution, and "because the people of Indiana were not fools enough to take stock in a State Bank in which the State itself owned not a dollar of stock."

Indeed, sir, so strong is the feeling upon this subject among the friends of the State Bank, that I am credibly informed, that on last evening the same means were resorted to in order to rally the supporters of that institution, as were so graphically described by the gentleman from Delaware (Mr. Kilgore) yesterday in his his-



tory of the passage of the mammoth internal bill of 1836 [laughter]! Yes, sir, I am told that members were visited at their rooms last evening, in order that they might be prepared to vote "understandingly" this morning. Squint at it as you will, the bank question is now the one influencing the minds of gentlemen who oppose the restrictions embodied in the section now under consideration, and I thank gentlemen for their frankness in announcing the fact.

But, Mr. President, my object in addressing the Convention at this time, is to demonstrate that the State Bank question is not necessarily involved in the adoption of this restrictive provision in a section of the new Constitution.

SEVERAL VOICES. You cannot do it.

Mr. McFARLAND. Let us see. At the expiration of the present charter of the State Bank, supposing this restrictive provision to be incorporated in the new Constitution, the State will come into the possession of one and a half millions of dollars, being the amount of the school fund—unless, indeed, it has been squandered by the Bank. If squandered, correct that fact with your mendicant cry for more, and let it have its proper weight in the consideration of this question. But, if it is not squandered, there is a million and a half of dollars, being the school fund, which the State can use as her portion of the basis of a State Bank capital. Thus it will be seen that the contracting of another State debt, is not necessary to the recharter of a State Bank.

Mr. WALPOLE. The amount of the school fund now remaining, is about eight hundred thousand dollars, the residue having been absorbed by State Scrip;—absorbed—not squandered.

Mr. McFARLAND. Admitting this to be true, the State would still have nearly a million of dollars to invest as the basis of a State Bank capital. But, suppose that the million and a half of the School Fund to be all absorbed, or, suppose that, not being absorbed, but in a condition to be paid into the Treasury, at the expiration of the charter of the State Bank, the State shall decide to invest that fund otherwise than in banking—could not Indiana secure all the advantages resulting from this form of banking, without becoming a partner in another State Bank, which would involve the necessity of creating an additional State debt?

This is the first time, Mr. President, since the lessons taught by the financial disasters of 1836-7, that it has been seriously proposed anywhere in this Union that a State should again borrow money for the purpose of engaging in the business of banking.

True, sir; Ohio has established a State Bank since that period; but how? Not by borrowing money for that purpose, but she assumes the right, as a sovereign, to participate in its management, without owning any portion of its capital. And cannot Indiana do the same?

Must she become a partner to acquire that control over a State Bank, deemed so desirable by gentlemen, which she may, without any violation of correct principles, assume by virtue of her sovereignty?

I believe that I have succeeded in showing that the adoption of this restrictive provision will not, to use the forcible expression of the gentleman from Hancock, (Mr. Walpole,) give the "free bankers a clincher on the State Bank." [Laughter.]

It seems to me, sir, that, while gentlemen have been denouncing all systems of internal improvement, and mourning over the consequences which have resulted from the system in this State, they have forgotten the lessons of the past with regard to banking by States. A careful examination of the subject will, perhaps, show that the embarking of States in banking speculations has been followed by more disastrous consequences than even the justly odious system of internal improvements by the State.

I hold in my hand, Mr. President, the American Almanac for 1840, in which is given "a summary of the amount stock of issued, and authorized to be issued, for banking, canals, railroads, turnpikes, and miscellaneous objects." From this, it appears, in round numbers, that the total amount borrowed is one hundred and seventy millions, and that nearly one-third of that amount—fifty-two millions—were borrowed for banking purposes.

I am aware that the full amount of State indebtedness is not given here; but the amounts set down approximate sufficiently near to the real sum to serve as a basis for the argument.

What is the experience of the State of Indiana in this matter? She has borrowed and invested in banking one million three hundred and ninety thousand dollars. It is claimed by the friends of the bank that that amount has not only yielded, thus far, a handsome profit to the State, but that the capital is entirely safe, and will be ultimately returned. Without stopping to investigate the correctness of this claim, all must admit that the State of Indiana has lost one million of dollars by embarking in the business of banking. It is known to every delegate here, that the sale of an additional million of dollars in the bonds of the State was authorized by the Legislature—that they were placed in the hands of the then President of our State Bank—that they were disposed of upon credit, and no considerable amount was ever realized from the sale. And I wish to be distinctly understood, that, while I do not charge the Bank with having lost the money, through its officers, it must be set down as an absolute loss, resulting from the fact that the State engaged in the business of banking.

Having shown the results of our own experience in banking, let us inquire, in addition,

what has been the history of this system in other States!

I find that the State of Kentucky borrowed two millions. With regard to this, her bankers claim that the investment has been profitable, and that the capital will be ultimately repaid to the State. Next upon the list of States, in which it is claimed that the amount borrowed for banking has been profitably used, and the capital safe, stands Missouri. She has borrowed two and a half millions. And, sir, these three States—Indiana, Missouri, and Kentucky—are the only ones in the Union where it is claimed that the amount borrowed for banking purposes is safe; and I have already shown that our own State has lost one million of dollars in consequence of her connection with the business of banking.

Let us now look at those States where it is admitted that the connection of the State with banking has been disastrous; and I will commence with the one which has lost the smallest proportion of the whole amount borrowed. Louisiana borrowed twenty-two millions. Of this enormous sum, over eleven millions of dollars have been invested in banks that have already failed, and it is supposed that their capital stock will be a total loss. And, sir, let me here remark, that the consequences of State banking in Louisiana have led to the adoption of a provision in her amended Constitution prohibiting the chartering of any association for banking purposes.

Next comes Tennessee. She borrowed three millions, and a large proportion of this amount was invested in the stock of the Union Bank of Tennessee. Since 1837, the State has paid the interest upon the money borrowed, the bank having failed; and I learn from the message of the Governor of that State that the capital stock of this bank cannot be sold for enough to pay the first instalment of the debt, amounting to about one hundred and twenty-five thousand dollars. Another portion of the three millions was made the basis of the Bank of Tennessee; and in reference to this investment, the Governor tells us, in his message, that the bank cannot pay the interest upon the loan without diminishing its capital, and that the interest and principal of the whole debt must ultimately be paid by levying a direct tax upon the people for the amount.

Alabama borrowed seven millions eight hundred thousand dollars, which she invested in the establishment of a State Bank. Of the fate of this investment, I can learn nothing, except by general report; but the whole amount is supposed to be irretrievably lost.

Arkansas borrowed three millions, with which she engaged in the business of banking. It is supposed that this, also, will be an entire loss.

The State of Illinois borrowed three millions, and invested in a State Bank, which has

been out of existence for several years, and the whole amount invested was totally lost.

And last, sir, in this array of States, who, in the pursuance of this banking policy, have trodden to the brink of ruin, stands Mississippi. She borrowed seven millions, which she invested in the various banks of the State, and also one hundred and ten thousand dollars of a Seminary fund, derived from a donation of lands from the General Government. From the messages of Governor Brown of 1844 and 1846, I learn that nothing will be realized to the State from her investment; so that not only the seven millions have been lost, but the character of the bounty given by the General Government was not sufficiently sacred to protect it from a similar fate.

I shall not have time, Mr. President, to enlarge upon this subject, but I will conclude by asking gentlemen if they will still insist that Indiana should follow farther on in a course strewn with the wrecks of States, and where experience has every where inscribed in the plainest characters: "*This is the road to financial ruin!*" I beg that delegates will ponder upon the instructive lessons of the past, and pause before they decide that Indiana shall engage yet farther in Banking, when the results in other States have proved so disastrous.

With these remarks I will submit the question, trusting that the restrictive policy will be adopted by the Convention.

Mr. OWEN. Mr. President, it is evident that the vote about to be taken will be a close one. Strong efforts are made to-day to reverse the decision of yesterday; and an effort to prevent such a result, if made at all, must be made now.

Sir, what is the prevailing, I may say the sole idea, repeated in every form and shape by those who oppose the adoption of this section? It is, that, by adopting a Constitutional provision of this character, we evince a mistrust of the capacity of the people for self government. I ask gentlemen who oppose this restriction, and who are in favor of submitting to the people the question of debt or no debt, why not, upon the same principle, submit in like manner every other restrictive provision in the Constitution?

Take one of the first, which declares that "no preference shall ever be given by law to any mode of worship." And let us imagine that some one sect, gradually increasing, should at last obtain an overwhelming majority in the State. Are we to leave this an open clause, so that such a majority, trampling on the rights of conscience of the minority, may create an established church, towards the support of which all shall be forced to contribute, no matter whether they are dissenters from its doctrine or not? No one proposes this. Why? Because we are sure that, even if a majority did it, it would be wrong.



Take another example: "The right of trial by jury shall remain inviolate." Do we desire that this should be left open? Do we evince distrust of the people if we leave it not open? No one argues this. We know it to be an eminently wise and just provision; we are sure it ought not to be rescinded; and we act upon this conviction.

There is another instance: after a long and animated debate, this Convention adopted a section providing that no man's property should be taken for public use without just compensation first assessed and tendered. Why did we not provide, that we might submit to the people a law declaring that private property *shall* be taken without assessment and tender? Is it because we mistrust their capacity for self government.

And so we might go through almost the whole Constitution, clause by clause. My eye catches the provision that "printing presses shall be free." Are we in doubt about letting that stand as it is? And here again: "that no *ex post facto* law shall be passed." Shall we submit that also?

If the restrictive feature of the pending section be yielded, let the rule apply to the whole Constitution. If there is to be no mistrust of ourselves as a people, or rather if a refusal to leave such a restriction open to be abolished by a future Legislature, is to be construed into mistrust of the people, then let us carry out the principle consistently at once, and say that laws may be passed abolishing every restrictive principle in the Constitution, provided these laws be submitted to a vote of the people.

The reason, sir, that we do not submit the provisions I have named, the right of conscience—the right of trial by jury, a prohibition of *ex post facto* laws, a provision that no man's property shall be taken without just compensation—and the rest, is, that we have settled it in our own minds that they are restrictions that should be, and permanently remain, a part of the organic law. We feel that it is a matter not open to doubt. And just so I feel in regard to the restriction now under consideration. I am sure that we are right in declaring it.

We are asked, "shall it be said that the people are to be restrained from doing that which a majority desire?" Yes; when they themselves will the restraint.

If there be a spectacle truly sublime, a spectacle upon which the Great Creator may look down with approval, it is that of a man, strong as Hercules, powerful as Alexander, unrestrained by any external influence, yet restricting himself in the exercise of his strength and his power; saying, "I can do this, but I will not do it;" listening to the still, small voice of reason, acknowledging that voice as more powerful than the sword.

I remember, many years ago, reading some verses from the pen of an Italian poet. They

pleased me, and I made of them a translation, still fresh in my memory, and which, as the lines embody, in strong language, the sentiment I am now enforcing, may not be out of place here:

"Crown his brows with laurel wreath,  
Who can tread the field of death;  
Tread, with armed thousands near,  
Yet know not what it is to fear.  
But greater far his meed of praise,  
Juster his claim to glory's bays,  
Who, true to reason's voice, to virtue's call,  
Conquers himself—the noblest deed of all."

And that which is noble in an individual, is it not noble also in a republic? yet more especially in our people, all powerful as they are? in a State sovereign as she is, controlled by no power save that which controls the Universe?

Let us rejoice in our strength, in our sovereignty, in our independence. That is well. But let us also remember the words of Nature's own poet:

Oh, it is excellent  
To have a giant's strength, but tyrannous  
To use it like a giant.

Sir, where we know that our act is right in itself, where we know that the people will defend and approve it, let us do it boldly, decidedly. Let us take the responsibility. We shall be sustained in taking it here. Let there be presented to the voters of Indiana, the naked question: "Shall we forbid, in the Constitution, the contracting of a public debt for any purpose other than to meet a deficit in the revenue, or to pay the interest on the State debt?" the response from nine-tenths of the people will be, *yes!*

Mr. HADDON. I chanced to be out of my seat when the pending proposition was read, and I would ask the indulgence of the Convention to have it read again.

The proposition was read, and is in substance that the General Assembly should have no power to create a State debt, except when the law for that purpose should first be submitted to the people, and provision made by direct taxation for the payment of the interest, and the canceling of the whole debt in twenty years.

Mr. HADDON resumed. Mr. President, I hope the Convention will adopt no such principle. It is, in effect, the same as the latter part of the section which was stricken out on yesterday, with the exception of a slight alteration, fixing twenty years instead of twenty-five as the period of redemption. Sir, I am not afraid to trust the people; on the contrary, so far as the nature and theory of our government indicates that they should be trusted I am willing to trust them. But I will not give my consent that a majority shall tax and virtually rob a minority, against their own will, and in violation of every principle of equity and fair dealing. Minorities have their rights, and those rights ought to be sacredly regarded; and for one, I desire to see them scrupulously protected by this Constitution. I

am here, sir, to represent the interests of the whole, and not a part, of my constituency—to protect the weak against the aggressions of the strong. Under all circumstances, sir, it is wise to guard against public indebtedness. My colleague from Sullivan has said, that in times of excitement, the public mind is susceptible of false impressions, when continually besieged by selfish and designing politicians. It is hasty and unguarded steps on their part, arising from this cause, which I desire to fortify the people against; I would here ask the gentleman from Sullivan, if he would feel satisfied to pass a law allowing his county and constituents, who might neither be interested nor consulted, to be taxed for the construction of a public work, which, by its direction, would afford no commercial facilities to them? And yet, sir, under this section the weak or remote counties, might be taxed, and that heavily too, to construct favorite railroad routes, planned and protected for private aggrandizement, and carried into effect because they passed through populous counties. I have no private ends to subserve, no sectional prejudices, or local partialities to gratify. Sir, I have the honor to represent in part three counties, viz.: Sullivan, Vigo, and Clay; and although I hail from the same county as my colleague, Mr. Wolfe, my duty compels me to dissent directly from his views on this important subject. I therefore trust in all sincerity, that the section as it has been amended by the adoption of the motion of the gentleman from Ripley, (Mr. Smith,) striking out that part of the section which provides that the Legislature might borrow money, by first submitting a law for that purpose to the people, will be adopted.

**Mr. ROBINSON.** This subject, sir, is one among those in which the people are most interested, for I believe that it is one of the prominent causes which influenced the call of a Convention to amend the Constitution. There is a very general desire in every portion of the State that the Legislature should be restricted from increasing the public debt, even though a law for that purpose should receive the sanction of a majority of the voters of the State. There is a universal opposition to any provision which will allow the State to embark in another system of internal improvements.

We came here to frame a Constitution for the government of ourselves, and of generations that are to come after us; and now for gentlemen to say that we have no right to circumscribe the acts of the Legislature and of the people, for the future, is to say to me that the will of the people in calling this Convention is to be disregarded. A Constitution is not of itself a restriction upon the government and upon the people, and designed to keep each within their proper spheres. The disastrous results of the debt making and internal improvement policy of 1836, has taught the people a severe lesson, and

they have proved their disposition to profit by it by requiring us to provide checks and guards upon the debt making power for the future.

They remember how they were led astray in 1836 by politicians who told them that an additional hen would pay all their increased taxes resulting from the internal improvement system. That bubble has burst, and it is now found that instead of the hen it takes the cow and the horse to pay their taxes. I can assure gentlemen that the restrictions of the section as amended is not at all beyond the desires of the whole people. I represent a portion of the State which was never benefited to the amount of a dollar by the internal improvement system, while twelve millions of dollars were expended on public improvements in other parts of the State. But, sir, the people of my district are willing to put their shoulders to the wheel, and make common cause with the rest of the State in paying off our enormous public debt. But what they demand is, that having done this, the Legislature should be restricted, and the people should be restricted from borrowing money for the future.

Let them have at least this privilege, while they are bowed under their present burthens; let them have the satisfaction of knowing that hereafter there is to be no increase of the public debt. I hope, sir, that the section as amended on yesterday will be engrafted as a provision of the new Constitution.

**Mr. WOLFE.** I am decidedly opposed to granting the Legislature any power to borrow money except for the purpose specified in the section preceding the one in debate.

I voted against the Bank proposition; therefore, the hints thrown out by the gentleman from Tippecanoe (Mr. McFarland) about members visiting and being visited at their rooms last evening, in order that the friends of a State Bank should be prepared to act in concert this morning, do not apply to me.

**Mr. ROBINSON.** I can endorse the gentleman from Sullivan in that respect. I have known him as a representative of the people for several years, and I can say that I never knew him out of his room after dark. [Laughter.]

**Mr. HENDRICKS** proposed to amend the section so as to read as follows:

"The General Assembly shall never pass any act to create any State debt except as named in section —, unless such debt shall be authorized by a law, for some single object, therein distinctly specified, together with the amount of such debt, and such law shall provide for the collection of a sufficient direct annual tax to pay the interest on such debt as it falls due, and also to discharge the principal within — years from the contracting thereof.

On the final passage of such bill in either House of the Legislature, the question shall be taken by ayes and noes, entered on the journal thereof, and shall be, 'shall this bill pass, and



ought the same to receive the sanction of the people?"

No such law shall take effect, until it shall, at a general election, have been submitted to the people, and have received a majority of all the votes cast, for or against it.

No such law shall be submitted to be voted on within three months after its passage, or at any general election, when any other law, or any bill, or any amendment to the Constitution, shall be submitted to be voted for or against.

The money arising from any loan, or stock creating such debt, or liability, shall be applied to the object specified in the act authorizing such debt, or liability, or for the repayment of such debt or liability, and for no other purpose whatever."

Mr. HENDRICKS. In order to secure the support of some gentlemen who almost reverence everything that comes from New York, I will mention that my amendment is similar to the corresponding clause of the New York Constitution.

When the vote was taken on the motion to strike out the latter part of the pending section (relative to the power of the Legislature to contract a State debt with the consent of the people) on yesterday, I could not vote my sentiments. I could not do so, because the remarks of the gentleman from Wayne (Mr. Rariden) and the speeches of other gentlemen, had had the effect to make the whole question turn upon that of the State borrowing money to bank upon, and becoming a partner in the banking business.

To this we were forced by the gentleman's declaring that the clause prohibiting the Legislature from contracting a public debt, except for the purpose of meeting a deficit in the revenue, and for paying the interest on the public debt, &c., was designed to, restrict the Legislature from ever connecting the State as a partner in any banking institution. Therefore, I voted for the amendment to strike out all that part of the section which proposed that the Legislature might contract a public debt, provided the law for that purpose was first submitted to the people and by them approved.

For, sir, I am opposed to having the State in any way connected with a bank or banks, as a partner. I am opposed to the State having any connexion in interest with banks. Let her have only a controlling power over any banks that may be established. In this I am confident that I carried out the will of the people, and that is what I shall desire to do upon every vote during the session of this Convention.

The gentleman from Marion (Mr. Morrison) undertook to sound the bugle of party here, by saying that opposition to the section as it stands, allowing the Legislature to contract a debt after the people had voted to that effect, was democratic, and the position that every democrat must occupy.

Sir, the position of the democratic party upon this question has been assumed and defined by an authority generally recognized by the party—a democratic State Convention.

Two years since, I was a member of the democratic convention, at which Governor Wright was nominated for the office he now fills. Among the resolutions adopted there, as reported by the gentleman from Floyd, (Mr. Kent,) I find the following:

*Resolved*, That it is expedient that a Convention should be held for the purpose of amending the Constitution of the State—and that the following, among other provisions, should be incorporated in the amended Constitution:

1st. That no public debt shall be contracted without laying a tax at the same time for paying the interest annually, and for the gradual redemption of the principal, nor until the proposal to contract such debt shall have been submitted for decision to the people at a general election.

That, sir, I am prepared to endorse and support here, as I supported it there. With that, and other principles inscribed upon our banners, we went before the people that year. The result tells us most emphatically what is the will of the people relative to the provisions of the section under consideration.

A few days after the session of the democratic Convention to which I have alluded, the whig State Convention assembled, and took precisely similar ground; with exactly what design I cannot say; but I remember very well, that at the time, we thought they were endeavoring to steal what was legitimately our thunder! [Laughter.]

I do not allude to these facts, sir, because I would regard this as a party question, nor do I read the resolution for any partisan purpose—far from it, but I call them up for the purpose of showing gentlemen who wish to know the real will of the people, that their desire is to have this whole article as it came from the hands of the committee. For it is well known that the same summer that this principle was endorsed by the people, they resolved at the ballot-box to call this Convention. Therefore, I say that the principles of this section were declared to be, not only democratic, but the popular will, before the gentleman from Marion pronounced it to be anti-democratic ground.

Mr. MORRISON of Marion. I did not wish to be understood as classing one side of this question as democratic and the other whig. I said that the doctrine that a national debt was a public blessing, was not a democratic position.

Mr. HENDRICKS. I understood the gentleman to say that his position was peculiarly a democratic measure, and I wished to show democratic authority on the other side; but if I misunderstood him I take it back.

In the debate upon this question, gentlemen are constantly reverting to the events of 1836.

Even the gentleman from Posey has carried us back to the disastrous proceedings of that time, and tells us that that was one instance where the people judged wrong. But, sir, I say it was not the people. I contend that it was the politicians of that day who went astray and took the people with them. It was not the people who committed the blunder, but the Legislature; and the Legislature was governed by a system of log-rolling which bore down every opposing interest; and that the people could not have been controlled by such influences as governed the Legislature. What use is there in pertinaciously declaring that the people were inflamed and excited, and that they involved themselves in the colossal debt which is now, and for these years has been, hanging over them? I tell gentlemen that the people never did it, and never will so involve themselves; it was the Legislature, at whose doors this whole scheme must be laid with all its consequences. Then, sir, I say let us restrict the Legislature by a provision that will forever prohibit that body from contracting a public debt, but let us not restrict the people, who are the source of all political power. Between the people and their representatives I draw a broad line of distinction; the one I regard as the proper subjects of jealousy and of restriction, the other as being beyond the need and the proper province of Constitutional restrictions.

In the amendment which I have read it is provided that the object and the amount of a loan which at any time might be made, shall be clearly specified, so that the people shall know to what specific object the money is to be applied, and the amount of debt created.

The next provision of the amendment is that the act shall be submitted to the people and shall not be mixed up with any other question. It cannot become confused with any other law or amendment of a law, but is to be submitted as a simple, naked proposition, to occupy the exclusive attention of the voter. Thus there is no danger of error and mistake on the part of the people in voting upon it.

Another provision is that upon the final passage of a bill for the contracting of a public debt, the question shall be taken by yeas and nays and entered upon the Journal, and shall be, "shall the bill pass, and ought the same to receive the sanction of the people?"

One of the greatest objections made to a submission of a law to the people is, that it takes the responsibility of the act from the Legislature, where it should belong. But by the terms of the amendment every member shall not only vote upon the passage of the bill for submission to the people, but shall endorse it or condemn it, and place his vote of recommendation; or of disapproval, on the records.

And now, Mr. President, I have to say that if, with all these ample, these extraordinary checks and guards, these restrictions and prohibitions,

the people are not competent to vote upon the question of borrowing money, I do not know what they are competent to do. Why, sir, there appears to be no distrust of the capacity of the people to decide upon this Constitution; we are engaged in framing a Constitution which is to bind them and their children perhaps for a century, involving their most vital interests; and yet, sir, we are told that they are not to be trusted to vote upon a simple question of temporary expediency—a question of the propriety or impropriety of borrowing money! I have not been profuse of professions in the perfect ability and never erring judgment of the people, but I have too great confidence in them to vote for restricting them from contracting a debt when they shall declare at the polls that it is their will to borrow money for a specific purpose.

Mr. President, I have stated the points to which I rose to call attention. I have stated my position as a democrat upon the question, and will occupy no more time.

Mr. PEPPER. I think that it is evident from the fact that most of the remarks of gentlemen are of a somewhat personal and hasty character, that the debate upon this question has proceeded far enough, and I shall therefore move to lay the motion on the table.

Mr. TAYLOR thought this was an ungenerous course to pursue with those who are supposed to be in the minority.

Mr. BASCOM remarked, that after the "Hunkers" had got through they supposed the Convention ready for the main question.

Mr. BARBOUR of Vigo. If Gentlemen are disposed to continue to discuss, I shall not object. I will withdraw my motion.

Mr. President, the great question now before the House is this: shall we have a free or an arbitrary form of Government. Sir, this question lies at the root of the subject in debate. Now, sir, I have always understood that all power is inherent in the people. If this doctrine be true what right have we to restrict the power of the people? What right have we, through all coming time, to say that a majority of the people of Indiana, may not do as they please in reference to any great question of State policy, in which the citizens might feel a deep interest? None, sir, none. If this provision is adopted as a part of the organic law of the land; if in the Constitution you deny that the majority shall rule; if you say that the Legislature shall have no power, to exercise one of the prerogatives of a sovereign State, when approbated by the votes of the citizens—you place a tyrant over the free will of the people. And yet, Mr. President, the people are the possessors of all power, and what they *will* to be done—they *will* do.

Whenever the public mind becomes excited on any great question of State policy—when ever the great body of the people are moving in



one direction—whenever the public mind is bent on the accomplishing of some great object of State enterprise—these fetters will be broken—your Constitutional barriers will be swept away, and a new form of government organized, based on that eternal principle, *that all power is inherent in the people*. Why, then, seek to engraft in the Constitution a principle at war with the genius and spirit of a free people!—a restriction at war with the very principle on which a free representative government is founded. Sir, it is on this ground, and not because I am in favor of a State debt, that I am opposed to this restriction.

When you say that Indiana shall never, under any circumstances, engage in any matter worthy of State enterprise, you strike at the power of the people. Who shall say that the time will never come when Indiana may not accomplish some great work, of which the citizens may feel justly proud.

The gentleman from Posey, (Mr. Owen,) and others, have asserted that a Constitution is a restriction on the people. This, Mr. President, I deny. The Constitution of a free representative government should reflect truly the will of the people. The gentleman asks, is not the prohibition against the imprisonment of the debtor, except in cases of fraud, a restriction on the will of the people? I answer, no. The gentleman further asks, if the prohibition, restraining the Legislature from suspending the writ of habeas corpus, except in cases of invasion or rebellion, was not a restriction on their will? I again answer, no. Why do we place a Constitutional barrier between the honest but unfortunate debtor, and the prison house? It is because it is a great moral wrong to incarcerate the honest man in prison because he has not the means to discharge a just debt. Why do we say that the writ of habeas corpus shall not be suspended, except in case of invasion or rebellion? Because the citizen has the right to know that he is not unjustly and illegally restrained of his liberty. We recognize these as great fundamental truths, to guard the individual rights of the citizen against aggression. But, Mr. President, is it a great fundamental truth that there is no great public work, to which the individual enterprise of the citizen may be unequal, in which the State may not engage? I can well imagine the proud satisfaction with which the citizen of New York can point to her great public improvements,—her flourishing city, where the commerce of the world is unladen and then borne along her grand canal, to the great West. I ask, then, is it a great and fundamental truth, that there is no great work in which a State may legitimately engage? Where, then, is the analogy between the two cases? There is none, sir.

Gentlemen have told us that the popular will demands this restriction. Mr. President, I have not so read the people. The citizens of Indiana

are proud and jealous of their rights and privileges as freemen. What citizen of Indiana desires to see her acknowledge before the world that she is incapable of self-government. For, turn this question as you will—disguise it as you may—it is nothing more nor less than saying to the people: You are not capable of governing yourselves. Think you not, Mr. President when this question is addressed to the citizen he will feel his State pride touched? My word for it, if this restriction be adopted, they will reject your Constitution. They will never make the humiliating confession. They will vindicate their right that the people are sovereign and capable of self-government; and this act, Mr. President, will adorn the brightest page in Indiana's history. I feel that a great blow is pending over the fair fame of Indiana. I wish to see it averted. I trust and sincerely hope, that, after careful deliberation, the Convention will reject the amendments, and adopt this section as reported by the committee.

Mr. FOSTER. This Convention has now been in session for seven weeks, and with but one exception, I have been constantly at my post. I therefore thought it unkind in the gentlemen on yesterday—

The PRESIDENT. That is not pertinent to the subject in debate.

Mr. FOSTER. I desired to explain a remark which had been made.

The PRESIDENT. The Chair decided that the gentleman should confine himself to the question in debate.

Mr. FOSTER. Well, sir, I appeal from the decision of the Chair. I wish to know if I may not be heard in reply to personal remarks.

The question upon the appeal was put, and the decision of the Chair was affirmed as the judgment of the Convention.

Mr. FOSTER proceeded to make some remarks of personal explanation relative to the action of the Convention in allowing the gentleman from Laporte (Mr. Niles) to record his vote, when that privilege was denied to him (Mr. Foster).

He then said that he had discussed the question in debate, before the people, and had declared himself against allowing the Legislature to borrow money unless the law for that purpose was first submitted to, and sanctioned by, the people; in this I was supported wherever I addressed the people.

The gentlemen who have preceded me, have so effectually stole my thunder, sir, that I have but little to say. However, I am content, inasmuch as the arguments I had intended to use are now before the Convention, and will have their weight.

I was surprised at a remark made by the gentleman from Tippecanoe (Mr. Pettit) when last up. He was certainly unfortunate in his comparison, or in his figure, when he said there could be no social equality between the laboring man

and the man of letters—had he said between the blackguard and the man of letters, I could have assented, but I cannot agree with him that there can be no social equality between the laborer and a man of education:

Sir, there are many hard working men in Indiana, whose natural refinement makes them fit to grace any library or parlor in the State. It is not true that because a man toils with his hands for an honest living, he is therefore coarse in mind, and unfit for the society of the educated and refined.

The gentleman from Posey (Mr. Owen) also made a remark which I will notice. He rose and said, that it was evident that this would be a close vote, and therefore *he* must speak. As much as to say, that the crisis was a great one, and that he must interpose *his* strong arm and prevent the Convention from taking a false step! This was said with an air of triumph, which, with all my respect for the gentleman, I cannot approve.

As to the question immediately in debate, I hope the amendment of the delegate from Shelby may be adopted. The section, as it now stands, is too restrictive.

On motion, the Convention adjourned until two o'clock.

#### AFTERNOON SESSION.

The Convention resumed the consideration of the section prohibiting the Legislature from authorizing any debt to be contracted on behalf of the State, except for certain purposes.

Mr. HELM said—

MR. PRESIDENT: Modesty is said to be a virtue. It is not for me to say whether my silence during the long discussion of this subject, is to be attributed to my peculiar modesty, or to my not being able to catch the eye or the ear of the President, and that, as I am situated upon the out-skirts of this Hall, I have but few opportunities of being heard upon this floor.

The fate of the section and the amendment now under consideration, I conceive to be sealed, by the vote of last evening, and by renewing the contest this morning, we did not expect to change the decree of this Convention.

I ask, sir, what power this section confers upon the Legislature or the people? It reads as follows:

Sec. — No act of the General Assembly shall authorize any debt to be contracted on behalf of this State, except for the purposes mentioned in the — section of this article.

You discover that this section confers the power in a very indirect manner, upon the people. The Legislature has first to consent to the propriety of making a loan, and then the whole matter has to be submitted to a direct vote of the people—the next Legislature may pass an act authorizing said loan. This, sir, is all that is claimed by this section for the sovereigns of

this State, and yet we are willing to deprive them of this right.

Does this look like democracy? A government based upon true democratic principles, acknowledges that all power is vested in the people, and when this power is withdrawn, the form of government is changed. Yet, sir, our modern democratic friends are willing to curtail their rights in an organic law.

I hold that it is not only anti-democratic, but that it is anti-republican.

In a republican form of government, the sovereign power is vested in the representatives, elected by the people; and, by striking out this section, you infringe upon the vested rights of the Legislature, for you refuse to trust the people, or the people's representatives. It seems to me that to deny this right, will curtail the powers that naturally belong to a democratic or to a republican form of government.

But the friends for striking out are ready to meet us at every point, with the old internal improvement system. They charge this upon the people, and make it the scape goat to carry all that they say against the rights of the people. The odium of this system belongs, not to the people; it was conceived in this Hall, and brought forth, not far distant from this Capitol. After its conception, they returned home, with gleaming prospects ahead. They told the people that we could borrow ten millions of dollars, and invest it in works of internal improvement, and that the profits from tolls would pay the interest, and ultimately the debt; that an old hen and a brood of chickens would pay all the taxes created by the State Debt, and that a market would be furnished at their doors, for all their surplus products. It was by this course of reasoning that a small portion of the people gave their assent to it. At the next session of the Legislature, the monster was brought forth with all its deformities. If this matter had been left to the people, Indiana would have this day been free from indebtedness.

I have as much confidence in the ability of the people to manage their financial concerns, as I have in this body, or in the Legislature. If we go to the honest yeomanry, who are the bone and sinew of the country, we find around them ample evidence of caution and economy, and will compare with the same number in this Convention, in point of wealth. Then why distrust their abilities to judge in matters of this kind, for themselves?

Let us, for a few moments, review our course whilst canvassing for a seat in this Convention. We appealed to them as the sovereigns of the land. We told them that all power was inherent in them, and that we only wished them to delegate it to us, and that we would reflect their will. Now is it reasonable, or right for us, whilst clothed with this brief authority, to tie up their hands and that of future Legislatures? I say that it is not.



Both political parties, in the last summer's contest, contended for the principle contained in the section about to be stricken out; each claiming the honor of having conceived the sentiments therein contained. But we are now in possession of what we were then in pursuit of, and I fear that many have lost sight of the people and their pledges. The time will come when they will hold us to an account for the manner in which we have discharged our stewardship. If we have been faithful in redeeming our pledges, we may expect them to receive our work. If not, they will reject it. I conceive it to be my duty, as a friend of the original section, to vote for the amendment of Mr. Hendricks, which is an amendment to the amendment proposed by the gentleman from Sullivan, (Mr. Wolfe,) neither of which materially alter the original section, as reported by the committee.

Mr. BASCOM. After so many gentlemen have been making speeches and given their views upon this subject, I think now it is time that the voice of my people should be heard. This is an important question, not touching the interest merely of a single county—not confined to those interested in the Madison Railroad, or the White Water Canal, but it is a question affecting the interests of the whole State. The question is, whether you will have any more public debt?

Gentlemen seem to talk here as though we were a legislative body, and they say, What right have we to come up here and pass organic laws which will bind and restrain the power of the people? Sir, our acts here are but as a rope of sand. We cannot bind the people. We are not sent here to propose certain restrictions which the people may adopt for themselves. The restrictions which we propose, if the people consent to be governed by them, are no longer to be regarded as imposed upon the people by this body—it is the people restricting themselves. I am entirely willing that the people should exercise this power. I have as much confidence in the people as any gentleman. In this matter, it is plain that the people will act for themselves. It is not for the hundred and fifty men assembled in this Hall, to say the people shall not contract a State debt, but the people themselves.

Sir, we have come up here, I hope, for the purpose of carrying out the views and wishes of our constituents; and first, for the purpose of ascertaining the views and wishes of the people, by comparison of the instructions which we have severally received. I do not speak here for the whole people of Indiana. I speak for my constituents alone. I represent their wants, and ask of no gentleman to speak for me or for them, who cannot be informed of their wishes as I am.

Mr. President, from all that I know, and from all that I have observed in this Hall, I am pre-

pared to say, that, if there is any one thing with reference to which we are most positively instructed, it is, that we shall have no more public debt. And whatever may be our action in the premises, you will find that the people have determined that there shall be created no more public debt.

Sir, our present taxation laws are very burdensome. They rest heavily upon all. I represent a people residing in a new country—a comparatively poor, laboring people, who have all they can do to make a living. Having but just gone into the woods to acquire a home, this heavy taxation comes with a double force upon us. Therefore it is, that we want this restriction. We want the most rigid restraints placed upon the power of the State, to prevent any more public debt.

Gentlemen talk about the right of the majority to rule. But I concur with my friend from Harrison, (Mr. Zenor,) when he says that the majority have no right to put their hands into the pockets of my people, for the construction of internal improvements, which cannot benefit them, or to make a railroad or a canal to any man's door.

Sir, what is the lesson that we may learn from the debate of the last two days? What schemes of fraud and villainy have been developed in the past operations of majorities with reference to this subject of internal improvements! The gentleman from Delaware (Mr. Kilgore) has admitted the corruption to which I refer. He says that he, himself, stalked the streets of Indianapolis nearly the whole of the night before the passage of the great internal improvement bill, and literally bought up the votes of members of the Legislature. It was thus that those old and visionary schemes of the Madison Railroad, the White Water Valley Canal, the Wabash and Erie Canal, and other ruinous projects of improvement, were brought to bear upon us. In view of these facts, do you really suppose, sir, that the people will not close the door against the adoption of another system of fraud? Think you that they are not now satisfied—that they have not had enough of this system of political cheater? Do you think to beguile them again by sending out your surveyors and engineers? Will they not rather remember the lesson they have learned—that, in former times, when you got the power into your hands, instead of benefiting the State, you proceeded to carry out the most nefarious schemes of speculation, and withhold that power from you?

The gentleman from Wayne, (Mr. Rariden,) who is always so anxious for the dear people, whenever you speak now of the White Water Valley Canal, he rouses himself like a turtle with fire upon his back. He calls that a miserable concern, which has cost the State so dearly, and for which we are still paying taxes while he would not be averse to throwing it

still upon the State, and increasing the public burthen for that which never was nor never can be worth a dime to me or my constituents. I say, sir, that we have had enough of this. We have learned by experience that it is now time to stop. We want, for the future, most effectually, to deprive those whom we send here in a representative capacity from acting as they have heretofore with reference to this subject.

The gentleman from Wayne (Mr. Rariden) calls his Canal Company a miserable and down-trodden association, as though the people were disposed to take away and deprive them of something which belonged to that Company, by depriving themselves and their representatives of the power to create any more public debt.

The gentleman from Jefferson (Mr. Dunn) gets up and tells you that it might be for the interests of the State, after a while, to buy out the Madison Railroad. But the gentleman from Ripley (Mr. Smith) supposes, as I think, more correctly, that it might be still more to the advantage of the Railroad Company to sell out to the State. But I say, if the State should ever desire to purchase any of these improvements, let them first get the money in the treasury and pay for it at once.

There has been a great deal said here about democracy, and certain resolutions passed by a convention of the people which assembled in this building two years ago. I am not disposed to find fault with the democratic party, sir, when I say that these resolutions have had nothing to do with me, nor with sending me to this Convention. They have nothing to do with my people, neither do they feel themselves disposed to be governed by them, concocted and adopted, as they were, by a convention of old hunkers.

But it has been well said by many gentlemen that this is not a question of democracy or whiggery; but it is a question involving the rights of the people—whether the people have a right to restrain themselves, or whether it is proper that the people should restrict their right of sovereignty, and submit themselves to be governed by a certain rule. This is the only question involved in this proposition; and this question is to be decided, ultimately, by the people themselves; for when you submit your Constitution to the people, unless they choose to breathe into it the breath of life, it will remain a lifeless thing—an abortion. Then the question here is this: Have the people the right to make this decision? Gentlemen who pretend to have so much confidence in the people, and make such flowery speeches to them upon the stump, will now have an opportunity to show, by their votes, whether they are willing to trust the people—whether they are willing to let the people act for themselves, and say whether or not they will ever incur any more public debt. If the people say that the Legislature shall never contract a public debt, the matter is forever sealed.

It is, then, a plain proposition in few words: Whether the people shall restrict themselves, or whether the old system shall be continued.

Mr. MAGUIRE said:—

Mr. PRESIDENT: I rise for the purpose of making an explanation. In the course of this debate a good deal has been said about the history of the past, and I desire to turn over and review another leaf in that history.

I wish to make a few remarks by way of correction, in reply to a statement made by the gentleman from Tippecanoe, (Mr. Pettit,) when he addressed the Convention on this subject a few days since. That gentleman said, in substance, that the late Governor Noble, in his last message to the General Assembly, declared that the people never would be taxed one cent for the payment of either interest or principal of the public debt created by the act of 1836.

Now, sir, I do not wish to be understood as charging the gentleman from Tippecanoe, either in this instance or at any other time, with intentional wrong-doing. I suppose him to be incapable of doing intentional wrong to any man, but especially to one over whom the grave has long since closed. But, sir, he is mistaken in an important fact affecting the character of that lamented man, and it is just as important to correct the mistake as it would be if it were an intentional calumny. The statement has gone on the record, and I deem it due to the memory of a departed and much esteemed friend, to make the correction, and let it go along with the statement. Governor Noble was a man of excellent common sense, of more than ordinary sagacity, and a good practical financier. He could never have been such an enthusiast as to say or suppose that the mammoth system of internal improvements, adopted by the Legislature in January 1836, could be carried on and completed without taxation for the interest of the money borrowed. He never did say so, either after the system was adopted or before. I have carefully examined the last message of Governor Noble, delivered in December, 1837, and the preceding one, delivered in December, 1836—these being the only messages delivered by him after the adoption of the system—and there is not, in either of them, a declaration upon which such a statement could by any possible construction be based. I will frankly admit, for I have no wish to conceal anything, that Governor Noble did, in his message of 1835, before the system was put in operation, state, in substance, that in his opinion a system of internal improvements, costing ten millions, might be completed without taxing the present or succeeding generations anything for the *principal*, but never, then or at any other time, did he say that it would not be necessary to resort to taxation to pay the *interest*. I repeat, that I acquit the gentleman from Tippecanoe of any intentional misrepresentation, and only insist upon a correction of the mistake, which I



feel assured the gentleman himself will be prompt to make upon information of the fact.

In the last message of Governor Noble, to which the gentleman in his remarks referred, there is not a word about the debt, either principal or interest. In the preceding message—that of December, 1836—the first message delivered after the commencement of the internal improvement system, I find the following remarks:

“With wise and prudent councils, some years of persevering exertion will be required to bring our works to a favorable termination, and insure speedy success. There must be foresight and stability in our legislation, so as to continue and increase the confidence of the people at home, and maintain the just credit of the State abroad. Until our success is complete, our duties will not terminate, and whilst indulging our fancies with the prospect of a bright future, it should not be forgotten, that during the progress of every public work like ours, there has been a financial pressure from which we can claim no exemption. An overflowing prosperity will follow profuse disbursements of the public funds. With its current we will be swept along and seduced by the times; we will live high, purchase freely, contract debts, and run into other extravagances, at which our present notions of economy would revolt. And when these disbursements are reduced, when the heaviest demands are made upon us for the support of the Treasury, we shall have parted with the means placed in our hands. *Such a state of things will hardly fail to bring upon us a pressure.*”

“To palliate, and if practicable, to obviate the approach of the evils of such a period, it will be the part of wisdom to take a prospective view, and while all is prosperous, and our citizens are able, ready, and willing to contribute, to *commence the burthen with the beginning of our works*; and the levies to be made should be distributed in advance, through the whole period of our operations, leaving no one year to meet the entire demands upon it. *The sum to be derived from an established policy of this kind*, the annual interest that may be expected from a proper disposition of our dividend of the surplus revenue, and that portion of the three per cent. fund that you will be able to set apart, will throw into the Treasury a sufficient supply for the demands upon it, leaving a handsome balance at the close of each year to be applied to the increased demands of the next.

“With these resources, and with the exacting of a just accountability and an enlightened but rigid economy on the part of all entrusted with the construction of the works, you will be prepared in a great measure for any crisis.”

This, sir, is all that I can find in the message of 1836, relative to taxation. In this connection I may without impropriety add that I was well acquainted with Governor Noble's private

opinions on this subject, and that I know it was his opinion that taxes should be levied adequate to meet promptly the interest on the public debt. He never believed in the policy of borrowing money to pay the interest.

In the message of 1838, to which the gentleman referred, I can find nothing on the subject of taxation. There are, however, some very important suggestions in regard to conducting the system, a portion only of which I ask permission to read for the information of the Convention. After speaking of the progress of the several works, he adds:

“At the date of the commencement of the enterprise our State and its citizens were in the enjoyment of unprecedented prosperity. The then existing condition of things was made the basis of our future calculations. Since then, external causes have cast a shade over the auspicious prospect, and taught us with an impressive force, the duty of so shaping our policy as to be prepared for every vicissitude that may befall us. Looking, then, with a calm foresight to the future in reference to our policy and the financial condition of the State, we cannot but observe that a period will arrive when the means of paying the interest on our expenditures, will, unless derived in some degree from the incomes of the public works, multiply the public burthens. A foreign war, or any disturbing cause, affecting the prosperity of nations and communities, may, at such a crisis, by preventing the acquisition of additional loans, arrest the progress of our internal improvements. We should then be burthened with the interest on the invested capital, whilst the stationary and unproductive situation of the works would preclude our realizing any return from them. Sound policy would therefore dictate the expediency of so directing their prosecution as will have a tendency to render some of them soon available in the production of revenue. The great disparity in the length of the lines, in their relative cost, and the time requisite to finish them, *indicate the evident impolicy of their simultaneous completion.* The comparative shortness of some of them, and their forwardness, would justify us in making increased appropriations with a view of finishing them as soon as practicable.”

I shall not read any more. My object has been merely to show the gentleman from Tippecanoe that he was mistaken in attributing to Governor Noble the sentiment to which I have referred. I should have made the correction yesterday afternoon, but the gentleman was not in his seat. I think it appropriate to do so now before this subject shall be finally disposed of.

I wish now to make a single remark—

Mr. PETTIT. Will the gentleman allow me—

Mr. MAGUIRE (yielding the floor). Certainly.

**MR. PETTIT.** The gentleman from Marion does me, certainly, justice,—and, I trust, no more than justice—when he says he believes that I would not, here or elsewhere, knowingly state a fact erroneously. To prevent mistake, therefore, I will repeat here what I have before stated. In one of Governor Noble's messages—I do not know that it was the last, or which it was, for I was not here—the language which he used was to assure the Legislature that the whole system of internal improvements could be prosecuted and completed without taxing the people to the value of one dime. If that be not true, then I have done Governor Noble's memory injustice. And I say now to the gentleman from Marion, if he will furnish me with a copy of Governor Noble's messages, I will examine with reference to this matter; and if I do not find the sentiment which I have attributed to him, I will here make a public avowal of the fact, and correct the remark at the earliest opportunity.

**MR. MAGUIRE (resuming).** I have already said that I did not believe the gentleman intended any injustice to the memory of Governor Noble. I have the messages, and will with pleasure furnish them to the gentleman from Tippecanoe. They will fully sustain me in the declaration that Governor Noble never said to the General Assembly that the system of internal improvements could be maintained without taxation.

**MR. PRESIDENT,** I wish now to make a few remarks, not upon the merits of the question—for I think it has been already amply discussed—but by way of explanation. I was a member of the committee of which the gentleman from Gibson (Mr. Hall) is chairman, by whom the section under consideration was reported. In justice to that committee, I desire to say that this section was, I believe; reported in the exact words of the resolution of the gentleman from Ohio (Mr. Pepper); which resolution was adopted by this Convention, and came to the committee in the shape of an imperative resolution. The committee agreed unanimously to report the section. I was, therefore, no little surprised to find in the gentleman from Ohio a strenuous opposer of that very section which, on his motion, the Convention instructed the committee to report. I was also somewhat surprised to see some members of the committee rise here and denounce the section. So much for the original section, which is an almost exact copy of a section in the new Constitution of Kentucky. Now, sir, let us look for a moment at the amendment now pending, offered by the gentleman from Shelby, (Mr. Hendricks,) which is in exact accordance with a provision on the same subject in the Constitution of New York. A resolution was also adopted by this Convention, on the motion of my friend from Sullivan, (Mr. Haddon,) directing the committee to inquire into the expediency of reporting a section

to that effect. That gentleman, however, is now opposed to this amendment which was originally his own proposition.

**MR. HADDON.** My resolution was not imperative. It only required an inquiry into the expediency of the measure. I am willing to go further, and I cheerfully embrace the opportunity.

**MR. MAGUIRE.** I said the resolution of the gentleman was only one of inquiry, but it is generally fair to presume that a gentleman who introduces such a resolution is himself satisfied that it is right.

Now, sir, I desire to notice an observation made by the gentleman from Monroe and Brown (Mr. Read). He remarked with an air of triumph, and as if he meant to fasten the charge upon some one, that he did not believe in the doctrine that a public debt is a public blessing. Why did he make the remark unless he meant to convey the idea that such a doctrine was advocated by the committee, or by some one who supports the section as reported by the committee? Unquestionably that was the impression intended to be made by the remark. Now, sir, I have shown that the section was reported in conformity to the direction of the Convention, and I have heard no one advocate the doctrine that a public debt is a public blessing. The charge of the gentleman was not indeed made in a direct form, but was on that account the more objectionable, because no one might feel called upon to meet and refute it. I affirm, sir, that no member of the committee is any more in favor of a public debt than is the gentleman himself. I am as much opposed to a public debt as any man in this Convention, or in this country. I am utterly opposed to the creation of a debt of any sort, or for any purposes, other than those mentioned in the preceding section, unless the people of the State, by a direct vote, shall authorize it, and unless a tax be levied to pay the interest annually, and the principal in a reasonable time. I advocated this doctrine before the people during the canvass, and if there was a single dissenting voice among them as to its correctness, I never heard of it. This has been the doctrine of both of the political parties for several years past; it was, if I mistake not, endorsed by both the State Conventions held a year or two ago, and advocated by both the candidates for the Gubernatorial chair; and being both democratic and whig doctrine, it is fair to presume that it is the doctrine of the people.

Sir, I have no fault to find with those who propose to take this discretionary power from the people, nor do I design to impute to them any improper motives. My object has been simply to defend myself and the committee by which the section was reported from the imputations indirectly cast upon us. I repeat, that I am as much opposed as any member can be



to the creation of a public debt by the Legislature without the direct sanction of the people; but I do not think we are called upon, in the organic law, which will be irrevocable, to tie up the hands of the people so that they cannot, under any circumstances, or in any emergency, direct, by a vote of their own, the creation of a debt for purposes that in their judgment may be eminently useful and proper. I am not willing to say that the people cannot be trusted. I believe they would not abuse a power thus left with them, and if they should the blame would rest upon their own shoulders. The people had no opportunity to pass upon the internal improvement system of 1836; and since their experience of the events which followed the adoption of that system, I think it is not at all likely that during the present or succeeding generation they would be at all likely to embark again in any such enterprise. Emergencies, however, might arise, which, in the unanimous judgment of the people, might authorize and demand the creation of a temporary debt of a small amount, and I submit whether it be proper for this Convention to say that in such an event the people shall not carry out their own will. But, sir, I arose merely for explanation, and not to make an argument, and I will abstain from further remarks.

Mr. DUNN of Perry. Mr. PRESIDENT, I move to lay the pending amendment on the table.

The yeas and nays were demanded and ordered upon this question.

The Convention refused to second a call for a division of the question.

The PRESIDENT now directed the Secretary to proceed with the call of the yeas and nays, and the vote stood—yeas 74, nays 55—as follows:

YEAS.—Messrs. Alexander, Allen, Anthony, Bascom, Beach, Berry, Bicknell, Biddle, Borden, Bracken, Bryant, Chapman, Coats, Colfax, Crumbacker, Davis of Madison, Davis of Vermillion, Dick, Dunn of Perry, &c., Duzan, Fisher, Foley, Gibson, Graham of Miami, Haddon, Hardin, Johnson, Jones, Kent, Kinley, Mather, Mathis, May, McClelland, McFarland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Mowrer, Nave, Niles, Nofsinger, Owen, Pepper of Ohio, Pettit, Read of Clark, Read of Monroe, Ristine, Ritchey, Robinson, Shannon, Sherrod, Shoup, Sims, Smiley, Smith of Ripley, Smith of Scott, Spann, Tague, Thomas, Thornton, Trimble, Watts, Wheeler, Wiley, Work, Wunderlich, Yocum, Zenor, and Mr. President—74.

NAYS.—Messrs. Badger, Balingall, Barbour, Beard, Blythe, Bowers, Brookbank, Carr, Chenoweth, Clark of Hamilton, Cole, Conduit, Crawford, Dobson, Dunn of Jefferson, Farrow, Foster, Frisbie, Garvin, Gootee, Gregg, Hall, Hamilton, Harbolt, Hawkins, Helm, Hendricks, Hitt,

Hogin, Hovey, Howe, Huff, Kendall of Wabash, Kilgore, Lockhart, Logan, Maguire, March, Milligan, Milroy, Moore, Murray, Nave, Newman, Pepper of Crawford, Prather, Rariden, Schoonover, Steele, Stevenson, Taylor, Todd, Wallace, Walpole, and Wolfe—55.

So the pending amendments were laid upon the table.

Mr. PETTIT now demanded the previous question, which was seconded by the Convention, and under its operation the engrossed section was passed the third reading by yeas 89, nays 38, as follows:

YEAS.—Messrs. Alexander, Allen, Anthony, Balingall, Bascom, Beach, Berry, Bicknell, Biddle, Borden, Bracken, Bryant, Carr, Chapman, Coats, Colfax, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, &c., Duzan, Farrow, Fisher, Foley, Foster, Gibson, Gootee, Graham of Miami, Haddon, Harbolt, Hardin, Hawkins, Hendricks, Johnson, Jones, Kent, Kendall of Wabash, Kinley, March, Mather, Mathis, May, McClelland, McFarland, McLean, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Mowrer, Nave, Niles, Nofsinger, Owen, Pepper of Ohio, Pettit, Read of Clark, Read of Monroe, Ristine, Ritchey, Robinson, Shannon, Sherrod, Sims, Smiley, Smith of Ripley, Smith of Scott, Spann, Stevenson, Tague, Thomas, Thornton, Trimble, Watts, Wheeler, Wiley, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President—89.

NAYS.—Messrs. Badger, Barbour, Beard, Blythe, Bowers, Brookbank, Chenoweth, Clark of Hamilton, Cole, Conduit, Crawford, Dunn of Jefferson, Frisbie, Garvin, Gregg, Hall, Hamilton, Helm, Hitt, Hogin, Hovey, Howe, Huff, Kilgore, Lockhart, Logan, Maguire, Murray, Newman, Pepper of Crawford, Prather, Rariden, Schoonover, Steele, Taylor, Todd, Wallace, and Walpole—38.

So the section was passed the third reading and referred to the committee on revision, arrangement, and phraseology.

#### AMENDMENT OF THE RULES.

Mr. WATTS. In conformity with notice given on yesterday, I will now move to amend the rules so as to authorize any member of the Convention to record his vote if he shall be with in the Hall when the vote is taken.

The PRESIDENT. Will the gentleman withhold his motion until we can get through with this report?

Mr. WATTS. Oh, yes. I will withhold a few days, for that.

#### THE SINKING FUND.

The PRESIDENT. The next thing in order is the last section of the bill; which the Secretary will read.

The section was then read by the Secretary, and is as follows:

SEC. —. The General Assembly shall have no power to pass laws to diminish the resources of the Sinking Fund, as now established by law. but may pass laws to increase it.

Mr. TAGUE. I move to amend by striking out all after the word "section."

Mr. PETTIT. I move to amend the motion of the gentleman from Hancock (Mr. Tague), by inserting the following words in lieu of the matter proposed to be stricken out, to-wit:

"The debts and liabilities of the State shall be held sacred and obligatory."

Mr. HOWE. I propose to amend the original section, which motion, I believe, has precedence.

The PRESIDENT. It has.

Mr. HOWE. I propose to add to the original section the following words:

"And a tax of fifty thousand dollars with an annual increase of five per centum, shall be annually levied, and applied toward the purchase of State Bonds, or funded, and remain a permanent sinking fund for the payment of the State Debt."

Mr. HOWE (in continuation). By a large vote, sir, it was provided that the State should not get into debt and that the Legislature should endeavor to get it out of debt as quickly as possible. I look upon this provision sir, as one of the most important that has been gotten up, or can come up for the consideration of this Convention. We are now largely involved in debt, I suppose to the amount of about six millions, and if there is any question important to the people and the State, it is the one of determining how we shall get out of debt. Undoubtedly, it is the duty of the Legislature, as a general proposition, to devise and carry out means for paying this debt; but this matter is of vast importance, and of too great importance to be left entirely to the action of the Legislature. Experience has shown us all, that not only individual, but political bodies can repudiate. The immense debts which so many of the States have incurred shows the necessity of a provision being made in the fundamental law, to avoid the necessity of getting into debt as much as possible, and when incurred, to endeavor to get rid of it as speedily as practicable. One great object of Conventions is to devise remedies for evils of great magnitude. They are, also, to make provision for the protection of rights that are liable to be infringed upon, and to carry out judicious and salutary reforms in the different departments of government. And what measure of greater importance, than this I have referred to in my amendment, can be presented? The only proposition that has been introduced with reference to this subject is of a very uncertain character, namely: that that portion of the revenue which may be left after paying the ordinary expenses of government, shall be devoted to this object, together with the mere nominal proceeds arising from the sale of the

public works. We had a specimen of the avail that will arise from the sale of the public works the other day, when the canal lying north of this city, which cost the State half a million of dollars, was sold for about twenty-five hundred. This mode of paying the State debt is a very uncertain one, and we should at once fix upon some more safe and satisfactory plan. Undoubtedly it will, even if my plan is adopted, take many years to get out of debt. It may take thirty, perhaps fifty, years, to accomplish the object. If my proposition is adopted, in the course of twenty-five years there will have been paid off by this progressive ratio of five per cent. per annum, the sum of one million and a half dollars of the State debt. What amount would be paid in any number of years beyond that time I have not calculated. This provision for liquidating our debt is not an original one with me. It struck my mind, favorably on looking into the Constitution of Michigan, where the State has made provision for raising the sum of twenty thousand dollars with an increase of five per cent. annually by taxation, though that State is not badly involved in debt. Twenty thousand dollars is as large an amount for that State to raise, as fifty thousand dollars is for us. Now fifty thousand dollars is a small sum to be raised, compared with the means of the State, and will be readily paid.

And, sir, do not our means increase five per cent annually? If the addition to our capital from abroad, and the extension of our resources are taken into consideration, if it is not so we cannot be in a flourishing condition. This increase may be expected, and in addition it is quite possible that the proceeds of the sales of the public property, together with the balances of the revenue which may remain, will amount to a million and a half of dollars, thus making—including the tax I have proposed—a sum of three millions at the end of twenty-five years. This will pay off nearly one half of our debt if the interest is paid regularly in the mean time. I think, sir, to the small sum of fifty thousand dollars which the State is perfectly able to bear, there can be no objection, and I am sure that to endeavor to pay the State debt is one of the patriotic steps the Convention can take; and they have ample power to frame such a provision. If any fact can be demonstrated, it is that the interest on our debt of five per cent is a larger increase upon the capital represented by the debt than the nett profits of agriculture, upon the value of all the landed and other capital invested therein. Hence, not only duty, but policy invites us to get out of debt as quickly as possible. Bear it in mind that if the interest of the State debt be put against the nett gains of capital, the difference will be greatly in favor of the State debt. It is to the interest of the State, and all the people of the State, that we should act immediately upon this matter, and if any gentleman can pre-



sent a better proposition than 'the one I have introduced, I trust he will do so. We must either get out of debt or repudiate. The dilemma is before us, and stares us in the face at every turn. I think that now is the time to act upon this matter. It will probably be twenty-five years before a Convention again assembles in this State, unless some unforeseen calamity demands it, and unless this Convention discharges this important duty, it will be left to the lingering action and delays of the Legislature, whose action upon it will be certainly dilatory—perhaps prolonged from session to session, and finally abandoned; and I think a permanent evil should be met by a permanent remedy.

The amount required to be raised the twenty-fifth year, under my proposition, is approximately one hundred and seventy thousand dollars.

But it must be borne in mind that the amount of interest is annually decreasing with the decrease of the debt. Calling the interest five per cent the decrease will be twenty-five hundred dollars the second year, and twenty-six hundred and twenty-five the third, and so on. When the subject comes up again I will exhibit a calculation.

One thing may be set down as certain: if the State debt is to be paid, it must be by the gradual and easy process of a sinking fund. All the State funds—leaving out those which have been sacredly pledged to the interests of education—with the proceeds of the public works, will never suffice, and it is much to be feared that they will be dissipated, or applied to other objects. I shall have more to urge upon this subject at another time, and in the mean time, at the suggestion of the Chairman of the committee on State debt and public works, I will now withdraw the amendment, intending to offer it again when the proper article shall be under discussion. In the mean time I trust that gentlemen will give the proposition that examination and reflection which its importance demands.

Mr. CHAPMAN. If I should be called upon to vote on striking out the section as reported, I should vote in the affirmative. I shall vote against the amendment proposed by the gentleman from Lagrange (Mr. Howe) also. But while I am opposed both to the adoption of the proposed section, and the amendment, I have no objection to sanction the general principle embodied in the proposition offered by the gentleman from Tippecanoe (Mr. Pettit) as an independent one.

The financial calculation submitted by the gentleman from Lagrange, (Mr. Howe,) may possibly be true, though I have some doubts on the subject; for I have seen many ineffectual calculations of the same sort. But whether it be, in the abstract, true, or not, I cannot see the necessity to legislate for a period of twenty-five years in advance. It seems to me, that the plea which we have so frequently heard urged in regard to other matters, applies most

forcibly here. It is impossible that we can prescribe rules in such an important matter as this, without regard to the thousand contingent circumstances which may be likely to occur during so long a period of time as that contemplated.

Mr. President, this is a subject of the greatest practical consequence, and we should not act upon it hastily, but with due deliberation. I do not believe that the State debt can be paid off in the manner contemplated by the gentleman from Lagrange, but I do believe that we have the opportunity of providing for its ultimate liquidation, without imposing an unwieldy burden upon the people—a burden greater than they can bear.

The first step necessary to be taken in the settlement of the debt, is to transform its character. It is now a *foreign* debt, and the interest, which we have hardly yet begun to pay, will, in a few years, amount annually to something like three hundred thousand dollars, to be paid in cash, not only out of the State, but out of the country. I need not tell gentlemen how much harder it is for a country to pay interest on a foreign than upon a domestic debt. England furnishes us a sufficient example.

If we can contrive any way to make our foreign debt, a *domestic* one, we shall have taken a long first step towards its liquidation, and a step which is absolutely necessary, before we can possibly take a second one safely.

In my opinion, it will be as much as we can reasonably exact of the people, at present, if we require them to raise as much money as will be necessary to pay the full amount of interest on the State debt, together with the amount necessary for ordinary current expenses of the government. But we have another means within our reach, which, if we are wise, we shall bring to our aid in the accomplishment of this great object. I allude to the banking system, which will soon come under review. I well appreciate the prejudices of many gentlemen, in favor of the present State banking system. I am opposed to that system for many satisfactory reasons, and one of the chief of them is, that I desire to make any banking system which we may adopt, subservient to the adjustment of the State debt, as well as the accommodation of the commercial classes.

This can be easily done, by adopting some such system as that of New York, requiring the stocks of the State and of the United States as collateral security, (not as capital), and thus create a business demand to bring home our stocks. This is a practical and feasible measure. It is certainly worthy, at least, of consideration, and I am confident that the friends of this policy, will be able to demonstrate the propriety of it, if opportunity be allowed by the Convention.

At this late hour of the session, I have not time to discuss the policy which I suggest in detail, and I only make these rapid remarks in the hope of securing the careful attention of the Convention to this subject, as well as to justify myself in voting against the adoption of the proposition of the gentleman from Lagrange, at least, for the present, and until the subject can be fully investigated.

Mr. HALL considered that action upon this subject, at the present time, would be improper. A report from the committee on the State debt had been sent in a few days ago, and when that report came up for consideration, the subject matter now before them would appropriately come up for examination. When the report came up for consideration, he had a statement to submit, based upon a certain set of facts, which had been laid before the committee, which would enable the Convention to act more definitely upon it, than if they proceeded to consider it incidentally in this manner.

The section then under consideration, had been reported by the committee in accordance with an imperative resolution presented to the committee, and he hoped would be left out. He would not say that it would do much harm, nor would it do much good. Anything in relation to the State debt would be in order when the report of the committee on that subject came up for consideration.

Mr. HOWE said, that as it appeared from the statement of the gentleman from Gibson that there was another section coming up for consideration, to which his amendment would probably be more germane than to the present one, he would withdraw his amendment.

The amendment was accordingly withdrawn.

Mr. BERRY said, that inasmuch as the subject has to come up again upon the consideration of another section, he would move to lay the section and pending amendment on the table.

A division being called for, the question was taken and decided in the affirmative—yeas 62, nays not counted.

So the section and pending amendments were laid upon the table.

Mr. BORDEN said, that there was a section connected with this subject, in the same article, the fourth section of which they had just had under consideration; he referred to the first section, and he would move that that section, with the pending amendment, be now taken up for consideration.

The section was not taken up.

#### HOMESTEAD EXEMPTION.

The first section of article four was then taken up and read a second time, as follows:

"SECTION —. The privileges of the debtor to enjoy the necessary comforts of life, shall be recognized by wholesome laws, exempting

a reasonable amount of property from seizure or sale, for the payment of any debt or liability hereafter contracted."

The question being upon the engrossment of the section for a third reading—

Mr. NEWMAN said, that for the present the consideration of this section should not be proceeded with; he would move to lay the section on the table.

The motion was not agreed to.

Mr. BORDEN moved to amend the section by inserting after the word "property" in the third line, the words "real and personal."

Mr. FARROW moved to amend the amendment by striking out the word "or" and inserting the word "and," so that the amendment of the gentleman from Allen should read, "real or personal," instead of "real and personal."

Mr. BORDEN accepted the amendment.

Mr. MURRAY moved to amend the amendment as follows:

"And that a homestead owned by any person, the head of a family, in this State, to consist of land or town property, not less than five hundred dollars, shall be exempted from seizure and sale, by any legal process whatever, for any debt contracted after the adoption of this Constitution: *Provided*, That such exemption shall not affect in any manner any mechanic's lien, or any mortgage thereon, lawfully obtained; but such mortgage, or other alienation of land by the owner thereof, if a married man, shall not be valid without the signature of his wife.

"SEC. —. The Legislature shall, in addition to the present exemption of personal property, add to it, in the case of those persons who are not landholders, such additional amount in value of mechanics' tools, farming utensils, and other personal property necessary to the business or support of such persons, as the Legislature may deem expedient and equitable.

"SEC. —. The Legislature shall pass such laws as are necessary to carry into effect all the provisions of this article."

Mr. SMITH of Ripley. I move to lay the amendment upon the table.

Mr. WALPOLE. I demand the yeas and nays upon that motion.

Mr. SMITH. Then I withdraw it.

Mr. MURRAY. Mr. PRESIDENT: I have offered this amendment because I think it is in agreement with the original section just read, and will render the exemption more definite, and much more substantial in its benefits. I think, also it will comport with our duty, in "providing for the welfare" and happiness of the people, and is in accordance with the genius and spirit of our institutions.

At every step in the progress of our government, the condition of the poor has been ameliorated.

Benevolent and charitable institutions have been greatly multiplied; the public domain has



been made more and more accessible; the amount of property exempted from execution has been gradually increased; and imprisonment for debt has been abolished.

In all this, our political institutions have displayed not less wisdom, than humanity; for it is the poor, principally, who labor, and labor only produces wealth. The rich harvest which fills the granaries of the farmer, and the gold that glitters in the coffers of the banker, have been abstracted from the earth by tolling millions.

The pearls of the seas have yielded up their treasures to labor only. But for labor, there would be no foundation for trade—no sustenance for man.

It is a perennial spring, that must be kept flowing, or we perish of thirst and hunger. How wise, therefore, as well as humane, is it to strengthen the hands and cheer the hearts of those who labor, by providing them a home where they can rest in safety, and be refreshed for the morrow's toil. Indiana is now marking a new era, in her proud march to political eminence. And I confess the desire nearest my heart, is, that this era, should be stamped with a liberal provision securing to the laborer a home, which shall be inviolable. And as in the mutations of human affairs, every person in every pursuit of life, is liable, by the sudden reverse of fortune, to become poor, I would extend this privilege to every one who is the head of a family. I desire to have it a Constitutional provision, that the door to this sanctuary may be always kept open.

I would not have it subject to the ever changing features of legislative enactments. I would have *all*, not a favored *few*, share its benefits.

I would have no man a wanderer and a vagrant, in our land.

I would elevate the laborer above the beggarly necessity of being turned out of doors, and being driven into the street for a quarter's rent. I would not see the storms of heaven pouring down upon a shivering family group, who had not where to lay their heads.

I would rob the highways, and the alms houses of this unfortunate class of its tenants, by providing a home for the homeless.

Sir, give to a man a home and he will struggle nobly with adversity. There is an irresistible charm in the word. It is a castle, against which most of the arrows of misfortune fall harmlessly. Thirst, hunger, and the essential wants of life, assail the man in vain, who has a home to refresh himself in. He has a sovereign remedy against these evils. Diligent and healthful industry will banish them from his door. A home, sir, is an essential element of prosperity and independence.

It is like a sublime alchemy in the hands of the chemist, turning the very trees to bread. It is to man what the earth is to the vegetable kingdom. Plants may vegetate upon a barren

rock, but they must have root in the soil or they perish. I have heard it objected, that this measure would impair individual credit, and lead to the practice of fraud in procuring a home-stead. I admit, sir, that there might be instances of fraud, practiced under this measure, for no law is secure against abuse. It is too common to see property unlawfully sequestered under our present laws, and under the laws of every State in the Union. But I deny, that this would be the general tendency of this provision. On the contrary, it would give greater security to the creditor, and greater ability in the debtor to pay his debts; but far more than this, it would place the debtor above the dire necessity, which tempts man to misdemeanors.

Sir, when a man sees himself about to be stripped of the means to support his family, and to be driven abroad like a leaf before the wind, the ties of nature prompt him to contrive some way to shield them from suffering. He has sworn before the holy altar to protect them in sickness, or in health, in prosperity or adversity, and he feels this bond to be more binding than the bonds of his creditors. Under these impulses, he is apt to seek some dark corner for the concealment of a portion of his goods. His faith is too feeble to trust the raven to give his children bread, or the hand that clothes the lillies of the valley to give them raiment. He feels that he has been ordained of heaven, to discharge these duties. Affection subdues principle, and sets the penalties of the law, and the reproaches of conscience at defiance, rather than to expose his family to the cold charities of the world without a shelter from the storm. Mr. President, we have the power to save men from this sad alternative. We have the power to place them above the temptation of committing fraud, to shelter their families from the tempest and the storm. Shall we do it? Sir, I fervently hope we shall.

I hope we may provide for him the means to secure a peaceful and permanent abode, without resorting to fraud. I have no doubt but there will be a diversity of opinion in regard to the amount of exemption.

For one, I desire only an amount that will secure a very humble home. I would not tempt the debtor to defraud his creditor. I think the sum which the amendment provides for is a reasonable one, and ought to be adopted. To those who own no lands, this bill secures to them their mechanic tools and implements of husbandry. These, with industry and prudence, will enable them to procure an interest in the soil, whereon to make a home. If they fail to do so, the fault is their own—the State has done its duty.

Sir, the laborer's home would operate as a fulcrum, on which a lever is placed to raise ponderous weights. No reasonable weight of debt would crush a laborer who had a home to refresh himself in. He would not be a floating

debtor, but his creditor would know where to find him, and would be met at the threshold with a manly independence, ready to discharge his obligations from the never-failing capital of labor. Sir, you cannot bankrupt this capital. It is a sure, productive and safe foundation, on which the creditor may rely for the redemption of his notes. When this capital fails, Mr. President, all human operations will fail with it, for all are based upon it.

This measure, sir, cannot impair individual credit. In our fair and fruitful State, our resources are so abundant, our soil so fertile, our minerals so inexhaustible, our water power so magnificent, our industry and enterprise so proverbial—that not even our appraisement laws, which almost interdict the collection of debts, have prostrated individual credit. Look abroad, sir, at our railroads, the pride of our State, and see the vast loans, based upon them—see the rich merchandise spread forth in every city, town, and village in the country, and the liberal credits given to merchants, and then say whether individual credit is prostrated.

No, sir; and if credit has been sustained under those laws, an indefeasible inheritance in the soil will not impair credit; but it will lay a sure foundation for the safety of the creditor, and the prosperity and happiness of the debtor.

To honest industry, labor is no burthen; and when the laborer is cheered by the smiles of his family, and the assurance that his fireside is his own, he goes forth in the morning with cheerfulness, and returns at evening with a grateful heart. His children may be scattered here and there, through the city or the neighborhood, in busy industry during the week; but the tranquil close of it brings them again together, where they are refreshed from the deep fountain of fraternal love. In the language of Burns—"Hope springs exulting on triumphant wings;" and from the repose of the Sabbath, and the salutary lessons to which they listen, setting forth the rewards of virtue and the penalties of vice, they would go forth with renewed energies to their weekly labor.

Sir, men would be impelled to seek this comfortable independence from virtuous and honorable motives. They are about to take their stand with the respectable yeomanry of the country, and their homes are to be held too sacred for the touch of the law. Would they pollute them with fraud? Would they have the beams of their houses reproach them continually with fraud? Would they tempt the unseen hand to write upon the wall that ominous sentence, "thou art weighed in the balance and found wanting." No, sir. Evil designs would stand abashed, and virtuous emotions would triumph—man would seek this earned pavilion through the path of industry, honesty, and integrity of purpose. What parent, whose circumstances bring him within the pale of the poor, who would not hail this measure as the

precursor to happier days. A measure that would leave a hearth and a home to those he loves, when his hands should cease to labor. A measure that would not entail pauperism on society, or degradation on his name.

Who, in possession of such an abode, would not rest easier on a bed of death? To secure such a place of repose from the eddying storms of life, men need not the base incentive of dishonesty. Upright and virtuous impulses would awaken all their energies to obtain it. Every person, whether in prosperity or adversity, in view of the uncertainties of life, and the fickleness of fortune, would be induced to seek this asylum by such means as would leave no stain upon their name. And, sir, he would shape its value to the provision of the law which secures it. He would take good care that the sheriff could not divide it. A universal effort would be made to embrace the offered privilege, and in this would consist one of its best effects; for, in proportion as we interest citizens in the soil, we strengthen the government, and diffuse prosperity and equality. Sir, to have this great object of domestic comfort, men would rise earlier, work later, and eat the bread of carefulness. Conjugal exertions would be united, and the bright needle and the humming wheel would be plied with greater alacrity, in view of such a reward.

Sir, is it not worthy of Indiana—is it not worthy of this Convention, to give such an impetus to industry—such encouragement to morality? It is a maxim, that idleness and vice herd together, and that industry and honesty are apt companions. Pass this measure, and these twin sisters, like ministering angels, will walk through the land, dispensing honor to the State and comfort to her people. All eminent authors on political economy argue that an interest in the soil insures the devotion of the citizen to his government, and diffuses the greatest sum of prosperity.

A man having a home to defend, could scarcely be found recreant to his duty. All that is dear to the heart, would urge him to fly to his country's rescue in an hour of peril. In such a day, he would listen to that still, small voice, that inspires patriotism, and scorns danger—no Swiss emissaries would be found in their ranks. Every citizen would be a soldier, and every soldier brave. This measure, then, will not only strengthen the government, and give dignity and comfort to her citizens, but it will insure industry, abate poverty and pauperism, and redeem vast multitudes from want and wretchedness.

In every point of view, it seems to me, it recommends itself to the most favorable consideration of this Convention. Wisdom, humanity, the honor and interest of the State, plead for it. The earth is our common mother—may we not all have a place on her bosom? Finally, Mr. President, in this lovely land of ours,



where the air is made vocal with the sound of independence, is it not pitiable, indeed, that the laborer, from whom we receive the bread we eat, or the raiment we put on—is it not pitiable, indeed, that this man should be denied a spot of earth, whereon to stand and assert his independence, and, having asserted it, maintain it against all invasion.

Mr. READ of Clark. My friend over the way (Mr. Murray) has made a pretty speech upon the subject. And, although it is truly a most important subject, I trust there will be not much more time consumed upon it. I admit that there is a very respectable minority in the State which appears to be in favor of something of this kind. I am satisfied of this fact, from what I have observed in the State Legislature for the last eight or ten years, where this subject has been occasionally introduced, and only a small minority voting for it.

This being the case, I would ask, if we might not endanger the acceptance of the Constitution by incorporating such a clause. It is my advice, therefore, to leave the subject with the Legislature, till the time shall come, when the whole people may see the necessity of a proposition of this kind.

Before I sit down, I would like to move to lay the amendment upon the table, but seeing other gentlemen desirous of speaking, I will withhold the motion.

Mr. MILLER of Fulton said, he had no objection to laying the matter on the table if it would be called up again at the proper time. The Legislature of last winter would have passed a Homestead Exemption law, in obedience to the will of the people, but in view of the approaching session of this Convention, it was deferred.

Mr. BLYTHE. I take this occasion to explain the position I occupy on this question. I am in favor of the article just as it passed the committee and was reported. I am in favor of a liberal exemption of property from execution. But that is, in my humble opinion, the legitimate work of the Legislature, and there I would leave it.

If we adopt the amendment proposed as a Constitutional provision, we trespass upon the province of the Legislature. If it be true that a majority of the people are in favor of such a law, the Legislature will, undoubtedly, frame it. I believe that the principle of Homestead Exemption is demanded alike on the score of policy, and because it is consonant and in harmony with the spirit of the age. Examine the legislation of the country for years past and you will find that the spirit of exemption runs through all its acts.

But, sir, while I decidedly favor the principle, I cannot vote to place it in the Constitution, in detail, for I believe it would be out of place there. But I am willing, in this Constitution, to recognize the principle. This is just what the section as reported by the committee does.

I am, therefore, opposed to the amendment, and in favor of the report of the committee.

Mr. MATHER proposed to make the section the special order for Monday next.

Mr. COLFAX said he desired to express his views upon this important subject, but he would, if it were the pleasure of the Convention to adjourn, defer them until to-morrow.

And then, on motion by Mr. COLFAX, The Convention adjourned.

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SATURDAY, Nov. 23, 1850.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. MILLS.

COL. RICHARD M. JOHNSON.

Mr. RARIDEN. Mr. President, I desire, for peculiar reasons, which I will state to the Convention, to withdraw the preamble and resolutions which I offered yesterday, in regard to the death of the late Hon. Richard M. Johnson of Kentucky, and that the same be stricken from the Secretary's Journal. I do this at the instance of a number of friends, in order that I may surrender the mournful office of announcing the death of a distinguished citizen, into the hands of another member of this body. I refer to my friend, one of the delegates from the county of Floyd, Major Thornton, who served as Captain under Colonel Johnson, in the north-western campaign. I do this, not on account of any aversion to the performance of that duty myself, but because it has been thought by several gentlemen around me that it more properly belonged to the gentleman who had served in the same campaign with that distinguished chief, and because I think myself, it would be more appropriate for the customary resolutions to be offered by him.

And accordingly, by unanimous consent, it was

Ordered, That Mr. Rariden have leave to withdraw his preamble and resolutions.

NOTICE OF AMENDMENT TO THE RULES.

Mr. OWEN. Mr. President, I now give notice that, on to-morrow, or some subsequent day of the session, I will move to amend the standing rules of this Convention as follows:

"No delegate shall speak longer than one hour at a time; nor in any debate arising upon the third reading of an article or section, or upon a motion to refer at that stage, more than fifteen minutes."

ABOLISHING PENALTY FOR DELINQUENT TAXES.

Mr. DICK offered the following resolution:

Resolved, That the committee on finance and taxation be instructed to inquire into the expediency of so amending our Constitution, as to abolish the penalty of fifty per cent. on property sold for delinquent taxes; also, to extend

the term of redemption of said estate, and to provide that personal estate be first sold.

The resolution having been read by the Secretary,

Mr. DICK said: Mr. President—on Saturday, fourteen days ago, I offered this same resolution, which was then not adopted. As it was presented in the mildest form, a mere resolution of inquiry, I had not anticipated any opposition; I therefore made no remarks upon its introduction, expecting as a matter of courtesy that it would be permitted to go to the committee. In this, however, I was disappointed. I shall therefore now avail myself of my privilege upon this floor to offer some reasons why it occurred to me that such a resolution was neither out of place, unimportant, or unworthy of the deliberative and serious consideration of this Convention.

Mr. President, if gentlemen will turn to the Auditor's report of last December, they will find the delinquent tax list of this State presents the enormous amount of \$223,500 of deficiency. The penalty of 50 per cent. upon which is nearly \$112,000. Now, sir, I would ask gentlemen, out of whose pockets this \$112,000 comes?—no one will deny that it comes out of the scanty means of the poor man; nor will any one refuse to admit that it goes into the pockets of those of the rich, who are mean enough to seize upon every opportunity to crush still further that unfortunate class of our citizens.

Sir, if we divide the delinquent by the ninety counties, we have to each county a deficit of about twenty-five hundred dollars; the penalty on that amount is twelve hundred and fifty dollars. Now, sir, in my judgment, this is not so light a matter as to make it unworthy the attention of this body. The loss to the embarrassed portion of our citizens throughout the State annually, by this fraudulent penalty alone, must be at least sixty thousand dollars, a sum nearly equal to the annual expenses of our General Assembly. Public sentiment has determined, for reasons of economy, to save this expenditure every alternate year by adopting biennial sessions. Then why not try to find a remedy for an evil of equal magnitude, that falls exclusively upon the poor. Government must be sustained, and for that purpose taxes must be paid. But surely a more equitable mode of collecting them can be devised by the wisdom of this body than the present most wretched system. Sir, my constituents sent me here to obtain, if possible, relief from such palpable grievances, and if I should stand alone upon this floor, their support and the knowledge that I am right, will sustain me. I shall, therefore, if any objections are made to this resolution, demand the yeas and nays, and we shall then see how many friends the proposition has in this Convention.

The resolution was agreed to by consent.

ABOLITION OF THE COMMON LAW.

The PRESIDENT. This being the day set apart for the consideration of resolutions, the first resolution lying over upon the calendar is that offered by the gentleman from Hancock, (Mr. Tague,) proposing to abolish the common law of England. [Laughter.]

Mr. GIBSON. I propose to amend the resolution by striking out the word "of" and inserting the word "in," so that it will read "in England."

SEVERAL VOICES. Read as proposed to be amended.

The resolution was accordingly read by the Secretary, as proposed to be amended by the gentleman from Clark.

OTHER VOICES. "Consent," "consent." "Yeas and nays." "Tague, Tague, Tague."

Mr. TAGUE, addressing the President, expressed his desire to state the objects he had in view in offering this resolution; and remarking that he apprehended he could not be distinctly heard from his desk.

Upon the invitation of several members, he took his position in the aisle to the left of the Speaker's chair, and said—

Mr. PRESIDENT: This matter was somewhat discussed in the county where I live, and the people there desire the change contemplated in the resolution which I have offered. Some gentlemen may perhaps think that I have offered this resolution in the way of a jest, but I am in serious earnest. It has been said, not only in the county where I live, but wherever I have traveled and talked over the matter with the people, that we have had entirely too much law, and I have heard the same sentiment repeated in this Hall. As for my part, if we are to have a reform in the law which has been talked of, I have thought that the common law of England, of which it is complained we have too much, should be entirely abolished, and the practice of it taken out of the courts; for I am of the opinion—not that I am much of a law-maker, or that I understand much about law—that we have men in Indiana capable of making laws to govern ourselves, without referring to the common law of England, which has been made up from the decisions of judges who lived from five to eight hundred years ago; and those decisions were generally given in favor of those who held the appointing power—the great men, the king, and the lords.

I know, sir, that it may be argued here, that the common law is nothing more or less than common good sense; and I admit that a great deal of it is good sense; but I also think that the people of Indiana have good common sense enough to make laws for their own government. But it is to the practice of the common law that I principally object. I think that must be radically wrong, for I discover that a case can hardly ever be brought up

and adjudicated upon its real merits. I would like to see such a reform instituted in our law practice, that a man can bring up his case in a brief and plain manner, and have it tried upon its merits. I object, also, to the right which is assumed, under the common law, by all the attorneys, to stop a witness, upon the stand, perhaps a dozen times, before he gets through with his testimony, and so preventing him from giving to his testimony the sense which it ought to have. It does appear to me that when a witness is called to give testimony, that he should be allowed to tell the matter in his own way, without being interrupted, and then he would be more likely to tell the plain truth; and let all the cross-questioning be done after he gets through. This would save a very great waste of time which is now indulged in all the courts.

I would remark that our circuit courts have become very expensive, on account of the manner in which cases are tried—which, also, is the result of having too much law; and I think, in all probability, that if the common law of England was done away with, and our laws made shorter and plainer, one-half the time which is now occupied by the courts throughout the State, and one-half of the present expense in money, would be sufficient for our people to settle all their difficulties. I do not wish to find fault with the attorneys, but when we go to them for advice, there is always too much of it. A common man cannot understand the law. It requires a long course of reading, for which he has no time, and I doubt very much whether a man of plain sense would be able to understand it all if he were to read it. But the attorney always tells him that he has a good case; and not knowing any better, he is led into law, which consumes time and becomes expensive, as before said. Our county I suppose to be about an average county, and the total expenses of the Circuit Court there for one year amounts to something like one thousand dollars; then the people of the one hundred counties of the State must pay a tax of something like one hundred thousand dollars a year to support the Circuit Courts alone. And if this expenditure of time and money could be reduced one-half it would make an item of saving to the people which would well deserve the attention of this body. The time alone which might be saved to the people in this way, is a matter of the highest consideration; for if three hundred men are more or less interrupted in their business by attendance upon the court in any of the average counties, (which I believe is a moderate estimate,) then thirty thousand citizens are more or less losers in this way, on account of the expensive and dilatory practice of the courts. Time is always worth money, and every day that might be saved in this way, would enable our citizens to accumulate more money at home.

For these reasons I would like very much to see something proposed and adopted into the Constitution which would make the State the gainer, in some such manner as I have pointed out. I hope the lawyers in this body will take hold of the matter and carry it out, and to give an opportunity for them to do so, I will surrender the floor.

Mr. NAVE. In order to give the gentleman from Hancock (Mr. Tague) time to read and understand what the common law is, I move to lay the resolution and pending amendments upon the table.

This motion was lost, and the question recurred upon the adoption of the amendment proposed by Mr. Gibson.

Mr. MILLER of Fulton. Perhaps it would be better to make the consideration of this resolution a special order, and consider it in committee of the whole, so long as we are attempting to abolish the common law of England, for the sake of preserving amicable relations between the two countries; in the mean time, perhaps, it would be better that the matter of our proceedings should not appear upon the Journal. I move, therefore, that the Convention do now resolve itself into a committee of the whole upon this subject.

This motion was agreed to; and accordingly the Convention resolved itself into a committee of the whole, (Mr. Miller of Fulton having been called to the Chair,) and took up the consideration of the resolution and pending amendments.

Mr. MILLER (remaining in his place) desired to be excused from serving as Chairman.

Mr. DUNN of Jefferson (addressing the Secretary, the President having vacated the Chair). I desire that the Sergeant-at-Arms be directed to enforce the order of the Chair.

Mr. DOBSON. I hope that as a matter of courtesy, the Chair will be given to the gentleman from Hancock (Mr. Tague).

A VOICE. "Courtesy gives the Chair to the gentleman from Fulton (Mr. Miller)."

Mr. HALL. Would it be in order to reconsider the vote just taken?

A VOICE. "You voted against going into committee." [Much merriment prevailing.]

Mr. MILLER of Fulton (advancing to the Speaker's Chair) said, I ask the committee to excuse me from serving as Chairman at this time. Those who are in favor of granting me this request will please to say "aye."

MANY VOICES responded a most tremendous "no," from every part of the Hall, with shouts of merriment and laughter.

Order being partially restored—

Mr. ANTHONY said—

MR. CHAIRMAN, I propose to amend the amendment by adding to the end of the resolution these words: "And forever to abolish logic and the mathematics."

This amendment having been entertained by the Chairman, and the question being taken thereon, it was rejected.

Mr. COLFAX said—

MR. CHAIRMAN, I would suggest that lest the discussion of this resolution might disturb the amicable relations now happily existing between the government of this country and the government of Great Britain, it might be prudent for us to sit with closed doors. [Cries of "order," "order," and "sit down."]

Mr. MILROY. I move to amend the amendment by adding the following words: "And also Queen Victoria and the Fugitive Slave Law."

This amendment was agreed to, amidst cries of "division," and "Foster," "Foster."

Mr. WOLFE moved that the committee rise; but—

MANY VOICES responded another overwhelming "no."

Mr. TAGUE. Mr. CHAIRMAN,—— [Cries of "hear him," "hear him."]

The CHAIRMAN. The gentleman from Hancock has the floor. [Continued cries of "hear him," "hear him;" and "Foster," "Foster."]

Mr. FOSTER. Mr. CHAIRMAN, I offer the following amendments to come in at the end of the resolution:

The amendment was read by the Secretary, as follows:

"And abolish the practice of manipulating." [Roars of laughter.]

The CHAIRMAN now attempted to put the question upon Mr. Wolfe's motion, but was effectually prevented by the uproar which was raised against it.

Mr. KILGORE. I desire also to propose an amendment whenever it shall be in order, by adding these words: "And the chills and fever."

The CHAIRMAN being completely overcome by the noise and confusion which prevailed in the Hall, retired from the Chair; and

The SECRETARY said, "Mr. Read of Clark will take the Chair."

Mr. READ obeyed, and advanced to the Chair.

The CHAIRMAN. [Knock, knock, knock.] The committee will come to order. The question is upon the adoption of the amendment to the resolution proposed by the gentleman from Clark, and which the Secretary will read.

The amendment having been read by the Secretary, it was agreed to.

Mr. HOWE. I move that the committee now rise and report the resolution as amended to the Convention.

This motion was rejected.

Mr. HOVEY. I propose to amend the resolution by adding the following words:

"And that the Chairman inform Her British Majesty, by telegraph, that the common law in England is abolished."

This amendment was agreed to, amidst renewed shouts of merriment; and the question recurred upon the adoption of the resolution as amended.

Mr. ANTHONY'S amendment was now again proposed, and it was agreed to, and the question again recurred upon the adoption of the resolution as amended.

Mr. MATHER proposed to amend by adding these words: "So as to make hickory bark peel the whole year round."

MANY VOICES. "Consent."

So this motion was taken by unanimous consent; and the resolution, as thus amended, was adopted by the Convention.

Mr. WOLFE. I move that the committee now rise and report the resolution as amended, to the committee.

This motion prevailing, the committee accordingly rose, and the Chairman reported that the committee of the whole, to which was referred the resolution to abolish the common law in England, with the pending amendment, had considered the subject, and directed him to report the same back to the Convention, with forty amendments, and to ask the Convention to concur therein.

The PRESIDENT. The question is, shall the Convention concur?

Mr. PETTIT. I think we have carried this far enough, and as I do not want it upon the Journal, I move to lay the resolution upon the table.

This motion was agreed to, and the resolution lies upon the table.

PERSONAL EXPLANATION.

Mr. PETTIT said—

MR. PRESIDENT: I ask the Convention to indulge me about three minutes with reference to the matter introduced yesterday by the gentleman from Marion (Mr. Maguire). That gentleman charged me with doing injustice to the memory of the late Governor Noble, by saying that the Governor had said that the whole system of internal improvements, adopted in 1836, could be completed without taxing the people anything to pay principal or interest. I do not know that I used language in just as broad terms as these; but I said yesterday if, upon examination of the Governor's messages, I should find that the allegation was not sustained by them, I would take it back and relieve his memory of an unjust imputation. I have no desire to do any man injustice, nor to pervert the truth. Truth is what I always seek for, and hope ultimately, if I have it not already, to attain to it. The gentleman said I had affirmed that this language was to be found in the last message of Governor Noble. I might have said so, but I am not aware that I affirmed anything more than that the Governor had asserted the principle in general terms, in one of his messages, that the whole expense of the public works

could be sustained without taxation. The gentleman from Marion insists that I used the words as first above quoted. Other gentlemen tell me that I did not refer to "interest," but that I said that Governor Noble had stated that all these public works could be constructed without taxation. This, I think, is what I did say, and to show that I was not altogether wrong, I have brought here the message of Governor Noble, of December, 1835, and I find that it does sustain the allegation I made. After one season had passed, and Colonel Stansbury had made his surveys, he (the Governor) goes on to state how the parties had got along in the field; and urging the propriety of adopting his suggestions, he says:

"I will not, however, withhold the opinion that you may safely expend the amount of ten millions of dollars without calling on the present or future generations for the payment of any portion of the principal under the process of taxation."

Now, if I used the words "principal and interest," I certainly did Governor Noble injustice. But if I only said "principal," I did him no injustice. On the other hand, it was alleged that this message was written before the system was adopted, and therefore the Governor could not be held responsible for his fallacious argument. This is not fair. He ought to be responsible for the errors he induced the Legislature to commit.

I will not read further; but he goes on to suggest if every man in the State would pay in taxes half as much more as he then paid, that the sum which might thus be raised would complete all the public works. And since it was the utter falsity of the reasoning to which I adverted, I do not think that I did the memory of Governor Noble any injustice.

Mr. MAGUIRE. I noted down the language of the gentleman at the time, and if I got it correctly, it was precisely this remark:

"That Governor Noble, in his last message, declared that the people would never be taxed one cent for either principal or interest upon the amount borrowed for the purpose of completing the internal improvement system of 1836."

But, to be certain that I was not mistaken, I inquired of the gentleman in his seat.

Mr. PETTIT. The inquiry was, as to what message it was.

Mr. MAGUIRE. No, sir. I inquired also as to the statement as made by me on yesterday, and the gentleman replied in the affirmative.

It will be recollected, Mr. President, that on yesterday I stated that Governor Noble, in a message delivered before the passage of the act of 1836, declared the sentiment which the gentleman has just read from the message of 1835. The gentleman, however, should have read on a little further, and he would have shown the

Convention that in the very next sentence is a recommendation *that provision be made for the payment of the interest.* Fairness and justice, it seems to me, demanded this at his hands. Immediately in connection with what the gentleman has read, is the following language:

"But to sustain an enterprise of such magnitude, a *suitable provision should be made for the payment of the interest on the capital*, one million of which would be needed the first year, and about an equal sum annually until the work shall be finished."

Mr. President, it is perfectly immaterial whether the allegation of the gentleman from Tippecanoe was that the *principal and interest*, or the *whole cost*, of the public works could be paid without costing the State one dime. I take it that they mean exactly the same thing. The explanation made by me yesterday was just as full as the gentleman's statement today. I admitted that Governor Noble, previous to the adoption of the system, gave it as his opinion that an investment of ten millions might be made in a system of public works without costing the State anything for the payment of the *principal*. But it cannot be shown that he did, in his last or any other message, assert, as was alleged by the gentleman, that those works could be constructed without *taxation*.

Mr. PETTIT. I stated in the fullest manner, that the Governor had not said anything about paying principal and interest.

Mr. MAGUIRE. I freely acquitted the gentleman in my remarks yesterday, of any intentional misrepresentation. But I must be pardoned for saying that his explanation would have been much more satisfactory if he had read the sentence to which I have called the attention of the Convention, and which fully exculpates Governor Noble from the imputation of the gentleman, whether that gentleman originally used the language imputed to him by me, or the language admitted by him to have been used.

STATE DEBTS.

Mr. BORDEN moved a re-consideration of the vote of yesterday by which the second section of the report from the committee on the State debt and public works was ordered to be engrossed.

The yeas and nays being demanded, and ordered upon this question,

Mr. B. said—

Mr. PRESIDENT: I have made this motion to re-consider for the purpose of enabling us to consider the matter of the preceding section, before proceeding to act upon the matter of the pending section. It is necessary to look to the preceding section in order to understand precisely the force and effect of adopting the section under consideration. If we proceed to the final passage of the section now under consid-

eration, we close the matter and lock the door with reference to the privileges and restrictions to be conferred upon the section already adopted. We have to look to the preceding section for the purpose of understanding how far the powers of the State government will extend under this section. The language of the preceding section is: "The General Assembly may contract debts to meet casual deficits or failures in the revenue, for the purpose of paying the interest on the State debt; but such debts shall not, at any time, exceed the amount of such deficits, *Provided*," &c.

Mr. PETTIT (in his seat). That section has been amended.

Mr. BORDEN. Not in that respect. But now according to the terms of that section, we can only borrow money to meet casual deficits in the revenue for the purpose of paying the interest on the State debt, and for that purpose only. So long as the interest on the State debt is paid we cannot borrow one dollar in money, [a voice, "we dont want it,"] for any purpose whatever. The Legislature may be in session here, and on the morrow this Capitol might be burnt down; and in such an event you cannot borrow one dollar of money for the purpose of rebuilding it. If a blight were to go over the crops of the country, or the people become unable to raise the revenue from any cause, we would be unable to borrow, sir, even to pay the ordinary expenses of the State. We cannot tell what would be the result of this restriction. We cannot say what contingencies may arise in the future which would render the borrowing of a few thousand dollars absolutely indispensable. Now the amendment adopted upon the motion of the gentlemen from Lawrence (Mr. Helmer) creates an ambiguity in the sense of the section, where the meaning was more definite and certain before. As the section now stands, with this amendment, all the State government has to do, is to use the revenue for the payment of the interest on the debt, and thereby creating a deficit, which will enable the Legislature to borrow money to supply such deficiency—thus allowing those who administer the affairs of State to do that by an indirection which the spirit of the Constitution would forbid. If we look at the Constitution of New York, we find that it permits the Legislature to borrow one million for general purposes, without any restrictions whatever. I know that some gentlemen are opposed to referring to the Constitutions of other States as precedents. But if we look into the Constitution of New York or California, (which are both considered, I believe, to be very restrictive on this subject,) and observe how far they have gone, they will serve as guides to us. With the permission of the Convention I will read the tenth section of the seventh article of the New York Constitution:

"The State may, to meet casual deficits or failures in revenues, or for expenses not provided for, contract debts; but such debts, direct or contingent, singly or in the aggregate, shall not, at any time, exceed one million of dollars; and the monies arising from the loans creating such debts, shall be applied to the purpose for which they were obtained, or to repay the debt contracted, and to no other purpose whatever."

Here, as you observe, the Legislature is authorized to borrow money to the amount of one million of dollars without taking a vote of the people. That is giving great latitude compared with what I propose. But we, here in the section, prescribe that never, under any circumstances, shall the Legislature have power to borrow money beyond what may be necessary to meet deficiencies to *pay the interest on the State debt*. No State has ever yet gone so far in the way of restrictions upon this subject. I can use no better term than to say, by so doing, you manacle the State. You take away the power to borrow money, when it is impossible to see what contingency may arise in the future history of the State, requiring the immediate use of money.

I hope, therefore, that the Convention will re-consider the vote upon the engrossment of both sections of the report, and insert a clause permitting the Legislature to borrow one hundred or two hundred thousand dollars for general purposes. I submit it to the judgment and reflection of this body whether this section should not be so altered.

I called the attention to this subject on yesterday, and proposed an amendment to the first section. In that amendment it was provided that, to meet any temporary exigency, the General Assembly might borrow a sum not exceeding two hundred thousand dollars, without a vote of the people.

Should the motion, which I now make, prevail, I propose to amend it so as to authorize the Legislature, with the approbation of the people, to borrow a sum not exceeding one million of dollars. Now, sir, it does seem to me that occasions may arise when the people should have the power to do this. I wish it distinctly understood that I am opposed to the people's borrowing money to go into banking, construct canals, railroads, or other internal improvements, and think it is not the legitimate objects for which governments are instituted. But, sir, the time might come when the people of this State would be willing to give their aid and assistance to the government in carrying on a war with a powerful foe. Sir, we all remember what the great State of New York did, under the influence of the patriotic Tompkins. She nobly aided with her credit, the Union in carrying on the late war with Great Britain. And, sir, shall we say that Indiana shall place it beyond her power to render the like assistance, should it become necessary? I trust not. I voted on yesterday

against the amendment of the gentleman from Shelby (Mr. Hendricks) for the reason that it did not provide that the law which imposed the tax on the people, for the payment of the principal and interest of the debt, should be irrevocable. This I deemed a very important matter, for unless this restriction is inserted, the Legislature, after borrowing the money, might repeal the law imposing the tax.

My proposition made the law irrevocable until the principle and interest of the debt should be paid.

Another objection to the amendment of the gentleman from Shelby, was this: It provided that the question of borrowing money should be submitted to the people, giving them only three months' consideration. This, as I think, would not give time enough for the matter to be fairly understood. In the amendment which I intend to propose, it is prescribed that six months' consideration should be given to the people before the question should be taken. I propose further, that, as in the Constitution of California, every such proposed law should be published in at least one newspaper in every county throughout the State, for three months next preceding the election at which the question was to be submitted to the people. And then I proposed that neither directly, solely, or in the aggregate, nor indirectly, should the State contract debts, which should never exceed, in all, one million of dollars; whereas, by the gentleman's proposition, there was no limit to the amount which the State could borrow. This, I think, is a very material difference. I have alluded to the provision in the New York Constitution, which provides that the Legislature shall not borrow over a million of dollars, *without* the consent of the people; but with the consent of the people they may borrow any amount. It is my proposition to limit the aggregate amount of indebtedness to a million—giving ample opportunity for consideration and decision on the part of the people. I proposed this amendment because I cannot but consider that this matter of the power to borrow money, should always belong to the sovereign power of every government, under proper restrictions; and because I am unwilling to whittle down the power of the State to that of a mere corporation.

These, in short, are my views, and for these reasons, and others, I hope the engrossment of both sections will be re-considered.

Mr. WATTS. I think we should not re-consider. But I suppose we can go on with debate upon the subject for two or three days longer. This is substantially the same matter which was brought up by the gentleman from Sullivan (Mr. Wolfe). I could hope that we might be permitted to get along with business, without bringing up some new modification of the same matter every day, upon the meeting of the Convention. If, when a question has been decided twice by yeas and nays, it is not sufficient, when

can it be reasonably expected that we can get through with the requisite amendments of the Constitution? For myself, I have but very little choice between the section as proposed to be amended, and as it now stands. However, I believe, for the interest of the State of Indiana, the present shape of the action is as good as we can make it. I have no particular wish to rid the representatives of the people of any just responsibility. If they are sent up here by their constituents for the purpose of passing laws, and if they should pass a law such as they might believe to be for the advancement of the best interests of their constituents, and that it should turn out otherwise, let them bear the responsibility, and not think to throw off their responsibility, by merely proposing laws and requiring the people to pass them. I am not a lawyer, sir, but I have my doubts whether it would be constitutional to pass a law that may take effect upon a certain contingency which may or may not happen.

Mr. DUNN of Perry. I move to lay the motion to re-consider upon the table.

The PRESIDENT. That motion is not in order.

Mr. DUNN. Then I demand the previous question.

But the Convention refused to sustain the call.

Mr. RITCHEY. I freely accord, sir, the best motives to the gentleman from Allen, (Mr. Borden), who has made this motion to re-consider. But I doubt very much whether any question, which is to come before this Convention, will be debated more thoroughly than this question has been already. We have spent several days upon it; and, if the gentleman had been in his place, attending to the argument, I think he would not have made the motion. The reasons which the gentleman presented were all rehearsed yesterday by the gentleman (Mr. Hendricks), who sits behind me.

Mr. BORDEN (Interrupting). The instructions accompanying my motion to re-commit, on yesterday, were materially different from those proposed by the gentleman from Shelby (Mr. Hendricks).

Mr. RITCHEY. I have not been able to perceive any material difference between these propositions, which have been frequently submitted to us, during this discussion; and, if our progress is to be hindered in this way, when shall we get through with the business of this Convention? How much longer time must gentlemen have to consider this subject?

Mr. DUNN of Jefferson. I presume that I am as much disinclined to consume unnecessarily the time of this Convention, as any other member, but I must beg leave to say a few words in reply to some remarks made yesterday by the gentleman from Ripley (Mr. Smith). That gentleman did me the honor, to speak of me in terms far more complimentary than I

have an idea are deserved. I acknowledge that I partake of the infirmities of human nature, and that flattery is as agreeable to me as to other persons; and while the gentleman was showering his compliments upon me, I could not but congratulate myself that we have a stenographer here, and that all these fine sayings would be printed and scattered abroad throughout the State; and, more than all, that they would go into the big book and constitute a part of the history of the times. But, sir, while I was indulging in these agreeable reflections, I suddenly discovered that his compliments had a double edge, and that while the gentleman gave me great credit for intelligence and sagacity, that he attributed to me a motive unworthy of any member of this body. He intimated that my opposition to the section under consideration, instead of being founded, in part, as I have stated, upon a desire that the Convention should not inconsiderately deprive the State of the opportunity of availing herself of the rights retained by her in the charter of the Madison and Indianapolis Railroad Company, was because my wise forecast satisfied me that the adoption of this section would effectually prevent the private stockholders in that Company from hereafter foisting that road upon the State in case the stock became unprofitable. [Mr. Smith of Ripley, interrupting, said: "surely I did not attribute any motive of that kind to the gentleman. I merely drew an argument from the gentleman's remarks."] I understood the gentleman differently; but no matter. All I have to say on this subject is, that if any fear of this kind is entertained, and the State is desirous of disposing of her interest in that Road, I presume she can find a purchaser. In my former remarks, I alluded to this subject as one worthy of the consideration of the Convention. I have discharged my duty, and if any gentleman suspects my motives for so doing, it cannot be helped.

Permit, me, before I take my seat, to refer to some other cases in which it might be important for the State to have the privilege of using her credit. Suppose your penitentiary should be burned down, or your State treasury should be robbed, or your treasurer should prove a defaulter, all of which are at least possible contingencies, how are we to get along if we cannot use the credit of the State? Mr. President, I have too much respect for the good sense and prudence of the people of Indiana to say that they cannot be trusted to determine under what circumstances it would be proper to borrow money, and therefore I cannot vote for a Constitutional provision which would place this great State of Indiana under the protection of the minor act.

Mr. KILGORE. I rise simply for the purpose of calling the attention of the Convention to the matter which we had up yesterday, em-

braced in instructions upon a motion to re-commit.

The PRESIDENT. The question is upon a re-consideration of the vote by which the section was ordered to be engrossed.

Mr. KILGORE. I understood that. But I desire to direct attention to these instructions, for the purpose of showing the necessity of re-considering that vote. The great objection which gentlemen urge against leaving this section open, is, their apprehension that the State may again enter into some system of internal improvement.

If this vote were re-considered, I could then propose to amend the section so as to meet the objections of gentlemen from that quarter, by providing that no debt shall be contracted on behalf of the State for the construction of any canal, railroad, or any other work of internal improvement. I wish merely to leave the question open with reference to borrowing money. There are various interests which might be endangered without such an open clause. It has been said, on a former occasion, that people overlook their best interests in times of excitement. And that is true. I grant it most cordially, that there is great danger from that quarter.

But again: I find a great propriety in supporting a Bank, and I am disposed, if the Legislature should deem it necessary to make a loan for that purpose, to allow them to do so. There are three parties upon this question of Banking. There are those who go for the right of free Banking; those who would support a State Bank; and those who are of what is called the no-Bank party. Well, I desire to ask those gentlemen who are in favor of free Banking, what Banking system they would be disposed to favor, if the free Banking system were voted down? I would ask whether they would not be in favor of a State Bank?

A VOICE. "No."

Mr. KILGORE. One gentleman says "no." I ask, then, of the no-Bank party, if they are driven to the alternative of choosing between a State Bank and the free Banking policy, which would be their choice, if they were driven to the alternative of choosing between these?

Mr. PEPPER of Ohio (interrupting). I rise to a question of order. I believe the subject of Banking is not under consideration.

The PRESIDENT. It is not.

Mr. KILGORE. No, sir, it is not. But I am showing why this question should be left open, on account of these different interests. I have no doubt, from the vote given yesterday, that, in the event of the prohibition of free banking, we shall establish no Constitutional provision for banking at all. And when gentlemen are driven to choose between various projects, there will be some feeling, as a matter of course. And they would not like to be tied up and compelled to decide upon what they do

not fully approve, or throw away the whole. I am willing then, that the vote should be reconsidered, and I hope it will be, so that the subject may be re-committed and a provision inserted which will guard against all the great danger which gentlemen are most earnestly disposed to avoid.

Mr. NILES. I have been occupied in the court below, during a considerable part of the discussion upon this section. And I must say that while I concur fully in the spirit of the two sections as amended, I am inclined to think that a slight verbal alteration or amendment ought still to be made in the section now immediately under consideration.

It seems that collateral questions have been largely introduced in the debate. Now, I have supported the section, without reference to the question of bank or no bank, free banks or a State Bank, simply—as I have contended before—because I believe the accumulation of a public debt to be inconsistent with the best interests of the State. But the government should have the power to borrow small sums to meet casual deficiencies in the revenue, and in case of sudden and unforeseen emergencies. In the event of the burning down of the State House, as suggested by the gentleman from Allen, (Mr. Borden,) or of the Penitentiary, as mentioned by the gentleman from Jefferson, (Mr. Dunn,) and in numerous other possible contingencies, the absence of such a power, would be a misfortune. As the section now stands, I apprehend that we could not borrow money for any such purpose. It reads thus: "The General Assembly may contract debts to meet casual deficits and failures in the revenue, for the purpose of paying the interest on the State debt," &c. This evidently limits loans to be made, to the single purpose of paying interest on the State debt. I would suggest the propriety of inserting after "revenue," in the third line, the word "and." By such an amendment the section could probably be made to meet the wants of the case. Perhaps such a change may be thought properly to come within the province of the committee of revision, arrangement, and phraseology. If so, and if the change is made by them, I am content. The section would authorize the contracting of debts, both for the purpose of meeting casual deficiencies in the revenue, and to pay interest on the State debt. Both of these are evidently right and proper.

Mr. SMITH of Ripley. I desire to make a single remark in answer to the gentlemen who have brought this subject up: the gentleman from Jefferson (Mr. Dunn) and my friend from Laporte, who has just taken his seat. I will not take up more than five minutes time.

Mr. President, these arguments of gentlemen are plausible enough. But let me make this remark: that nothing but a general power to borrow money, without restraint or restriction, will meet these contemplated difficulties—and why?

Let us see whether, under this restricted power, you can always be sure of the means to re-build the State House or the Penitentiary, in case of their destruction by fire. We suppose the case that the State has borrowed to her utmost limits; and that the State House or Penitentiary is burnt down, does not any one see that a limited power does not answer. It will not do at all. You must have a general power; for your limited power may be exhausted in a single year. This consideration, in my opinion, is not sufficient to induce us to travel over the ground of this discussion again, upon a motion to reconsider.

My learned friend on the right (Mr. Kilgore) looks upon this matter as forever closing the action of the Convention. He seems to think that, if we adopt this section, without putting in the word "bank," the State might be left without the money to carry a bank into operation. But there can be no doubt about the past that, although you may take away the power to borrow money, if we create a bank we must also create the power to carry it into effect.

Mr. HOVEY. I merely wish to say, that I think that the previous action upon this section, came off at a very unfortunate hour. The question of a bank, and the subject of internal improvement, have been so blended with the matter of the section, that I believe many have voted against it for these considerations alone. I hope, therefore, that the Convention will reconsider the vote upon the engrossment, and postpone the final action, until the question of banking, and internal improvement, shall have been disposed of; so that we may act upon the matter of this report dispassionately, and bestow upon it the consideration which its importance so justly deserves.

Mr. MORRISON of Marion. I had hoped that we had at last found bottom upon the subject matter of this section. I have listened with attention to the reasons why we should again open this question. Gentlemen seem not to be satisfied with urging and repeating those reasons which have already been considered and rejected by the Convention. The supposition has been made, that the State House or State Prison might be burnt down, and so make a necessity for having a contingent power to borrow money for the purpose of rebuilding. Now I ask gentlemen to answer me in all soberness, if such a power is necessary, even in the cases supposed? If such a calamity were to befall the State, in either of the cases supposed, what would be the natural action of the Government? Why contracts would, be made and the work let out, (if it were necessary, this power would be assumed,) by the officers of State, for the re-construction of the building, and it would not be possible to re-construct either one of those buildings in the course of a single year, and in the mean time, either by a regular or called session the Legislature would

act in the case, and assess the tax which might be necessary to raise a special fund for the work before the time could possibly elapse in which such an edifice could be constructed. The taxes could be collected even faster than the work could progress. So falls to the ground the air built vision, which can have no other effect than to consume time. I cannot see why gentlemen will be continually harping upon this subject. We have already spent four days upon it, and as I think elaborated every thing which can be usefully presented. No new idea has been presented this morning, and I can see no reason why any member should desire to change his vote upon the engrossment of this section. For my part I am prepared and willing to vote against the motion to re-consider; and I will now move the previous question.

But the Convention refused a second.

Mr. NAVE. I have not yet said anything in the course of this discussion. The doctrine of internal improvements by the State has been argued at length, which, in my opinion, has nothing to do with the question before us. On yesterday, I voted with the majority to engross this section—upon the same question which is now moved to be re-considered by the gentleman from Allen (Mr. Borden)—for the express purpose of making a motion to re-consider, myself. Seeing a disposition on the part of the Convention to pass it as it was, and being satisfied, that, on account of extraneous matter which had been connected with the subject, nothing that could be then said would have any influence to produce a different vote; therefore, I said nothing; and I design now to say but a very few words.

My opposition to this section is founded upon this fact: that it is impossible for this Convention to look into the future. We cannot foresee what contingencies may happen to the State of Indiana ten years hence. And it is for the purpose of reserving to the people the power to contract a debt, to meet those unforeseen contingencies which may, and most probably will happen, that I oppose this section as it now stands. The people of Indiana have settled these two questions with reference to the power of the State to borrow money: that is, that the State, through the Legislature, shall never again borrow money to prosecute any system of internal improvement. The people have determined upon this time and again. And a portion of the people, in all probability—judging from the votes of this Convention—have determined that they will never give the power to the Legislature to borrow money for banking purposes. These are the only two questions, in my opinion, which the people have determined in regard to this matter. But they have not called upon this Convention to tie up the hands of the Legislature, or their own hands, so that they shall never create a debt to meet any contingency which may happen in the unknown

future. Pass this section, sir, as it now stands, and you tie up the hands of the people with reference to the purchase of the Madison and Indianapolis Railroad and other works of improvement, and completely waive the right to buy out all these works, which has been heretofore reserved to the State in their several charters.

I will read this reservation clause in the charter of the Madison and Indianapolis Railroad Company:

"SEC. 64. The State of Indiana, through the Legislature thereof, shall have the privilege, at any time after twenty years, to purchase from any such association the entire interest such association may have acquired under the provisions of this act, by refunding to such association the full amount actually expended thereon by such association, with interest at the rate of six per cent. per annum thereon, from the date of such expenditure, first deducting from said six per cent. all net amounts of revenue received by such association."

Will any gentleman say that it will never be, at any time in the future, to the interest of the State to purchase out the Madison and Indianapolis Railroad? And should we manacle the hands of the State so as to render such a thing impossible, simply because a portion of the people have been once beguiled into the adoption of a most ruinous system of internal improvements? Are we to have this old system held up before the Convention, for the purpose of governing our action.

Sir, I, for one, have ever been opposed to that system. I have ever been opposed to the principle of the State borrowing money to prosecute works of internal improvement. I have ever been opposed to the State going into any speculation of any kind. But I never can be in favor of tying up the hands of the State, in the terms proposed in this section. I think, therefore, the vote out to be re-considered.

Mr. OWEN. I rise for the purpose of making to the Convention, a single suggestion, and I hope it will meet the views of my friends, the gentleman from Wayne, (Mr. Rariden,) and the gentleman from Laporte, (Mr. Niles). It is well known that this section, after it has passed the third reading, has to be referred to the committee on revision. And it will be well known to the committee, that the intention of the Convention, when they passed this second section of the article, was to provide that, in the event of any casual deficiency in the revenue, the State might be allowed to borrow a small amount.

Mr. BORDEN. [Interrupting.] Did not the Convention strike that out?

Mr. OWEN. No, sir. Here is the section as reported, (Mr. Read's). There is no "or" nor "and" in it. With reference to the alteration made by striking out "one hundred thousand dollars," and inserting "the amount of such deficits," I think it must be quite clear to every

gentleman, that it was not the intention to prevent the Legislature from borrowing to any amount which might be necessary to meet any casual deficit in the revenue. And, if that be understood, certainly, I think the committee on revision will feel themselves authorized to make any verbal alteration, which would make the sense clear. I hope, therefore, that this correction will be left to that committee.

Mr. ROBINSON. If there is any question upon which I feel myself to be directly instructed, it is that now before the Convention. I hope the vote will not be re-considered. If we consider the language of this section for a moment, we shall find that it confers every power which ought to be demanded. In the first place, it confers upon the Legislature the power to borrow money for the purposes of meeting any deficit in the revenue, or in the amount necessary to pay the interest on the State debt. This, a fair majority of the Convention have been disposed to sustain, and they have sustained it by repeated votings.

But some very plausible arguments have been thrown out, in favor of giving further authority to contract a public debt.

Gentlemen have supposed what may or may not exist in the future. They have supposed that the State House might be destroyed, and asked what would be the situation of things if the State could not borrow money to re-build it. Why, there is a plain, simple, well decided, direct course to pursue, in such a case; a course presenting itself to my mind which would be acted upon cheerfully by the people of Indiana. Suppose such a contingency were to happen. A special tax for the purpose of re-building, imposed upon such men as my constituents, (I speak for them because I know them,) would be paid most cheerfully; and these men hold—and I believe with them—that the State should never go into any speculation which would involve the borrowing of money. Sir, the people of our State are not so penurious and contemptible as to refuse to pay a tax which their representatives might assess for building a State House. Sir, it is all poetry, this talk about burning down the State House, the Penitentiary, and other public buildings. It is no argument to me to say that the people cannot furnish the means to build a State House, without going into the market and borrowing money.

Gentlemen say, we do not see what will take place in the future. Aye, sir, and because we are not able to see what may take place in the future, that is a very strong reason why I wish to shut the door against abuses. True, we cannot see what influences may come up to seduce the people, but one thing we can see and appreciate, and that is, sir, that experience is the best teacher, though sometimes the very hardest of masters. But I know of no better rule in making up our judgments with reference

to any particular course of policy than to look at the past. What has happened once may happen again. What has taken place in days gone by might take place again in time to come; and I venture to say, there is not a member upon this floor, nor a citizen of the State of Indiana, who would ever say that money should again be borrowed by the State and squandered as heretofore. I say, then, that if we authorize the Legislature to borrow money for the purposes mentioned in the section, we go as far as we ought to go. Yes, sir; in the emphatic language of the gentleman from —, (Mr. —),—perhaps my own modesty would not have prompted me to be the first to say it—the people have been swindled out of their money. There never was a greater swindling operation taken from first to last, than that which was enacted with our agents in connection with the Wall Street brokers.

It was said by the gentleman over the way (Mr. Nave) that the time might present itself when it would be for the interest of the State to purchase the Madison and Indianapolis Railroad. That Road is very good stock—perhaps the best in the State; I maintain, however, that the time may come hereafter, and perhaps it is not very far distant, when that Road will be effectually tapped, and the profits of the Company turned in another direction. But be that as it may, I am willing, from this time forward, during the period of the continuance of the amended Constitution, to prevent the State from going into any such speculation.

I confess that since I made some remarks on yesterday with reference to this subject, I have been congratulated as a good democrat, and some of my whig friends have almost held out the hand to bid me adieu. I may be mistaken, but if, in advocating this measure, I am justly charged with being a democrat, although few democrats will keep company with me out of doors, at all events I will be with them upon this subject, in this Hall. But I know no particular party with reference to any measure to be considered here. I vote for what I believe to be right, because that is my duty, and my people have instructed me to do so. And it is for the purpose of protecting the rights of the people that I am in favor of shutting up the doors of public credit for the future.

If I could believe that anything of advantage to the State could come out of this re-consideration, and the continuance of this discussion, in the spirit of liberality which I always desire to maintain here, I would vote for it. But believing that the minds of members are firmly made up in favor of the section as it stands, I have only to say that I hope the vote will not be re-considered.

Mr. SHERROD said: I do not rise, sir, for the purpose of inflicting a speech upon the House. I have but little to say, and shall say that little quickly. I have been an

attentive listener to the discussion of the question now under consideration, and with the gentleman from Jefferson, (Mr. Dunn,) I think the main point at issue has not been discussed; at least the greater portion of the argument, has been upon another branch of inquiry. Why, sir, in listening to the debates that have consumed the time of this House for the last three or four days, we are readily brought to the conclusion that the question is not, whether we will or will not have a State debt. But who of the honorable gentlemen upon this floor are most conversant with the countless topics of former ages and who have been the greatest advocate or opposer of the old exploded system of internal improvement. Why, sir, gentlemen have traveled around the universe, they have arrayed before us, ancient and modern history. They have resurrected that old monster, the system of internal improvement, that I had hoped was buried so deep that the hand of resurrection would never reach it, and paraded its ghost around this chamber for the last four or five days, until it now stands like the ghost of Banquo staring us in the face from every hole, and for what purpose I cannot see, unless it is as I have already mentioned. Now, Mr. President, I would ask in all seriousness what we are to gain by continuing a discursory debate that is entirely foreign to the main question. For one, sir, I am sick, and heartily sick of such a course. We have had a decisive expression of the Convention in favor of the section as engrossed. Then, sir, why continue to retard the action of the Convention by an effort to re-consider the vote, cast on yesterday.

So far as I am concerned I voted my sentiments and they are not to be changed, unless there is more forcible reasoning than I have yet heard.

Sir, I have discussed this proposition before the people whom I have the honor to represent here, and from all I have been able to gather, I venture to say that there will not be a single article or section in the amended Constitution, which will meet with a more hearty approval by the people, than the section as it now stands.

I had hoped, sir, as the call for the previous question was not sustained, that gentlemen on the opposite side of the question, would have given us some new light by which we would be enabled to see the errors that we have committed.

But, sir, in my mind there has not yet been offered one particle of reason why we should re-consider this vote.

Gentlemen talk loudly about tying up the hands of the people, and have denounced the friends of this measure as usurpers, as having trampled the fundamental principles of democracy under foot. Now, sir, I hope we will hear no more of this miserable cant about placing limitations and restrictions on the people. As

I have remarked on a former occasion, the very foundation of government rests upon restrictions and limitations upon the power of the people—a Constitution itself is a restriction upon the powers of the people.

My friend over the way (Mr. Wolfe) remarked on yesterday, that when the resolution which I had the honor of introducing into this body to restrict debate was under consideration, there was a great deal of kicking and flouncing against it, and this was echoed as an argument in favor of restricting debate.

I will now ask the gentleman from Sullivan, if he did not support that proposition to restrict debate, upon the principle that no deliberative body can well govern themselves without restrictions.

Now, sir, if it be true that this body cannot govern themselves—that they will run wild in the excitement and heat of debate without wholesome restrictions, is it not also most probable that the people themselves will become excited, and require the same wholesome restrictions. But perhaps I should not have alluded to my friend from Sullivan, (Mr. Wolfe,) for when the vote was taken, we find him right, voting for the engrossment of the section.

Now, Mr. President, I am decidedly opposed to re-consideration; I can see no good that can result from it, but only the consumption of time, and if the discussion were to be continued for weeks, I suppose there would be no change effected in the minds of the members of this body upon a question of this character; and it cannot be supposed, that the minds of the people, themselves, which have also been thoroughly made up, could be affected upon this subject by any amount of debate in this Hall.

MR. LOCKHART. MR. PRESIDENT: A strange fatality seems to await this section, or rather the section as it came from the committee, of which the honorable gentleman from Gibson is chairman. From its advent here up to the present time, a large number of those who opposed its adoption as reported, are those who ought have supported it.

It is well known to my colleagues upon this floor, that every candidate for a seat in this Convention from the counties of Posey and Vanderburg advocated the adoption of just such a section as the committee reported. Indeed, early in the session, a resolution was unanimously adopted by the Convention, requiring the committee to report the section; since then, however, a change seems to have come over the spirit of the dream of a majority of the members of this Convention. The section, as it now is, has been so amended that its original friends do not know it. I trust, sir, that the motion now pending will prevail. I wish to see the section brought back to its original form, or substantially so. Then it will come up to the just expectations of the people; then it will conform to the resolutions of the demo-

cratic convention which nominated Wright for Governor. One of those resolutions—and the one to which I particularly refer—was read on yesterday by the gentleman from Shelby, (Mr. Hendricks,) and was drafted, I am told, by one of my colleagues. Indeed, I understand him as admitting its paternity, in his note recently published in the "Statesman."

Mr. OWEN (interrupting) said, that his note only admitted that he drafted the resolutions on the slavery question.

Mr. LOCKHART. I understand the note as published in the "Statesman," to embrace them all; but I may be mistaken in this; but whether I am or not, is quite immaterial to the consideration of the question now before the Convention. I will, however, state for the information of my colleagues, that I have been informed that the manuscript resolutions have been seen within a few days past, and that they appear to have been written by the same hand.

This resolution, sir, among others, was inscribed upon the democratic banner under which Joseph A. Wright was borne into the Gubernatorial Chair. It was adopted as a part of the democratic creed two years ago. Its principles then received my sanction; they shall now receive my support. I cannot but express my surprise that my honorable colleague has taken the opposite side; for upon the stump we both advocated the principles embraced in the reported section. I recollect a remark which he made upon the stump. It was this: "Why, if the people vote a tax upon themselves, I ask, is it not their own business?" That was right. I should like to hear him advocate the same doctrine now. Mr. Matson, the competitor of Governor Wright, advocated the same provision; and so far as my information goes, every democrat and whig who went upon the stump throughout the State, advocated it. The people of the district which I represent expect to see such a provision engrafted into the Constitution. In conformity, therefore, to the public will, as expressed through the ballot box, I voted against striking out the provision in the section under consideration permitting the Legislature to borrow money on the credit of the State, when the people, who are our masters, shall say through the ballot box that it ought to be done. Has it come to this, sir, that the servants of the people are afraid to trust their masters? Do they expect or require at the hands of this Convention that the Legislature and they themselves should be tied down, and prohibited from exercising so important a branch of sovereignty as this? Certainly not. The section, I would remind the Convention, in its original form, is a sufficient guaranty that no State debt will ever be created unless some cause of urgent necessity shall hereafter require it; and ought we not to provide for such an emergency? It seems to me, sir, that wisdom requires it, and that it would be the height of

folly to prevent it. The high-minded and honorable constituency which I represent agree with Mr. Jefferson in saying, that "OUR LIBERTIES CAN NEVER BE SAFE BUT IN THE HANDS OF THE PEOPLE THEMSELVES." The section, as now amended, I believe to be in violation of this great principle. By voting for it, I would prove recreant to my duty; I should disappoint the just expectations of my constituents. They sent me here for no such purpose. Matters entirely foreign to the subject under consideration have been dragged into this discussion; and for what? Can gentlemen tell why the old system of internal improvement and the bank question have been introduced? Was it for any laudable purpose? Was it not for the purpose of creating a prejudice in the minds of members against a correct principle—a principle which they themselves, and the people who sent them here, have expected to see placed in the amended Constitution; for certainly these subjects have nothing at all to do with the question we have been considering.

Some gentleman declared upon this floor, that, if the internal improvement system of 1836 had been submitted to the people, they would have ratified the act. But this I deny. It would not have received the vote of a respectable minority if it had been submitted to the people. I will speak now for the first Congressional district, and the Senate district which I represent. In those districts, the first vote which could be taken as anything like a test upon this question, was cast at the election of 1837, when John Dumont and the honorable gentleman who sits before me (Mr. Wallace) were candidates for Governor. In the first district, John Dumont received a majority of three thousand seven hundred and forty-four votes. In this district, the canal passed through the counties of Pike, Gibson, Warrick, and Vanderburg. In these four counties, Dumont beat Wallace twenty-nine votes. In the county of Orange, through which the New Albany and Vincennes McAdamized road passed, Wallace had a majority of one hundred and fourteen votes. The county of Posey gave Dumont one thousand and ninety-nine of a majority. From this statement, I think, it is clear that the Senatorial district composed of the counties of Posey and Vanderburg would have voted against the internal improvement system. I think it is equally clear that the first Congressional district would have voted, by a very large majority, against the system.

Wallace, it will be remembered, was to be the successor of Gov. Noble, the father of the internal improvement system. Dumont was the candidate of the classifiers. He became a candidate at a late period in the canvass, too late to canvass the State, but where he went he made his mark; it would have been a glorious day for Indiana had he succeeded, as he doubtless would have done had he thoroughly can-

vassed the State. I make these remarks, Mr. President, with no unkind feelings towards the gentleman from Marion, for I can assure him, and this Convention, that I entertain no other than the kindest feelings towards him; but having been a classifier myself, my predilections were all in favor of the success of Dumont. I saw at that period, sir, that our load was too heavy—that classification was the only thing that would secure us; the result has satisfied the most sceptical.

The right of one generation to create a debt for a future generation to pay, has been denied by my honorable colleague (Mr. Owen). I do not design to discuss this question at this time. I only desire to say that I do not subscribe to that doctrine; it is too erratic for me. I do not think the position can be sustained by reason or authority. Does not the incoming generation succeed to all of the improvements in the arts and sciences, and in the possession of property of the preceding generation? Why, sir, if it be true that one generation cannot create a debt that shall be obligatory upon a succeeding generation to pay, why is it that we toil to transmit wealth, literature, and learning, to those who are to succeed us? Why do we not, instead of transmitting our monies, goods, and chattles to those who are to succeed us, destroy all! Why do we not, at the time of our death, cause our houses, barns, and buildings to be burned to the ground? If they are not to pay debts that were contracted for the general prosperity of the country, why let them succeed to any of the wealth of preceding generations?

Mr. Jefferson with all his radicalism did not go so far; he said that in the funding of a public debt, the payment of it ought rightfully to be made within the lives of a majority of the generation contracting it; but Mr. Jefferson does not take so broad a ground as my honorable colleague, but, sir, the impracticability of determining when one generation enters upon the theatre of action and another leaves it, to my mind entirely refutes the position.

This, sir, is an important question; one which demands the attention of this body. I hope that it will receive that consideration which is due to so important a subject, and that free discussion will be tolerated.

I hope that the friends of both sides will be heard upon the proposition; and that there will be no more efforts to stifle debate.

I do not wish to be understood from what I have said, that I am in favor of creating a State debt. On the contrary, I am opposed to the creation of such a debt, except in cases of emergency, and then only to a limited extent. I am opposed to the State's embarking in any system of internal improvements, or becoming a stockholder in any banking institution, upon borrowed capital, unless with the consent of the people of the State. When it is said that this Convention is going too far, that we are imposing

restrictions that the people do not desire, we are coolly told that if the people ratify this Constitution which we form, it is then their own act. This is a most magnanimous mode of argument, for the reason that there may be a great many good things in the Constitution, enough to overbalance the evil, so that the people would be induced to ratify it in the hopes of getting the evil removed by specific amendments hereafter. Hence this argument is without the slightest force; it is merely begging the question.

Some of the reasons advanced by the gentleman from Allen, (Mr. Borden,) appear to be conclusive in favor of re-consideration. Indeed, I cannot bring myself to believe that a majority of this Convention would have voted to mutilate and destroy the original section, had the internal improvement and bank questions been kept out of this debate.

I hope the motion to re-consider will prevail, and then that the further consideration of the subject will be postponed until after the discussion of the bank question. At that time I hope we shall have a full Convention; and if then, upon comparing notes, it shall be found that a majority of this body are in favor of the engrossment of the amended section, as they were on yesterday, then the friends of the original section will bow in humble submission to the will of the majority. Until then, we must oppose the passage of the section as engrossed—we must also oppose instructing the "smoothing iron" committee to change the section after it passes the Convention. Here, and here only, is the place to make amendments.

MR. OWEN. MR. PRESIDENT: All accounts between myself and my constituents, I shall settle in person, without troubling the Convention, and without any aid from the gentleman from Vanderburgh, (Mr. Lockhart). When that gentleman returns home, he will, I imagine, find his hands full with his own business. He introduced, early in the session, a resolution, declaring that "the interests of the people and the honor of the State, demand" that all banks should be prohibited by the Constitution. Yet, neither I, myself, nor his constituents at home, have forgotten the long and labored arguments he made, during the canvass, in favor of a State Bank. All that is nothing to me, sir; nothing to the Convention. It is an affair solely between the gentleman and his constituents; to which I should never have adverted at all, except by way of reminding the gentleman that he had better give attention to his own affairs, instead of intermeddling in mine.

The gentleman speaks for the first Congressional district, declaring what are the views and opinions there entertained. My right to speak for that district, is, it strikes me, as good as his. And I say here, that, whenever this subject is agitated before that people; whenever they are called upon to decide whether the question of increasing our present public debt, shall or shall

not be left open; if three-fourths of the voters of the district do not say, "Close the door at once!" then I will confess that I have canvassed that portion of the State to very little purpose.

A single word as to the resolutions passed at the democratic convention two years ago. I was not there; but my distinct impression is, that the resolutions on slavery only, were of my drafting, and they were considerably altered from the original draft. Be this as it may, it is immaterial. I admit to the gentleman, that if I had drafted the resolution relative to public debt, in all probability it would have been in substance, the same as that adopted. That was the usual form then received. Public opinion has been gradually maturing since, and settling down, more and more strongly, against all increase of debt. I believe it now demands an absolute prohibition. I believe it is right in the demand; and that consideration decides my vote.

Mr. LOCKHART. Mr. PRESIDENT: I crave the indulgence of the Convention for a few minutes, for the purpose of placing the gentleman from Posey (Mr. Owen) and myself right. My honorable colleague seems to think that I was interfering between him and his constituents, in the few remarks I made this morning. In this, sir, he is mistaken. His constituents, it will be remembered, are my constituents. I, therefore, had a legitimate right to refer to the manner in which the canvass, in my district, was conducted, and to state the views expressed by the several aspirants to a seat in this body, upon the question under debate. In stating that he advocated before the people the adoption of the section as reported by the committee, I stated a simple fact. To this statement he excepts. He has alluded to the anti-bank resolution, introduced by me, on the 24th of October, in no kind spirit. That resolution was introduced for the double purpose of showing the reverse of the proposition of the gentleman from Wayne, (Mr. Rariden,) and for the purpose of gaining strength to the State Bank party in this connection. It was not introduced because I expected to vote for it myself, but for the purpose of getting a vote upon the question of bank or no bank. This was known to several friends of the State Bank system, before I introduced it. It was introduced with their approbation. It was known to them and to me, that there were several members on this floor who were opposed to all banks, but who favored the State Bank, in preference to free banks.

It is well known to my colleague, (Mr. Owen,) that, during the canvass, I stated to my constituents that I regarded the bank question as settled. That the question in the Convention would be between a State Bank and branches, and free banks; and that I favored the State Bank system. That I had seen no system of free banks that I could approve; and that, while

banks existed in neighboring States, I believed that sound policy required that we should have sound, solvent, specie-paying banks of our own; if not, that we would be flooded with bank paper from other States, the solvency of which the people could not know. That, under the State Bank system, we had got along very well;—its paper was good, and our people generally satisfied with it; and that, to break down the banking system in the State at present, would be productive of ruinous consequences to all interests, and that none would feel the evils more than the agricultural and laboring classes of our citizens.

Mr. BRACKEN objected—he rose to a question of privilege. It was a rule of the Convention that no gentleman should speak a second time upon the same subject, until all others had had an opportunity to speak. He had waited to see what courtesy leading members of the Convention would extend to those more modest gentlemen, who were disposed to stand back and "wait for their turn." But he was satisfied that courtesy from that quarter was a delusive fallacy, and he now insisted upon the rights of others to have an opportunity to express their views and give a reason for their votes.

Mr. READ of Clarke hoped the President would enforce the rule rigidly. His friend, Governor Wallace, had been desiring to address the Convention several days, but had had no opportunity.

Mr. BARBOUR. It is but a courtesy which the Convention is bound to extend to the gentleman from Vanderburg to reply to the remarks of the gentleman from Posey. It is his clear and just right.

Mr. OWEN. I trust, Mr. President, that the gentleman from Vanderburg will be permitted to proceed.

The question, "Shall the gentleman be allowed to proceed?" was put by the President, and decided in the affirmative by the Convention.

Mr. LOCKHART. This is, I believe, sir, the second time that the honorable member over the way has called me to order. In both instances, however, I have been permitted to proceed, once by the decision of the presiding officer, and this time by the courtesy of the Convention, for which I now return my humble acknowledgments.

I was about proceeding, Mr. President, to say that my honorable friend need not give himself any uneasiness about my anti-bank resolution. It has filled its office, it has answered the end for which it was introduced.

In conclusion, permit me to say, that all my acts here shall conform to the will of my constituents—that I shall redeem every pledge I made them during the canvass.

Mr. CHAPMAN. I do not wish to make a speech, but I desire to refer to an authority upon the democracy or the anti-democracy in-

volved in this question of a public debt. I wish to quote an extract from the writings of Thomas Jefferson, of about twenty lines only.

SEVERAL VOICES. "Read it."

MR. CHAPMAN. It is as follows:

"To preserve our independence, we must not let our rulers load us with perpetual debt. We must make our selection between *economy and liberty* or *profusion and servitude*. If we run into such debts as that, we must be taxed in our meat and in our drink, in our necessities and our comforts, in our labors and our amusements, for our callings and our creeds, as the people of England are. Our people, like them, must come to labor sixteen hours in the twenty-four, give the earnings of fifteen of these to the government for their debts and daily expenses; and the sixteenth being insufficient to afford us bread, we must live, as they now do, on oatmeal and potatoes! have no time to think, no means of calling the mismanagers to account; but be glad to obtain subsistence by hiring ourselves to rivet their chains on the necks of our fellow-sufferers. Our land-holders, too, like theirs, retaining, indeed, the title and stewardship of estates called theirs, but held really in trust for the treasury, must wander, like theirs, in foreign countries, and be contented with penury, obscurity, exile, and the glory of the nation. This example reads to us the salutary lesson that private fortunes are destroyed by public, as well as by private extravagance. And this is the tendency of all human governments. A departure from principle in one instance, becomes a precedent for a second, that second for a third, and so on, till the bulk of society is reduced to be mere automations of misery, to have no sensibilities left but for sinning and suffering. Then begins, indeed, the *bellum omnium in omnia*, which some philosophers, observing to be so general in the world, have mistaken it for the natural, instead of the abusive state of man. And the forehorse of this frightful team is public debt. Taxation follows that, and in its train wretchedness and oppression."

I have only to add this remark, that the principle in opposition to a public debt was one that both Conventions endeavored to establish. The details were considered as of secondary importance.

MR. BORDEN. I merely wish to say a few words in personal explanation. I have been, in the main, a silent but an attentive observer of all the proceedings of this Convention. As I remarked at the opening of the session, I did not intend to occupy the floor much in debate, but would endeavor to perform my portion of the labor of the Convention. I was willing to assist to the extent of my power at the organization of the Convention, and in laying out business for the session, and after that to remain as far as I could consistently with the interests of my constituency, a silent member.

I have considered the arguments on both sides of this question, and have carefully examined the Constitutions of other States in relation to this matter, and I find no precedent for the restrictive policy to the extent which is so strongly advocated by gentlemen.

As to the gentleman from Posey (Mr. Owen) and the committee on phraseology and arrangement, I know that in expressing my sentiments fearlessly against propositions to commit the whole matter thus pertaining to the new Constitution to the hands of one man, I may have done myself some personal injury; but, sir, my sense of duty will not allow me to shrink for mere personal considerations. And I shall continue to oppose assumption or the exercise, on the part of the committee of revision, of any power to change the principle of a section, which can very easily be done by slightly changing the position of words. That committee have only a right to change the language—not the spirit or meaning of the articles and sections referred to them.

Mr. President, although I know that it is not entirely proper to allude to the canvass preceding the election of Delegates, I desire to ask attention to some of the instructions passed by the people of my district. They are very short and I will read them.

The following principles among many others were recommended:

"The sacred preservation of the public faith by punctually paying the interest on our State Debt and the adoption of some plan for the gradual, but certain, redemption of our outstanding State Stocks so as to relieve the people from perpetual taxation.

And also a Constitutional barrier against improvident State indebtedness by requiring all laws creating loans before they are carried into effect, to be submitted to the people for their approval or rejection, except to a very limited amount in cases of immediate necessity."

By this some idea can be gained of the state of public opinion in the section of the State which I in part represent.

Mr. President, I moved a re-consideration, but in order to put myself right where my position might be misunderstood I will withdraw that motion and move to commit this section to the standing committee on the State Debt and Public Works, with the following instructions: to insert after the word "article," in the line, the words

"Unless such debt shall be authorized by a law for some single work or object therein distinctly specified, together with the amount; but such debt or debts, direct and contingent, singly or in the aggregate, shall not, at any time, exceed one million of dollars; and such law shall provide for the collection of a sufficient direct annual tax to pay the interest on such debt, as it may fall due, and also to discharge the principal within eighteen years from the contracting

thereof; and the law levying such tax shall be irrevocable until the principal and interest thereon shall be paid and discharged.

And on the final passage of such bill, in either House of the Legislature, the question shall be taken by ayes and noes, and entered on the Journal thereof, and shall be, Shall this bill pass? and ought the same to receive the sanction of the voters of this State? And no such law shall take effect until it shall, at a general election, have been submitted to the voters, and have a majority of all the votes cast for or against it. No such law shall be submitted to be voted on within six months after its passage, nor until it shall be published in at least one newspaper in each county, if one be published therein, throughout the State, for three months next preceding the election at which it is submitted to the people;" and said law shall not be submitted at any general election where any other law shall be submitted to be voted for or against.

The money arising from any loan or stock, creating such debt or liability, shall be applied to the object specified in the act authorizing such debt or liability, or for the re-payment of such debt or liability, and for no other business whatever."

Mr. BASCOM remarked that he did not feel bound by the instructions just read. His people had declared positively against a State Debt.

After some conversational debate as to the points of order relative to Mr. Borden's motion,

Mr. BORDEN withdrew his motion to commit, and renewed his motion to re-consider the vote by which the amendment of the gentleman from Ripley (Mr. Smith) was adopted.

Pending the question upon which motion, The Convention adjourned.

AFTERNOON SESSION.

The PRESIDENT resumed the chair at 2 o'clock, P. M.

Mr. PRATHER said:

Mr. President, I find about forty members absent from their places, and I therefore move to dispense with the further consideration of this subject till Thursday. It seems to me that the Convention should be full when the vote is to be taken upon a question of such importance, and I hope the order will be taken.

The motion was lost.

Mr. BRACKEN. Probably it is due to myself, under the circumstances, to make a few remarks. And first, I wish to say a few words to the gentleman from Vanderburgh, (Mr. Lockhart,) though my course might seem to be personal, I intended nothing against the gentleman; but my object was to call the House to order. It was a mere accident that my call to order was directed against him, and not because I considered him to be out of order more than others. I do not wish to set myself up as a censor in

this body, but, having rules to be governed by, I think it is important that we should observe them.

Mr. LOCKHART (interposing). I have no doubt the gentleman's call to order was made from the best motives. I did not consider it as an attack upon me at all.

Mr. BRACKEN. I wish now to pay my respects to the gentleman from Rush, my colleague (Mr. Helm). He appears to be disposed to lecture some of us on account of our votes here: to say the least of it, he has insinuated that his colleagues were voting in a manner not in accordance with their pledges. I wish, also, to state what I know of that matter. I have a distinct recollection, that, during the campaign last summer, I personally took the position, that hereafter there should be no new State debt created either directly or indirectly. The position with which I entered upon the canvass was this: that we entered into the social compact for two purposes only: first, the protection of life; secondly, the right to acquire property; and its incident to enjoy it, and for this purpose only did we enter into the social compact; and, sir, if there was any objection taken to that position I do not know it.

It has been said that the two parties in the State have taken the same ground upon certain questions. So far as that is concerned, all I have to say is, that in July last, I held up the platform of whig principles to my opponents, and I asked them to endorse it. But, sir, not one of them would endorse it, so I know they were not bound by that platform at all. But we made the issue, once for all, that the State possesses no right to tax the citizens for internal improvement purposes. I told them if they wanted to make an issue, to do so, that I was perfectly willing to talk about the matter. Because I held that we never entered into the social compact for the purpose of erecting banks, constructing works of internal improvement, or getting up manufactories, and soap factories, if you please. We did not come into the social compact for any such purpose. We believed firmly that the State possessed no power to tax the people for any other purpose than those contemplated in the social compact.

I will give an example: Suppose there are two hundred and five thousand voters in the State, and the question before them to be that of a State tax to raise money for the prosecution of the work of the White Water Valley Canal, and that one hundred and five thousand of the citizens of the State vote to levy a tax of one million of dollars for this purpose. Thus they would tax the remaining hundred thousand citizens along with themselves, for the construction of this work against their will, and not to their benefit: and that hundred thousand citizens might possess and hold three-fifths of all the taxable property in the State: which would be a manifest act of injustice and oppression. I

hope, therefore, that the Convention will cast from them every idea of a public debt, and lock the door and throw the key away. This system of a public debt does not enter into the civil compact. It makes up no part of the bond:—the right of life and the enjoyment of property.

If each State in the world, that has a Constitution—and all should have had a proviso in this organic law against a public debt, then would cease the necessity of those tax rolls that grind down the toiling millions of the civilized world. This want of power in governments to contract debts, would do more to keep the world at peace, than all the peace societies that have met, or ever will meet. You have a right to tax me only for these two purposes, of which I have spoken. You might as well tax me to buy a home for a man living in another part of the State, as to tax me in order to raise money for internal improvement.

I hope the motion to re-consider will not prevail. It is a plain question of right and justice. Whatever is right, it is presumed, is expedient; and that which is not right never can be expedient. Injustice and wrong never was expedient in any course of policy for the advancement of individual, State, or National interests. You might just as well say that A. B. have a right to tax C. for D.'s benefit, as to say, that the State has a right to tax one portion of our fellow-citizens for the benefit of another.

Mr. MILLER of Gibson now made an ineffectual motion for the call of the Convention.

The yeas and nays having been demanded and ordered upon Mr. Borden's motion to re-consider the vote of yesterday, by which the second section of the report was ordered to be engrossed, and the same being taken, the Secretary reported—yeas 49, nays 70—as follows:

YEAS.—Messrs. Badger, Balingall, Barbour, Beard, Borden, Bowers, Brookbank, Carr, Chenowith, Clark of Hamilton, Cole, Crawford, Crumbacker, Dobson, Dunn of Jefferson, Farrow, Foster, Frisbie, Garvin, Gregg, Hall, Hamilton, Harbolt, Hawkins, Helm, Hitt, Hugin, Hovey, Howe, Huff, Kendall of Wabash, Lockhart, Logan, Maguire, March, Milligan, Nave, Newman, Pepper of Crawford, Prather, Rariden, Schoonover, Shannon, Steele, Stevenson, Todd, Trimble, Walpole, and Yocum—49.

NAYS.—Messrs. Alexander, Allen, Anthony, Bascom, Beach, Berry, Bicknell, Biddle, Bracken, Bryant, Chandler, Chapman, Coats, Colfax, Davis of Madison, Davis of Vermillion, Dick, Dunn of Perry, Fisher, Foley, Gibson, Gootee, Graham of Miami, Haddon, Hardin, Hendricks, Johnson, Jones, Kent, Kinley, Mather, Mathis, May, McClelland, McFarland, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Mowrer, Niles, Nofsinger, Owen, Pepper of

Ohio, Read of Clark, Read of Monroe, Ristine, Ritchey, Robinson, Sherrod, Shoup, Sims, Smiley, Smith of Ripley, Smith of Scott, Spann, Tague, Thomas, Thornton, Watts, Wheeler, Wiley, Work, Wunderlich, Zenor, and Mr. President—70.

So the Convention refused to re-consider the vote.

Mr. BORDEN now said: This vote is evidently conclusive as to the judgment of the Convention upon this subject; but, in justification to myself, I desire now to offer the same proposition which I presented in the fore part of the day, when it was ruled out of order. Since the vote just taken is a most clear indication that the Convention is disposed to pass the section as it stands, I do not feel disposed to struggle in opposition to the will of the majority. I hope, sir, that the question will be taken at once, and without a demand for the yeas and nays, as that might have the appearance of a factious opposition to the will of the majority. I do this that I may place my views upon the record. The Convention may vote down the proposition; I offer it in justification of my course before my constituents. My proposition is, to re-commit the section to the standing committee on the State debt and public works, with instructions to insert after the word "article" the following, which I send up to the table.

The words proposed to be inserted were then read by the Secretary, and they are as follows:

"Unless such debt shall be authorized by a law for some single work or object therein distinctly specified, together with the amount; but such debt or debts, direct and contingent, singly or in the aggregate, shall not at any time exceed one million of dollars; and such law shall provide for the collection of a sufficient direct annual tax to pay the interest on such debt as it falls due, and also to discharge the principal within eighteen years from the contracting thereof, and the law levying such tax shall be irrevocable until the principal and interest thereon shall be paid and discharged.

"And on the final passage of such bill in either house of the Legislature, the question shall be taken by yeas and nays, and entered upon the journal thereof, and shall be: 'Shall this bill pass, and ought the same to receive the sanction of the voters of this State?' And no such law shall take effect until it shall, at a general election, have been submitted to the voters and have a majority of all the votes cast for or against it. No such law shall be submitted to be voted on within six months after its passage, nor until it shall be published in at least one newspaper in each county, if one be published therein, throughout the State for three months next preceding the election at which it is submitted to the people; and said law shall not be submitted at any general election when

any other law shall be submitted to be voted for or against.

"The money arising from any loan or stock, creating such debt or liability, shall be applied to the object specified in the act authorizing such debt or liability, or for the re-payment of such debt or liability, and for no other purpose whatever."

Mr. WATTS. I rise to call for a division of the question; and while I am up, I wish to say to the gentleman from Allen, (Mr. Borden,) that I should be pleased if he could desist—

Mr. BORDEN (interrupting). I have said to the Convention that I did not wish to delay business. I do not intend to call for the yeas and nays.

Mr. WATTS. This is the third time that the same proposition, substantially, has been definitely acted upon by the Convention, and they have decided every time by increasing majorities, that the section as it now stands shall not be modified. It has been a "Monsieur Ton Son come agen;" and this is the third time he has come. I do hope that favorable time will come for the advancement of business in this body, when gentlemen will be willing to yield to the will of the majority. I call for a division of the question.

The PRESIDENT. The question is not divisible. You cannot commit without instructions.

Mr. WATTS. Well, sir, I move to lay the motion on the table.

The PRESIDENT. The Chair would remark to the gentleman that the success of his motion would also carry the bill to the table.

Mr. WATTS. Well, I will take it back then. [A laugh.]

Mr. DOBSON. I do hope that the friends of the section will consent to be quiet, keep cool, and let us have a fair, free fight.

The yeas and nays were now demanded and ordered upon Mr. Borden's proposition.

Mr. HENDRICKS. I desire to state, in order that my votes may not appear inconsistent, that, whenever there is a decided vote upon a question like this, I always believe in knocking under. [Applause.]

Mr. HAWKINS. I desire to say one word touching this question. I desire to say, sir, that in all my votes upon this subject, I have endeavored to be consistent; and I intend that they shall be. I voted for the re-consideration, and I shall vote for the proposition of the gentleman from Allen, (Mr. Borden,) not simply for the purpose of justifying myself before my constituents, but because I was in favor of re-consideration, and in favor of some change of the section from the condition in which we have engrossed it. But, sir, when I see gentlemen come here, with instructions in their pockets, and act on a question of this kind for three or four days, deliberately voting, according to their own acknowledgment, against

these instructions, till the principles embodied therein have been completely trodden down; and then get up here, and, for the simple purpose of *justifying themselves before their constituents*, offer a proposition, and ask the Convention at the time of offering it, to vote it down, without taking the trouble to call the yeas and nays, I confess, sir, that I am some astonished.

Mr. BORDEN (interrupting). Does the gentleman allude to me?

Mr. HAWKINS. I understood the gentleman, when he offered his instructions, to say to the Convention that he knew they would be voted down, and he did not desire the yeas and nays—

Mr. BORDEN. I did not say that. I said the vote just taken was a most evident indication that the section would pass. I did not wish to delay time by a call of the yeas and nays.

Mr. HAWKINS. It all amounts to the same thing. The Convention had determined upon a particular course of action, and he asks the House merely to take such cognizance of his proposition as may justify him before his constituents. I hope, sir, that I may be ready now, and at all times, to act with frankness and candor; and I would be sorry, sir, to see the gentleman shrink from his principles—

Mr. BORDEN. How does the gentleman infer that I shrink?

Mr. HAWKINS. I understood the gentleman to say that he expected the Convention to vote down his proposition.

The PRESIDENT. The gentleman was mistaken in regard to the remark.

Mr. HAWKINS. Very well, sir; then I suppose I must have misunderstood the remark of the gentleman from Allen (Mr. B). That being the case, I will, as a matter of course, *withdraw* the inference more willingly than I *drew* it. [A laugh.] I hope the proposition of my friend from Allen may carry. I fear, sir, that the section as it now stands will forever prevent the State from establishing a State Bank; at least we never can borrow a dollar more to add to the present Bank capital belonging to the State. I for one am not willing to so tie up the energies and necessities of our growing and prosperous young commonwealth. I, sir, am for a State Bank, with the capital of the State invested therein, the profits to inure to the benefit of the people of the whole State, and go to the education of the children of Indiana. I have no faith in the free banking system, as I believe it would be carried out, without the controlling influence of a State Bank to operate as a check upon it. If I should be correct in regard to my fears, that the section as it now stands will operate as a bar to the establishment of a State Bank—if, indeed, the friends of that kind of banking shall be, by the action of this Convention, foreclosed in their efforts to establish such an institution—and if,

sir, in the progress of this question of banking, I shall ultimately be driven to the issue of "Free Banks" or "No Banks"—entertaining the same views that I now do upon the subject, unless my mind undergoes a radical change, I shall be found voting with the "No Bank" side of the Convention. I want the profits of banking in Indiana to go to the State and her citizens. I desire that the State and her own citizens shall retain the power in their own hands of guarding and controlling their own great financial and commercial interests. I am opposed to trusting such great interests to the brokers and bankers of Wall street, New York, unless they come in their own proper persons, without any disguise.

The PRESIDENT here directed the vote to be taken upon Mr. Borden's proposition, and the Secretary reported—yeas 35, nays 86—as follows :

YEAS.—Messrs. Badger, Balingall, Barbour, Beard, Borden, Bowers, Brookbank, Clark of Hamilton, Cole, Crawford, Dobson, Dunn of Jefferson, Farrow, Frisbie, Garvin, Gregg, Hall, Hamilton, Hawkins, Helm, Hitt, Hogen, Hovey, Howe, Lockhart, Logan, March, Milligan, Murray, Newman, Prather, Schoonover, Steele, Wallace, and Walpole—35.

NAYS.—Messrs. Alexander, Allen, Anthony, Bascom, Beach, Berry, Bicknell, Biddle, Bracken, Bryant, Carr, Chandler, Chapman, Chenoweth, Coats, Colfax, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dunn of Perry, &c., Fisher, Foley, Gibson, Gootee, Graham of Miami, Haddon, Hardin, Hendricks, Huff, Johnson, Jones, Kent, Kendall of Wabash, Kinley, Maguire, Mather, Mathis, May, McClelland, McFarland, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Mowrer, Nave, Niles, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Rariden, Read of Clarke, Read of Monroe, Ristine, Ritchey, Robinson, Shannon, Sherrod, Shoup, Sims, Smiley, Smith of Ripley, Smith of Scott, Spann, Tague, Thomas, Thornton, Todd, Trimby, Watts, Wheeler, Wiley, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President—86.

So the Convention refused to re-commit.

The PRESIDENT now announced the consideration of the third section of the report—the question being upon the third reading.

Mr. BROOKBANK. Before calling the names upon the final vote, I wish to make a few remarks, to set myself right as to the vote which I shall give.

I have heretofore voted with the minority, against "striking out," because I believe the people to be capable of self government.

But since the question has been decided against us, and there is no doubt but that it has been fully and fairly settled, that the Convention will not permit any further increase of the

State debt, and considering it to be a matter of courtesy to acquiesce in the decision of the majority ; therefore, I shall vote for the third reading, rather than by voting against it, to indirectly vote the power to incur a debt, without any limitation, qualification, or specification.

Mr. STEELE. In defining my position, I here say that I shall vote against this section. In the district which I represent, I remember that all the candidates were agreed upon this subject, as may be seen by reference to certain resolutions which have been before referred to in this debate. We agreed that the Legislature was to be limited with regard to the power of borrowing money ; but not the people. I desire to explain this matter, so that it may be understood at home, that it has been declared here, as against the will of my constituents, for this Convention to block up and restrain the exercise and the power of the people.

The gentleman upon my left, (Mr Bracken,) has told us that he wanted to lock up the power to increase the State debt, and lose the key. That is the idea ; and I want it to go out to my constituents ; and want it to go out to the country that I protest against it, and declare, here in my place, that such locking cannot be found in all history. What ! lock up the power of the people at the ballot-box, and say that a minority shall govern ? This government of a minority has already been endured too long in this State, and to propose such a thing in a popular government ; is a step directly toward aristocracy. I tell the people, therefore, that now for the first time in the history of this State it is proposed to establish an aristocracy. Sir, I will not place my vote upon the journal there, in favor of a motion to manacle the hands of the people of Indiana. This is what I have said to the people ; and I now say upon this floor, that I have no instructions so to do.

A VOICE. That is the way with all of them.

Mr. STEELE. But one word further in regard to instructions. It is this, and it is a lamentable fact, that the extravagant expenditures of the country have been all effected by a few individual demagogues of the State setting themselves up to instruct the people. That is the idea. Let me tell you again, that instead of my constituents instructing me, I was all the time upon the stump, engaged in instructing them, [laughter,] and I am employed in the same business now. [Continued laughter.] I am throwing off here, and telling them that they will have to take this matter yet into their own hands, that they will have it yet to clear up for themselves.

A VOICE. "That is true."

Mr. STEELE. Sir, I have been very desirous to vote for every item of amendment which might be thought proper here, to place in the new Constitution, so that I might go home and say to the people, your work has been well done.

Your delegates have done much good and no harm. Such were my anticipations. But, sir, I am compelled now to fear that in this I shall be disappointed, for when you come up with a proposition to restrict the rights of the sovereign people, I cannot, for I will not, support it.

The PRESIDENT now directed the vote to be taken upon the adoption of the section, and the Secretary reported—yeas 91, nays 32—as follows:

AYES.—Alexander, Allen, Anthony, Bascom, Beach, Berry, Bicknell, Biddle, Borden, Bowers, Bracken, Brookbank, Bryant, Carr, Chandler, Chapman, Chenowith, Clark of Hamilton, Coats, Cole, Colfax, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dunn of Perry, Farrow, Fisher, Foley, Foster, Garvin, Gibson, Gootee, Graham of Miami, Haddon, Hamilton, Harbolt, Hardin, Helm, Hendricks, Johnson, Jones, Kent, Kinley, Mather, Mathis, May, McClelland, McFarland, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Mowrer, Niles, Nofsinger, Owen, Pepper of Ohio, Pettit, Read of Clark, Read of Monroe, Ristine, Ritchey, Robinson, Shannon, Sherrod, Shoup, Sims, Smiley, Smith of Ripley, Smith of Scott, Spann, Stevenson, Tague, Thomas, Thornton, Todd, Trimble, Watts, Wheeler, Wiley, Wolfe, Wunderlich, Zenor, and Mr. President—91.

NOES.—Badger, Balingall, Barbour, Beard, Crawford, Dobson, Dunn of Jefferson, Frisbie, Gregg, Hall, Hawkins, Hitt, Hogan, Hovey, Howe, Huff, Kendall of Wabash, Lockhart, Logan, March, Milligan, Murray, Nave, Newman, Pepper of Crawford, Prather, Rariden, Schoonover, Steele, Wallace, Walpole, and Yocum—32.

So the section was passed the third reading, and referred to the committee on revision.

Mr. OWEN now moved a suspension of the rules for the purpose of enabling him to introduce the following:

Resolved, That the Committee on Revision be instructed to insert in the second line of the second section, of number three, after the word "revenue" the word "or."

But the Convention refused to suspend.

And then upon the motion of Mr. Pettit, which was agreed to,

The Convention adjourned to Monday morning, nine o'clock.

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MONDAY, Nov. 25, 1850.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. BABE.

The journal of Saturday was read and approved.

Mr. THORNTON rose and said—

I rise, sir, for the purpose of asking a suspension of the order of business, to enable me to lay before the Convention a preamble and set of resolutions, expressive of the sense of this Convention in relation to the death of the late Col. Richard M. Johnson. It will be remembered that this matter was suggested to the Convention on Friday last by my friend from Wayne, (Mr. Rariden,) but who, since that time, at the suggestion of another friend, from Ohio, (Col. Pepper,) has, in consideration of the relation I bore Col. Johnson, as having been engaged in the service with him as an officer in his regiment, deferred to me the performance of that melancholy and interesting duty. Whilst disclaiming any wish to seek any prominence on this occasion, I did not feel at liberty to decline the call thus made upon me by those two friends, and, in accordance with their suggestion, I have prepared a preamble and set of resolutions, which I herewith submit.

In presenting these resolutions, I will not attempt anything like a eulogy on the deceased. This is not the time, nor is it a fitting occasion so to do. Besides, Mr. President, I feel not only my inability to do justice to the merits of the distinguished dead, but I furthermore feel as if I were obtruding myself upon forbidden ground—that I should be undertaking the performance of a task which could be much more ably and appropriately performed by others. It is well known that Col. Johnson and myself, enough ever warm personal friends, were opposed in politics. He, as a member of the democratic party, and one of its most prominent leaders for a long series of years, is a circumstance which confers upon his political friends the right to take into their exclusive charge and keeping, the care and guardianship of his political fame and reputation. I shall leave to his friends the performance of that duty. All I shall essay will be to award to the memory of an esteemed friend and fellow-soldier that tribute which is justly due to it as such. In the beautiful and expressive language of Mark Antony, I may well say, "*I come to bury Cæsar, not to praise him.*"

The relation between Col. Johnson and myself commenced in the year 1812. Col. Johnson was at that time, and had been for some years an active member of the House of Representatives in Congress, from one of the districts in Kentucky. War had just been declared by the United States against Great Britain, and the Colonel, as a member of that body, had given to the declaration a warm and zealous support; and as an indication of his devotion to the cause, had procured from the General Government authority to raise a regiment of mounted men to serve for six months. It was to consist of ten companies of one hundred men each, to be under officers of its own selection. The Colonel having left the halls of

Congress to attend to raising and equipping said regiment, I, then a resident of Bourbon county, Ky., for the first time became acquainted with him, having been introduced to him by his father, the venerable Robert Johnson, and his brother, Col. James Johnson, with both of whom I was at the time associated as members of the Legislature of Kentucky, they being from Scott, and I from Bourbon. The Colonel selected me as one of his intended officers, giving me authority to raise a company to constitute a part of his regiment. This was in the spring of 1813, and we were directed to be ready for service by the middle of June or the first of July. In pursuance of the authority conferred, I proceeded to raise the company and succeeded in so doing, and we prepared ourselves to be ready to march by the time designated. An unexpected event transpired, however, which rendered it necessary for us to march much sooner than was expected. The disaster of the 5th of May, 1813, which resulted in the defeat of Col. Dudley's regiment at Fort Meigs, induced Col. Johnson to call on us immediately, and accordingly we were ordered to rendezvous at the Great Crossings, Scott county, Kentucky, on the 20th of May, 1813, in order to go to relieve Fort Meigs, which was infested by the British and Indians. In consequence of this, only about one-half of the men engaged could, without great sacrifices at that season of the year, leave home. The result was, companies had to be consolidated, and my half company was attached to that of Captain Combs. This rendered it necessary for him and myself to draw lots for the command of the company, which he having won was commissioned Captain, and myself First Lieutenant.

We went into the service accordingly, and continued in it for the six months, during which time we traversed a considerable part of Ohio and northern Indiana. I was with Col. Johnson at the celebrated battle of the Thames, and charged along side of him in the onset upon the Indians, although we soon became separated, and I did not see him again until after the battle was over. He was in his tent, having been wounded in several places, was bleeding, as it were, at every pore, and though suffering intensely from his numerous wounds, he bore it without a murmur, and with unexampled fortitude and patience. It is unnecessary for me to advert to the manner in which the Colonel bore himself on that perilous occasion. There is higher and better testimony than mine. In the eloquent language of his commander, the lamented Harrison, "*His numerous wounds proved his was the post of danger.*" His conduct on that occasion, as well as on every other when put to the test, establishes his reputation as a man of the most daring courage.

Mr. President, I have said that Col. Johnson and myself belonged to different parties. It is due to truth to say that there was a time when

we belonged to the same political party, and remained so for years. During the war of 1812, we were both advocates of it. There was then a party whom we called Federalists, though not a very apt name, which was opposed to going to war with Great Britain, insisting that we had no cause of grievance against her, whilst we contended that the numerous outrages inflicted upon us in the imprisonment of our seamen, of instigating the savages to murder our helpless women and children, was just cause of war. To sustain this cause, the Colonel and myself had yielded our most hearty support, both in the councils of our country and in the field. We continued to be of the same party; and when Colonel Johnson was so bitterly assailed and persecuted for his vote in favor of the celebrated "Compensation Bill," I, at his call, left my own district and went into his, and gave him all the support that was within my humble means. He succeeded; but it was a hard race, and nothing but his scars saved him from defeat. In 1824, we both warmly supported Mr. Clay for the Presidency; but in 1828 we for the first time parted, he supporting General Jackson, and I Mr. Adams. In 1836, when the alternative was presented to me, either to vote for Mr. Van Buren, with whom Colonel Johnson was associated on the same ticket, or for my old beloved General, the hero of Tippecanoe, I unhesitatingly chose the latter. Again, in 1840, when the same parties were presented, I made a similar choice. How far either of us was right or wrong in the course we took as to that matter, should not be made here a matter of inquiry.

As a representative in Congress, Colonel Johnson was persevering and indefatigable in the discharge of his public duties. He never once flagged in his efforts to carry out any measure he undertook. This was most eminently tested by his long continued and unceasing efforts to wipe from the escutcheon of our country that odious relic of a barbarous age, imprisonment for debt. His exertions were, happily for the great cause of humanity, successful, and entitles him to the thanks of every friend of oppressed humanity throughout the civilized world. His celebrated Sunday Mail report, too, as indicating consummate ability and containing sound political doctrines, stands unrivaled as a State paper.

It is not pretended, however, that Col. Johnson possessed talents of a brilliant order. He was not one of those who aimed to shine as a political star. His were of the plain, practical, and useful character. When taking a retrospect of his public life, few of our public men have left behind them as many enduring evidences of usefulness to their country. In his private relations his unostentatious bearing and child-like simplicity of manner, made him ever accessible to the humblest and endeared him to all with whom he was brought into associa-



tion. But, although thus mild, amiable, and unassuming in his manners, he still possessed firmness, and was unwavering in his purposes, and everything he engaged in he pursued with unabated zeal and determination. He was generous and liberal to a fault, and no one, however humble, ever appealed to his generosity and benevolence in vain. He possessed courage even to daring, and no man ever entered the field of danger with less fearlessness of consequences. In fact to sum up all, as was once well said of another, "he was a man, which take him all in all, whose like

I fear we ne'er shall look upon again."

Mr. President, I now submit the preamble and resolutions and move their adoption:

WHEREAS, This Convention has just learned with profound sensibility that the Hon. Richard M. Johnson of Kentucky, late Vice-President of the United States, has recently, and whilst engaged in the service of his native State, as a member of the General Assembly thereof, departed this life: AND WHEREAS, the numerous long-continued public services of that distinguished patriot and soldier, as well in the councils of his country as in the tented field, constitute him the common property of our whole country, and justly entitle his memory to the grateful notice of the people of this State, in common with the rest of his fellow-citizens of the Union, and more especially, when it is remembered that a part of the services rendered by him, whilst engaged in the defense of his country in the war of 1812, against Great Britain and her savage allies, were performed upon the soil of Indiana, when an infant, defenseless territory, in defending our helpless women and children against the relentless tomahawk and scalping-knife of the ruthless savage:

*Resolved*, That we recognize in Col. Johnson the gallant soldier, the devoted patriot, and sound, able statesman: that among the long list of his public acts, whilst engaged in the National Councils, his zealous efforts in favor of abolishing imprisonment for debt, together with his masterly "Sunday Mail Report," will remain as imperishable monuments of his profound statesmanship so long as the sufferings of the oppressed and down-trodden debtor finds sympathy in the human bosom, or the cause of liberal principles has an advocate.

*Resolved*, That whilst cherishing a just sense of gratitude towards this distinguished citizen for his many important public services, rendered in behalf of his country during the course of a long public life, as the able, faithful statesman and brave soldier, we most sincerely condole with his numerous friends and relatives in the irreparable bereavement they have sustained in the loss of an affectionate and devoted friend; and with our sister State, Kentucky, in being thus deprived of his valuable services in her public councils.

*Resolved*, That ——— be appointed a committee, on the part of this Convention, to tender to the relatives of Col. Johnson the expression of our heartfelt condolence on the melancholy occasion, and that the Secretary of this Convention transmit to the Executive of the State of Kentucky a copy of the foregoing preamble and resolutions.

*Resolved*, That the editors of the several newspapers in this State be requested to publish the foregoing in their papers respectively.

Mr. SMITH of Ripley rose and said—

MR. PRESIDENT, I have delayed to the last moment for some better qualified gentlemen of the Convention to rise and respond to those excellent and appropriate resolutions, so well conceived and so expressive of the feelings and sympathies of this Convention.

But, sir, though they contain enough, and comprehend all that can be said, on this melancholy occasion, expressive of the deep affliction we feel for the public loss the nation mourns, yet, sir, I am not willing the occasion shall pass without the voice of private friendship and private grief being heard.

Sir, may I not say that a great man has fallen in our midst? Yes, sir, in our midst; for was he not our fellow-citizen? And are not his name and his fame our common inheritance?

But I will not dilate on his public character. Is not his history written to be read by all men? He was cradled in the times of the Revolution. He fought as a soldier in one war of Independence; and as a politician and statesman he has been prominent for nearly half a century. From the humble walks in life he attained the proud position of the second office in the republic, the Vice-President of the United States. Sir, the history of the republic cannot be written and leave out the name, and overlook the fame and public services, of Col. Johnson of Kentucky.

But, sir, leaving out everything adventitious in his character, he was a *man*, with the heart, and soul, and feelings of a *man*. This I had occasion to know.

Sir, in the year 1840, engaged in the public service, I resided in Washington City. He occupied the Vice-Presidential mansion. For some three months I was a member of his household; one-half of that time I was prostrated by fever, and was at the very door of death. And, sir, I can never forget, and I hope I never shall forget, his kind attentions and assiduous care of me. Sir, I was sick and feeble, but his sympathies appeared on my account as acute as my disease was painful.

Sir, the Vice-President's house at that time, was located in a part of the city surrounded by poverty and destitution; but Col. Johnson never forgot to meet and supply the demands that poverty made upon him. I know that his wood supplied many with fuel, and his table many with food.

He turned none away empty. In that little community on Capitol Hill I am sure his name is blessed and cherished. I suppose that Col. Johnson has died poor, for such a man could not die rich. In his hands money or property lost its adhesive quality if the calls of humanity demanded it.

Sir, in war Col. Johnson was as brave as Jackson—of death or danger, he was fearless as Worth, or Scott, or Taylor. But as a man, in his affections, he was tender as a child. The tale of sorrow never entered his ear and failed to draw a tear from his eye.

If goodness of heart, kindness of soul, and acts of charity, form claims on Heaven, then may we not say his spirit is blessed. Mr. President, I second the motion for the adoption of the resolutions.

The preamble and resolutions were unanimously adopted; when

The CHAIR directed the blank to be filled with the names of MESSRS. THORNTON, PEPPER of Ohio, and RARIDEN.

Mr. RARIDEN moved to postpone the order of business to enable him to introduce a series of resolutions, which he was desirous of presenting at this time, in view of the fact that the Legislature would soon assemble. For the information of the Convention he would read the resolutions.

Mr. R. then read his resolutions as follows:

WHEREAS, The Congress of the United States, at its last session, on account of the controversies that had grown out of the question of domestic slavery, connected with recent territorial acquisitions, in order to allay all irritation, and reconcile all sections, passed a series of acts intended to accomplish this object: AND WHEREAS, Certain misguided persons, in some of the States, have manifested a purpose to set at defiance one of these measures, namely, the one in regard to the reclamation of fugitive slaves, and have given out from public meetings, and in published resolutions, that they will not obey its injunctions; that it is unconstitutional and void, and that those who have had any agency in its passage, or shall assist its execution, or counsel obedience to its mandates, are traitors to God and humanity, and recommend forcible resistance to its administration;

AND WHEREAS, We, the Delegates of the people of Indiana, in Convention assembled, coming from every county, and feeling that we know the public sentiment of the State on this subject, and fearing that such proceedings and public outgivings, if unrebuked, may tend to discredit the allegiance of the State to the Union, and the fidelity of our people to the Constitution and laws, and thereby bring us into disrepute with our sister States: Therefore,

*Resolved*, That it is the opinion of the members of this Convention, that the common sentiment of the people of Indiana is, that the whole series of compromise measures, passed

at the recent session of Congress of the United States, were adopted with a view to reconcile discordant opinions, and to restore the peace, harmony, and integrity of the Union; that they are founded upon generous and patriotic concessions from all sections, and, if faithfully carried out, will realize the hopes of their projectors, in the restoration of confidence and kind feeling among the great sisterhood of States.

*Resolved*, That the obstacles often interposed to the reclamation of fugitives from labor, by the open resistance and subtle practices of the misguided, under the pretense of humanity, obedience to higher laws than the Constitution, made the passage of more stringent laws than the act of 1793 imperative, and was the true cause which led to the passage of the act of 1850, and that those laws ought to be observed and executed in good faith every where.

*Resolved*, That whilst the people of Indiana stand ready, at all times to uphold the laws enacted for the benefit of those who live in the slave States, they will be found equally firm in resisting all lawless designs, from whatsoever quarter, intended to break up the great confederacy of States; they are the friends of law and order, and devoted to the Union which our ancestors handed down to us, and are the enemies of all, whether in the North or at the South, who, upon any pretext, shall seek to overthrow it.

*Resolved*, That a copy of this preamble and resolutions be transmitted to the Governor of each State and Territory of the United States, and to each of our Senators and members of Congress.

Mr. BORDEN rose to address the Convention.

The PRESIDENT. The question is on the motion to suspend the order of business.

Mr. BORDEN. Is it not in order to debate it?

The PRESIDENT. No, sir, debate is not in order.

The question being put, a division was called for, and the ayes and noes being counted, were ayes 60, noes 47. Two thirds not voting in the affirmative,

The order of business was not suspended.

#### CORRECTION.

Mr. HALL. In the proceedings of the Convention of Monday the 18th instant, a proposition was introduced by the gentleman from Floyd (Mr. Kent) to refer the subject under consideration to a committee, to be composed of one from each Congressional district. The gentleman (Mr. Kent) made, on that occasion, some sensible and pertinent remarks, in which I entirely concur, but which I perceive have been credited to me in the published report. I take this public notice of the matter in order that the speech may be assigned to the gentleman to whom it belongs.



## LIMITATION OF DEBATES.

Mr. OWEN in accordance with notice previously given, asked and obtained leave to introduce an amendment to the rules, so that no delegate shall speak more than an hour at one time, nor more than fifteen minutes in the following cases, viz:

1st. On any motion to re-consider a section that has been passed or engrossed.

2d. In any debate on the final passage of a section, or on a motion to refer the same.

3d. In any debate arising on a report from the committee on Revision.

Mr. OWEN. Whether the Convention adopt this amendment to the rule or not, they shall not, so far as I am concerned, be detained long about it. I do not object to the present half hour rule, as being in all cases, too stringent. In some cases I think it so; while in others, I consider it not restrictive enough. I think that, upon the first broaching of a subject, when the question is upon amending or on ordering a section to engrossment, the rule is improperly strict; but, in other cases—and they will become more numerous as the work of the Convention progresses—I regard it as not stringent enough. For instance, when a motion is made to re-consider a vote by which a section is ordered to be engrossed or passed, it is to be presumed that there has been already afforded pretty full time for debate. That is one case in which I think that debate might be properly limited to one-half the present allotted time. Again, upon the final passage of a section, after full debate had upon its engrossment, we may, under the present rule, still debate the question for half an hour. I propose to cut this down to fifteen minutes. By and bye we shall begin to receive reports from the committee of revision, and it seems to me that, in discussing their reports, fifteen minutes might suffice. These are three cases where it occurs to me the rule is not stringent enough.

While up, I will say one word more. Sir, the Convention will not, I am sure, suppose that I set myself up as a censor of its proceedings, if I make a few suggestions as to the best mode of shortening debate. There are ways and means of saving time, much more effectual than a half hour rule, if members are willing to adopt them. I suggest as one of these that each member confine his remarks strictly to the question pending before the Convention, be it of reference, or for the adoption of some special amendment, instead of indulging in a wide range of debate. I suggest, also, that great gain of time will be made, by wholly abstaining from everything like personality. Both of these operations are prolific sources of tedious and profitless debate.

I read the other day, in a newspaper of this city, a paragraph, which, although I am little in the habit of noticing such things, it may not be

useless here to advert to. It is from a correspondent, who says:

"Here we are borrowing money to pay the expenses of this Convention, which is now a tax to the people of this State of about six hundred dollars a day, and day after day, nothing is doing but profitless debate."

"Nothing but profitless debate." It is not necessary to answer such a charge as that.

But again:

"Hour after hour is consumed in fun, revelry, vulgar anecdotes, stamping, hallooing, &c."

It will not suffer denial, that, though this matter is grossly exaggerated, scenes have been occasionally enacted here not very creditable to this body; and some which the respect due to age, ought to have forbidden. Such occur, unfortunately, in all legislative bodies. For the loss of time thence resulting, they are responsible, who originate or encourage them.

But it is to the conclusion of this article I desire especially to allude. The words are—

"Remember, gentlemen, the eyes of the people are upon you, and if you do not close your task by the 25th of December, you will hear a buzzing about your ears that you will not soon hear the last of."

This correspondent, whoever he is, knows little of the people of Indiana. Their sentiments were spoken to me a few days before I left home, by an old resident of my county,—one of that class whom it is sometimes the fashion to call "the hard-fisted yeomanry." Said he: "Mr. Owen, you are going to engage in an important work. Make us a good Constitution—take your own time to it, but make it as it ought to be; not one that will require to be patched up again, in half a dozen years." I believe that to be the true sentiment of the people. It is a just and proper sentiment. Our fellow-citizens will not justify a waste of time, but still less will they justify precipitate haste. They are willing to pay whatever expense may be necessary to make a good Constitution, I believe, and I think we have already an earnest of it—that our new Constitution will be the best ever made in the world. [Cries of "consent."] I believe it sincerely. If the expectation seem extravagant, I remind you, that, if it be the best among American Constitutions, it may justly rank as first in the world; for, where out of this Union, have organic laws been framed equal to those which govern the States of our confederacy? And ours ought to excel the others, for it is the last. We have the advantage of the light of experience to guide us. It ought, therefore to be the best. Let us make it so.

This restriction upon debate is a matter that does not touch me, not at all. The Convention knows, by this time, that my habit is rarely to speak over fifteen or twenty minutes. I have made but two speeches this session, (and both were on a favorite subject, introduced by my-

self,) which have exceeded half an hour in length. But I speak of the results of this rule as to others. The case of one gentleman occurs to me, a gentleman from whom I have frequently found myself differing, but always with reluctance; to whom I listen, and the Convention listens, with pleasure. I know his sensitive nature, and I know the effect of this rule upon him. I know that there are one or two important subjects upon which he desires to speak; and, from some words which have dropped from him, I believe that the effect of this half hour rule will be, to make him abandon his purpose. If it should be, the loss will be ours, not his.

It is upon modest and unassuming members, that this rule will chiefly bear. Others may be arrested, for the time, by the hammer; but, the first opportunity, they will inflict upon us another half hour. I do not say that the fall of that hammer has not, now and then, been a relief to myself; for some aimless and profitless speeches, it is, of course, our fate to endure; but the injury it does, in my opinion, exceeds the benefit from gain in time; and for that reason, I hope the half hour rule will be rescinded.

Mr. FARROW. I am not one of those, Mr. President, who consume much time in debate, but I nevertheless cannot subscribe to the doctrine that we ought to impose restrictions upon those who do. I hold that all questions that are proposed for our action should be debated. What is the object of debate? Its object is two-fold. First, to produce conviction on the minds of those acting here. That is a laudable object; and it seems to me that whenever such conviction or change of opinion is produced, in ninety-nine cases out of an hundred, it is produced before the first half hour's speaking. At any rate, there is a period of time in every speech when conviction is produced. The object is to find out where that point is. There is another object which is important with those in the habit of speaking at length, and that is to spread what they say before the public eye, so as to give our constituents an opportunity to know the views that that one entertained.

But the great object is to bring the Convention to a right conclusion; and the sooner that can be accomplished, the better. Any rule which will have a tendency to hasten that action, is the best rule that can be adopted.

The question was taken on the amendment of the gentleman from Spencer, and upon a division, ayes 53, noes 39, it was adopted.

The question recurring on the amendment as amended, it was by ayes 60, noes not counted, adopted.

#### ORDER OF THE DAY.

The Convention then proceeded to the consideration of the unfinished business, being the section reported from the committee on rights

and privileges in relation to the exemption of a certain amount of the property of the debtor from forced sale.

An amendment had been moved by Mr. Borden, to insert the words "real or personal" before the word "property."

The pending question being upon an amendment to this amendment, in the following words:

"And that a homestead owned by any person, the head of a family, in this State to consist of land or town property, not less in value than five hundred dollars, shall be exempted from seizure and sale, by any legal process whatever, for any debt contracted after the adoption of this Constitution; *Provided*, That such exemption shall not affect in any manner, any mechanic's lien or any mortgage thereon, lawfully obtained; but such mortgage or alienation of land, by the owner thereof, if a married man, shall not be valid without the signature of his wife."

"SEC. — The Legislature shall, in addition to the present exemption of personal property, add to it, in the case of those persons who are not land-holders, such additional amount in value of mechanics' tools, farming utensils, and other personal property necessary to the business or support of such persons, as the said Legislature may deem expedient and equitable."

"SEC. — The Legislature shall pass such laws as are necessary to carry into full force and effect all the provisions of this article."

Mr. MOORE moved to lay the section and pending amendments on the table.

Mr. COLFAX (addressing the Chair). I understood, sir, that I was entitled to the floor from Saturday.

The PRESIDENT. Does the gentleman withdraw his motion to lay on the table?

Mr. MOORE. Yes, sir, for a few remarks, but they must be brief.

Mr. COLFAX. Will the gentleman condescend to allow me half an hour? [A laugh.]

Mr. COLFAX. Although admonished by the gentleman who has withdrawn the motion to lay the proposed Homestead Exemption upon the table, that I must be brief, I beg leave to say, once for all, that I was sent here by the people whom I represent, to advocate reforms deemed by them necessary and expedient—to present and defend their views—and to stand up, even if alone, in the advocacy of what they deem to be right. I expect, sir, to perform that duty so long as I may have a seat here, and with equal fearlessness, whether those views chance to be popular or unpopular in this Hall. My constituents have made up their opinions independently for themselves, as they had a right to do, as part of the people of the State; and I hope, when I return them the trust confided to me, not to be amenable to a charge that those opinions were not represented here with equal independence.



From all the indications since the meeting of this Convention—from those evinced last Friday and again to-day—it would seem to have been pre-determined that the Homestead Exemption should be defeated; and, from the unwillingness even to allow its friends to be heard in its support, it would appear that it was also the intention to strangle it without debate. Having, however, obtained the floor, I desire to speak in its behalf, even if to unwilling ears; and I shall be strengthened in the remarks I shall make by the consciousness of being supported in this advocacy by the whole body of my constituents, with scarcely a dissenting voice. I shall confine my remarks, in the limited time prescribed by the rule, to the subject of the Exemption of the Homestead, it being conceded on all sides that, if that principle prevails, an exemption will also be made to those who are not landholders, of mechanics' tools, farming team or implements, or other personal property.

Let me add here, Mr. President, to avoid being misunderstood, that every friend of this principle asks only the incorporation of the outline of their system in the Constitution, the amount, the nature, and the beneficiaries of the Exemption. They ask that it shall thus be incorporated in the instrument which we are framing, as is the Judicial system, the Banking system, Corporations, and other prominent subjects that are before us—that its bounds and metes shall be defined, its features established, its provisions acknowledged as worthy of a permanent and irrevocable place in the organic law, and the Legislature commanded to carry out these principles, as is obligatory upon them in the case of all others in the new Constitution, by the enactment of such laws as may be necessary to give them full force and effect. This, sir, is our answer to those who object to the recognition of this humane principle, and who contend that it should be left, without a word relative to it in the Constitution, for legislative decision.

I shall advance what may perhaps be considered a bold proposition. I shall contend that the Homestead Exemption is a measure that injures no class, but that, on the contrary, will prove beneficial to the CREDITOR generally, to the DEBTOR, and to the STATE. I confess, that when I look upon the strenuous opposition which it encounters here, this must be considered a bold declaration; but I honestly and sincerely believe it to be true.

In the first place, then, would it not be beneficial to the CREDITOR class generally? What, sir, is the effect of the operations of the present law? You or I, or some other person, may own a small property, and may also owe a half-dozen or a dozen debts, averaging one or two hundred dollars each. Under the present statute, nearly all debts, evidenced by notes or due-bills, waive the appraisement laws, and property sold under them, is knocked off to the highest

bidder, without any regard to its real value. Suppose reverses to come upon the debtor—and who is safe or exempt from them?—he becomes embarrassed, unable at the moment to pay, and what is the result? The most avaricious of all these creditors—the man with the flintiest heart and the most frozen sympathies—he who could coolly sacrifice the only home of a poor man, while its owner lies writhing in pain and sickness within—he makes haste to secure his debt. He urges on the officers, and what property the unfortunate debtor owns is sacrificed that Shylock may not lose his claim. While those generous-hearted men, who, seeing their debtor's situation, are willing to postpone the time of payment—to give him a breathing spell before turning him out of house and home—those creditors who have waited and been lenient, find the property exhausted, or nearly so, by the less deserving, avaricious man, who has secured his debt regardless of all others. And this, sir, too often occurs even when the solvency of the debtor is only suspected. The operation of the present law is precisely this, and precisely wrong. It favors the man with the hardest heart—the smallest soul. It operates *against* the kindly creditor—the lenient man.

And how can such a policy favor the creditor class generally. No matter how anxious may be the man, who has been temporarily prostrated, to liquidate his liabilities—these debts which still hang over him unsatisfied—how can he do it? His means are all exhausted—the property, by which he could procure wherewith to pay his debts, is gone—a dependent family is by his side, who must be clothed, and fed, and supported by his toil—and you have taken from him what would be his greatest assistance in the performance of this sacred duty. These debts still hang over him to paralyze his energies. They are a warning that, if, by the severest labor, he should chance to be able to earn a little ahead, that little might be swooped upon and sacrificed as had that which he had owned before. You thus stifle all the energies of his character. And yet, if he does not, and cannot pay, the law and the creditor looks on him as a knave, and the ban is upon him. Will gentlemen look back at their own experience, and tell me if this has not been the result of the operations of the present law, in many similar cases that have come under their knowledge? Some, thus persecuted, do labor on and finally throw off the burden upon them. But how many, when the homestead that it has cost them years of toil to purchase has thus been swept away from them, become indifferent to the future—supine—careless as to earning more than a bare living for themselves and family; and how many more leave, with the slender remnant of their worldly goods for some far-distant State or Territory, leaving alike their debts and creditors forever.

But, when the Home is left, he has a tie to bind him to the soil—he has a roof to shelter his family—he has a little spot of ground to till for their support, and to earn from, for his debts. He has something, which, with labor, will produce revenue. And, if an opportunity is afforded to earn handsome wages at a distance from his residence, he, unlike the beggared Homeless, can leave his family comfortable, even if he leaves them to support themselves by their own labor, while he is amassing that which is to release him from the burden of debt, and again make him really free.

But, secondly, I hold that the Homestead Exemption will be a benefit to the DEBTOR class. And here let me state, what is, or ought to be, generally understood, that we contend for no retrospective act. We ask for its application only on debts *hereafter* contracted. Gentlemen have compared this measure to the National Bankrupt Law, but the comparison is neither true nor just. The Bankrupt Law operated on debts previously due; but this will only operate on debts incurred under its provisions.

Can there, sir, be anything unjust or improper or unwise, in providing that every man should have a Home—a little, humble home—exempt from legal process—that he and his could call their own, beyond all contingency, secured beyond accident or misfortune? But some few gentlemen meet us there, and say that that is the very reason why they oppose it—that, under its operation, a man who has not \$500 worth of property cannot obtain any credit whatever. Exactly similar was the argument by which the great Reform of the abolition of Imprisonment of Debt was resisted in this very State—in this very Hall. It was argued most strenuously that the power of the creditor to imprison his debtor, was actually necessary to the maintenance of credit—that were it not for this power, credit would often be refused to the poor man. And the friends of humanity, who warred against that barbarous provision, were forewarned that they would ruin credit, derange business, encourage fraud, and work evil, and only evil, by the change. But, sir, their predictions were disregarded. That reform, demanded by benevolence and humanity, was at last effected. Did those dire results follow, that were predicted? No, sir, no. And there is not a man now in this Hall—scarcely a man in the State, who, having witnessed what experience teaches as to the results of that change, would even think of returning to the old system of making poverty a crime, punishable by imprisonment. Subsequently, small exemptions of personal property were made, and at each addition to them, until they have now reached \$125, the same predictions were made—the same fears expressed—the same objections urged. Experience shows the fallacy of all these arguments. The poor man, if he is worth less than \$125, can always obtain credit if he has a character for honesty

and integrity. It is a libel upon the mercantile community to deny this. And, sir, under the operations of the principle we advocate, even the most closely calculating trader will conclude that his debt is safer with property in his debtor's possession than if that property is at the mercy of some keen-eyed, heartless creditor, who would quietly but quickly pounce upon the little all of his debtor at the first glimmering of suspicion.

Again, sir, I advocate this principle because it recognizes the most sacred duty, the most binding debt that a man can owe—the debt of Home and Support to his family. Mercantile debts, business liabilities, endorsements, I would recognize them all, but above them—higher, holier, than any of them—is the debt to the Family. Other States have recognized this, and given it its appropriate place, taking precedence of all others. Staid Vermont has done it; Connecticut, too, which is not apt to move rashly; and Iowa and Pennsylvania, Georgia and Texas, Wisconsin and Minnesota, Deseret and California; Michigan, whose Constitution, embracing this feature, even though it made it, in the opinion of many, too high, has just been ratified by a vote of four to one; our sister State, Ohio, and the great Empire State of New York, never too prone to lend an open ear to Reforms—all these, and more, have recognized and enforced this principle. And yet here, in Indiana, where it was supposed the spirit of progress and philanthropy prevailed to an eminent degree, it is almost impossible for an advocate of it to obtain a hearing on this floor. Here, in this State, this Convention was ready to crush it; without a hearing. Are all these sister States which I have quoted wrong? And if it works so badly as its opponents predict here, why have not they noticed the fact and retraced their steps?

Accidents, Mr. President, may happen to all men. None are exempt. He who is rich to-day, may become a beggar to-morrow. The accidents of fire or of flood, commercial revolutions, the dishonesty of others, endorsements, or, oftener than all, sickness, may reduce a man of limited means almost to bankruptcy. And, if they do, the law most kindly steps in and finishes the work. It ends the destruction which accident commenced. It crushes him to the earth, and while he writhes there, it brands him as a knave and a cheat because he does not rise. Sickness chains him to a bed of pain, and while thus there, it punishes him by the sacrifice of his property, because he is not well and at work, earning money to pay his debts. Is this the true policy of the State?

It has been falsely charged upon a great American statesman, that he declared the true policy of Government to be, "to take care of the rich, and the rich would take care of the poor." The sentiment has been branded as a libel by him to whom it was attributed, and all



parties combine to disown any approval of the idea that it inculcated. But, sir, we should be careful that our action here should not be justly amenable to such a charge. I contend, most sincerely, that when we are framing a Constitution, we should take special care to declare and uphold the rights, and defend the interests of the poor. They have a special claim upon us for our protection. The rich can bear almost any legislation. Their interest and their influence is powerful. But I go further; I say it is not only our special duty, but our *first* duty, to shield the poor, to protect, to encourage, to elevate them. The sentiment would be more truthful and more correct if it read, "take care of the poor, and the poor will take care of the rich." They are not only our most numerous class, if we include among them all who are worth less than \$500, but they are our main reliance, our main support, both in Peace and in War. When the trumpet sounds, and the flag of our country is unfurled, it is that class which comes to the rescue, which fight your battles, which win your victories—whose feats of daring not only gain the triumph, but give glory to your generals. And when peace prevails, they build your roads, dig your canals, fell your forests, and make the wilderness blossom like the rose. They add to the wealth of the State by what their labor extorts from their little plots of ground, or what their industry creates in other industrial pursuits. And should they not be protected? Let me ask, sir, one question: is the exemption of \$125 from seizure for debt, right or wrong? Is it founded upon just or unjust principles? For, if it is right, then I contend that it should be increased from its present inadequate amount to something that will be substantial, and that Indiana should at least do, what she has never yet done to the amount of a single dollar's worth of real estate, exempt a home of a limited value from the gripe of the law's officer.

In the third and last place, I contend that the Homestead Exemption would be beneficial to the STATE at large. Let me state at the outset, a single, simple proposition, which I am sure no one dare deny. It is, that immigration adds greatly to the wealth and advancement of a State. And, sir, the neglect heretofore—the refusal, I may say—to pass a Homestead law, has had the direct tendency to repress immigration hitherward, especially those from foreign lands, who have been, in such large numbers, seeking homes in the west. The northern tier of States, Michigan, Wisconsin, and Iowa have each passed liberal Homestead laws—the former largely increasing the amount in her new Constitution. The emigrant knows this—sees this. And he knows and sees further, that if he casts his lot with us, the humble home which he may purchase for his family may be swept away from them, if an acclimating sickness or any other temporary misfortune

may happen to them. He knows and sees that Indiana protects barely a small pittance of personal property, but not a dollar's worth of that which he has journeyed for, thousands of miles—a home. And when this vast array of emigrants look at this picture, and then contrast it with the liberal legislation of the three States I have named, is it any wonder that the mighty tide sweeps on past our borders, and fertilizes and improves and beautifies other States than ours?

It will also tend to elevate character. The poor man will know that his credit will depend on his honesty and promptitude more than on his property, and he will strive to build up and maintain a reputation that will be thus valuable to him. It will also avoid the necessity which, in the minds of so many, under the present law, drives them to smuggling their property into some friend's hands, or making a conveyance of their home, which is tainted with fraud, rather than to see their little all swept away by some merciless creditor, and their family turned out upon the world, with no roof to shelter them from the storms of adversity.

It will be a stimulus for every man to procure a home. He will feel that labor is attractive, when its earnings are to purchase a house and home which he realizes is his own, under all circumstances, beyond loss by accident or calamity. It will be an incentive to industry, a sweetener of toil.

It will most certainly, undeniably, tend to increase the number of landholders in every community and consequently, the property of the State. In military and feudal ages, as has been well remarked in a report on this subject, great States might exist while the FEW owned the lands and THE MANY were serfs or tenants. But in this age, for men to be contented and happy, and States to be prosperous; families must have homes, secured to them inviolably. Most truthfully has it been said:

"Ill fares the land, to hastening ills a prey,  
Where wealth accumulates, and men decay.  
Princes and lords may flourish or may fade;  
A breath can make them, as a breath has made,  
A bold geomanry, their country's pride,  
When once destroyed, can never be supplied."

Thus increasing the number of landholders, you infuse into them a deeper, stronger interest in the social progress of the neighborhood, in the peace, the morals, and the welfare of the community, in the advancement and prosperity of the State. They become warmer friends of improvement in schools and roads—they become sterner foes to vice and crime.

It recognizes another principle which is to me a valued one—that States and nations should, as far as possible, shape their legislation so as to secure to man a sufficient share of air, water, and earth for his support and existence. We cannot it is true as a State, furnish land for the landless, but we can provide, in a manner that,

like the present proposition, injures no one, impairs no vested right, operates on no previously incurred debt, that he who can by his labor, procure a home, shall have that home secured to him beyond peradventure.

It is urged against the introduction of this proposition here, that it is more appropriately within the province of the Legislature. My senatorial colleague, (Mr. Miller of Fulton,) has proven already, that the Legislature last winter thought it most peculiarly the duty of this Convention. And thus it is banded about from one body to another and back again, without action in either. But I hold, sir, that it is a reform peculiarly within the consideration of a Constitutional Convention. The Legislature is elected mainly for the purpose of representing local, or sectional interests, and each member of it is peculiarly the representative of his own constituents. But a Convention like this is assembled for a different purpose. Their main duty is to define, establish, and protect the rights of all classes of our inhabitants—to defend the weak against the aggressions of the strong—to establish bulwarks for the humble against the power of the mighty—to adopt and promulgate principles which will tend to the prosperity and the happiness of all. And each member here is a representative not only of his own immediate constituents, but of the State at large. In his votes here, he looks, or should look, to the welfare of all—he thinks, or should think, of the interests of all—he guards, or should guard, the rights of all.

Mr. President, the time must come, sooner or later, when the Home *shall* be secure—when the cabin of the poor man shall be really his castle. The time must come when the writ of the Sheriff shall be powerless at its threshold. Then indeed will it be truly a Home. Humble though it may be, it may be the place to which its owner has brought his bride from the paternal roof—it may be the birth-place of his children—and in its quiet garden, may repose all that remains of some of them, who have been too soon transferred to a securer Home in another world. Humble though it may be, the tenderest associations cling around it, and their severance is like the snapping of the heart-strings of life. That Home, to which he looks during his days of toil for rest, whose inmates around the hearth-stone, so often chase away the cares and sorrows which may cluster around his life, must be, at some time in our legislation, if not now, rendered secure and sacred. And when that is done, and not till then, will Indiana have done her part in hastening the coming of that period, when, in the beautiful symbolic language of the Scripture, every man can sit under his own vine and fig tree, with none to molest or make him afraid.

Mr. HOVEY said: Mr. President—As this is to be a political slaughter house, if it we believe some of the prophets of this Convention,

I suppose that the subject under discussion may be considered one of the blocks upon which "Mr. Fowler's martyrs" are to suffer death. At least it would seem so to me as I see many of the ablest debaters of this Convention shunning it as though its touch was contagious. For my part I shall not dodge the responsibility I, sir, for one, feel disposed

"To beard the Lion in his den,  
The Douglass in his hall;"

And to express freely and fearlessly my opinions in regard to the homestead principle, and what I think will be its effects upon the country, should it pass in the form proposed.

In investigating the principles of any particular law, it is sometimes both interesting and instructive to trace it back to its original source. In different ages and countries, chameleon like it will be found to change its apparent hue so as to meet, as far as practicable, the tastes, passions, and prejudices of its votaries.

Four hundred and eighty-six years before the Christian era, Spurius Cassius, an ambitious demagogue of Rome, was raised to the consular dignity. Historians inform us that his whole soul was directed to the accomplishment of his ambitious designs, and that to more effectually court favor with the multitude, he caused to be passed a law limiting the number of acres of land to be acquired by any one citizen, and dividing the conquered land equally among the Romans and the Latins. The Romans, displeased with being equalized with the Latins, and perceiving the dangerous ascendancy which Cassius was daily acquiring over the public mind, accused him of treasonable designs in aspiring to the sovereignty—tried, condemned, and threw him from the Tarpean rock. Soon after his death his law was repealed.

About a century after this period a wealthy plebeian of the name of C. Lucius Stolo, married an influential and ambitious patrician lady, whose whole thoughts consisted in devising schemes by which her husband might be elevated above his plebeian kindred. He was elected Tribune, but still she was not satisfied, and stimulated him still further to court the breeze of popular favor. Accordingly he promulgated the famous "Licinian law," which prohibited any citizen from acquiring or holding over 500 jugera of land, (300 acres,) and not exceeding 100 bullocks, and 500 goats or sheep. This law was at first hailed by the poorer classes with acclamations of joy, as the wealth of the few was thus to be divided amongst the many. But strange to tell Stolo was the first man who was victimized by this law. He was found attempting to conceal his ownership of 1000 jugera of land, severely fined, and one half of it taken from him.

For more than two hundred and fifty years succeeding no agrarian movement of any import was made, and probably never would have been again, in Rome, had not the celebrated



Cornelia, the mother of the Gracchi, induced her son Tiberius Gracchus to advocate the re-establishment of the "Licinian Law." He aroused the people to a state of phrenzied excitement, and fell a victim in the storm he had himself created. Eighteen years afterwards his brother Caius followed in his footsteps, and by his energy and eloquence created so great an excitement that the Roman Republic was shaken to its centre. The scenes that followed must be vividly impressed upon the minds of all who are acquainted with Roman history—the poor against the rich, the father against the son, the son against the brother and the father. Rome on the brink of ruin, threatened with intestine destruction, hung as it were upon the mere breath of that eloquent, heartless agrarian demagogue. Reason, however, at length prevailed. Caius paid for his ambition with his life. The blood of over two thousand of his followers was poured upon the altar of his ambition, and Rome was once more restored to tranquility and peace.

And now, sir, without tracing this historical chain any further, (which my time will not permit me to do,) I think I can see, through the dim distant twilight of the past, the "Licinian Law" casting its gloomy shadow until it has reached the present age. The arguments of Cassius of Stolo and the Gracchi are resounding through England, America, and France. Give us homes and an equal division of property, cry the agrarians of England. Down with the rich, and an equal division of the stealings, scream the wild, infuriated "sans culotte" of France. Permit us to use other men's property as our own under the sanction of law, is the more gracious language of the followers of those great Romans with us. Yes, sir, hide it as you will, disguise it as you may, the Homestead and the Licinian law have been woven in the same loom and are both of the same texture—the web other men's property, the woof the prejudices of the poor against the rich. The Licinian law took the property of one class and divided amongst another. The amendments proposed would have the same practical effect as they would permit one class, under the guise of contract, to obtain the property of another, and then keep that property under the sanction of the law.

In several of the debates which have been made in this Convention, some gentlemen seem to have lost sight of the distinction between the *truth* of abstract principles and the *propriety* of carrying such principles into practice. For instance, it was urged a few days ago with great warmth, that all mankind are free and equal—a proposition, in the abstract, that no reasonable man will deny. But the inference that was drawn from that proposition that negroes and mulattoes should therefore be entitled to all the privileges and immunities of the whites under our peculiar condition, is not quite so

clear of demonstration; and the same gentlemen, by their votes, have so indirectly declared, when they, with every delegate in this Convention save one, (Mr. May,) voted to prohibit the colored race from the exercise of the elective franchise—a right as inalienable and natural, in the abstract, as the right to enjoy liberty or life. Again: under that abstract principle, woman is entitled to all the political rights of man, the right to vote and the right to hold office; yet none but a few Quixotic knight errants have ever dreamed of casting the mantle of political power over her shoulders. An abstraction of a similar character has been contended for under the sections now under debate. It is this, that God gave the earth to man for his inheritance, and therefore every man is entitled to enjoy it. Now that abstraction is true, and man does enjoy it; but the argument that they attempt to deduce from that fact, that all men should be entitled to homesteads is to my mind anything but clear.

God gave no man a right to any particular spot, but an undivided interest in the whole. The location of his right to the soil is the offspring of contract, which was found to be necessary for the peace and quietude of society. If all were permitted to claim the same spot, feuds and discord would never cease. No man could assert that the roof that gave him shelter to-day would be under his control to-morrow, as a stronger hand might wrest it from him.

The first question that a legislator should ask himself should be, what is to be the *moral* effect of the law proposed to be enacted? Will its impress upon the character of the people be good or bad? Will it elevate or will it degrade? Will it purify or corrupt? I care not how much that law may benefit a particular class, or even the State at large, in a pecuniary point of view. I care not even how popular it may be, if he believes it will leave an impression on the public mind unfavorable to the principles of integrity and honesty, it would be his duty to pause, and not only to pause, but resign, before he should lend his influence to the passage of such a law.

Let us, then, ask what will be the *moral* effect of the amendments to the section under discussion if adopted? The solvent man needs not their protection. The only class that can be benefited by such provisions would be those who should become involved in debt beyond their means of payment. Now, sir, would it be conducive to public morals to place that class comparatively above want by giving them homesteads—homesteads purchased with the funds of other men—or would it be more in accordance with the principles of ethics, to tell them plainly, "You must pay your honest debts?" To test the morality of this law, let us examine it a little further. There are two men, bound together by the ties of friendship; one has five hundred dollars in cash and the

other has nothing. The one who is penniless relying on the ties of friendship, applies for the loan of the five hundred dollars, obtains it, and immediately invests it in a homestead. The friend who loaned the money in a few days applies for payment. Judge of his astonishment when he is informed of the manner in which it has been invested, and that his friend claims the exemption of the homestead principle.

Can it be possible that any law thus nakedly admitting of legal swindling, can meet with the approbation of the citizens of this State? Laws, instead of laying traps for men's consciences, should always, on the contrary, remove every temptation possible.

"Lead us not into temptation, but deliver us from evil," should be the united prayer of the governors and the governed.

There is another point of view in which I wish to present to the Convention, the effects which I think will ensue from the adoption of the amendments offered by the gentleman from Huntington, (Mr. Murray.) To those who believe credit to be a curse—to those who would abolish all laws for the collection of debts, I have nothing to say. Such men are entirely beyond the reach of any argument that I may offer. But those who with me, see in a healthy credit system the means by which the poor man may be raised from poverty to wealth—the means by which indigent artisans, farmers, and laborers may in a few short years, be placed above penury and want—such, will look upon the adoption of these amendments as the death knell to all their hopes for the poor.

What is the history of those who have made fortunes among us? As an illustration I will take the farmer boy, who leaves the home of his childhood penniless on arriving at the age of manhood. His character being as yet scarcely formed, and almost entirely unknown, he lanches forth with a bold heart, and a strong arm. He applies to some landholder to rent a farm for the season on a credit, and obtains it; he purchases a horse and necessary farming utensils on credit; even his food and clothing are purchased on credit, and his expected harvest is regarded as the security for the payment of the whole. His harvest is at length gathered and sold, his debts paid and he has still a surplus left, which well rewards him for his labor. By two or three years operations like this, he acquires a surplus of means—purchases a farm by part payment and a credit for the balance, which is soon paid off and he stands an independent freeholder. In like manner, all classes of society accumulate property through the beneficent action of the credit system. Ask the laborer, the farmer, the mechanic, the physician, or the merchant, who has acquired property, what would have been his condition without the credit system, and he will almost invariably answer—poverty. But now, sir, let us suppose that this homestead principle is adopted. What

do you think would be the answer of the landholder, and those who gave credit to the farmer-boy upon a like application? They would inquire, "can you give us any security?" "No." "Have you no friend that will assure us of our payment?" "No." "Nothing to pledge or mortgage?" "Nothing." "Well my young friend as you are not yet known in society, as you have never yet had the management of your own affairs, as your character has never yet been tested for honesty, and as the homestead law exempts more than you can acquire in the next five years, we cannot trust you." That poor young man has got to exist, he is compelled to make a subsistence, and let me ask you, sir, how will he do it? I'll tell you, with thousands thus driven from independent labor for themselves, they will be compelled to toil for their more fortunate and wealthy neighbors. And thus there being an over amount of hireable labor in the market, the price will be reduced and the poor will be completely within the power of the rich. I cannot sanction any law which would have the least tendency to produce that unhappy result.

But I am met here by the advocates of these homestead provisions, and told that credit is not based upon property, but upon honor. Let us investigate this position. I think, with all respect to other men's opinions, that that position is wholly untenable. Suppose a man of unblemished character, of the highest sense of honor yet poor, destitute, feeble and in the last stages of consumption, tottering as it were on over the very brink of the grave, should apply to you for the loan of five hundred dollars, for the term of a year. What would be your reply? You could not say to him "you are devoid of honor and I cannot trust you," for that would be a falsehood; but you would be compelled to say, "I doubt *your means of payment*, but not your honor."

The most desirable debtor is he who combines both honor and the means of payment. Honor so far as actual payment is concerned is but an empty sound; the other is more substantial.

It may be thought by some that I have now placed my poor boy in a bad situation, if the basis of credit is what I have just named. Not so. That young man's bones, sinews, and muscles, with energy, industry, and economy, constitute one of the surest "means of payment." Yes, sir, they are a mine, far surer to produce wealth, if rightly managed than the gold glittering sands of California.

In the next place, let us inquire what will be the effect of such a law upon the energy and intellect of the people. I know, sir, that the acquisition of gold has been cursed from the first down to the last of the poets.

"Gold, gold, in all ages the curse of mankind,  
Thy fetters are forged for the soul and the mind."



Such is the language of poetry, but not of truth. What was it that in a few short years peopled this western wilderness-like world with millions of happy and intelligent freemen? The love of gain. What is it that whitens every sea with the sails of commerce? Gold. What is it that lightens the poor boy's eye in his log cabin in the wilderness, when by the midnight lamp he pores over some old musty work of history or of science? What is it, sir, but the hope of glory or of gain?

Strike from the affections of man the love of property, and you will paralyze the intellectual progress of the world.

And now let me ask, if you adopt this homestead principle, what stimulus will the man have who is deeply indebted, to acquire anything above his mere homestead? None! He will settle down and refuse to exercise either body or mind for the acquisition of property.

But there is another argument alluded to by the gentleman from St. Joseph, (Mr. Colfax,) and sometimes urged with considerable plausibility by the friends of the homestead principle. It is this, that unless some law shall be passed to prevent the accumulation of lands in the hands of the few, a landed aristocracy will spring up which will entirely overshadow the poor. And he cites the condition of England as a warning.

Now, sir, we have only to look back at the history of this country to convince ourselves that all these fears are idle. The States of New York and Delaware were once owned in fee simple by one man—the Duke of York. The whole of Pennsylvania by William Penn, and all that part of our eastern States between the 40th and 48th degrees of North latitude, “from sea to sea” was patented to the Duke of Lenox and about forty others. Remember, also, the large grants to Fernando Gorges, John Pierce, and others. The thirteen colonies were once in the hands of not exceeding one hundred men. What is the condition of those States now? Why, sir, divided into millions of separate interests. The old landed aristocrats are almost forgotten and it is with difficulty now that the farmer there can “monopolize” enough land to make a respectable farm.

And now, the inquiry naturally suggests itself, what has produced this great change in so short a time? Many things; but among the most powerful that has conspired to that result is one little law early adopted by our forefathers. A law that commends itself to every lover of justice and freedom—a law assuring to the citizen and his children more certain equality than all the charters ever granted by the kings of England to her down-trodden subjects. I mean, sir, the law of descent and distribution—that law which divides the property of the ancestor *equally among all his children, male and female*. So long as that law exists, a concentration of land in the hands of the few

for any length of time cannot take place. In England, on the contrary, the law of primogeniture prevails, by which, on the death of the ancestor, all his real estate descends and vests in his oldest male child. Without that law the aristocracy of England would soon be reduced to their proper level, and with such a law in this country, there is not virtue enough in the whole of our free institutions to prevent a most powerful aristocracy.

Gentlemen who seem so fearful of the great land monopolies had better look closely to the provisions of the amendment. What would be the effect of that part which permits the owner to mortgage his homestead? My opinion is that nearly every man who would become insolvent under a provision of that kind would be tied down by mortgages to the keen, shrewd business men of our country. Credit with such could not be procured without security—a mortgage would follow to the merchant—while the mass, the farmer, mechanic, and laborer, would credit the same man upon honor, and when the mortgage should be foreclosed, they would have the consolation of knowing that honor is not payment. In this manner the tendency would be to throw the lands of the poorer and failing classes of society into the hands of the wealthy.

Now, sir, the view I have taken of this subject may be wrong. I make no pretensions to perfection in anything—and admit that I am at least as liable to err as those who assume the opposite side of the question. But I ask gentlemen if it is good policy to engraft new and untried principles into the organic law of our State? Would it not be better to leave such things to the action of the Legislature? That body can change, modify, and repeal, as the voice of the people may demand, but once adopt any principle in the Constitution, and it is locked up for the next quarter of a century to come. The gentleman from St. Joseph (Mr. Colfax) has stated that seventeen States have embraced the homestead principle in their constitutions. In that statement I am certain he is mistaken. There may be three that have taken that course, but that law, if it prevails in the others he has named, will be found in their statutory enactments.

I cannot conclude without saying that I think the amendments offered by the gentleman from Huntington would be unfair in their operation. If an exemption of five hundred dollars should be established in regard to real estate, I can see no sound reason why a like exemption should not be made to the owners of personal property. We should avoid making laws for one class to the injury of another. Without strong reasons to the contrary the general rule should be—no law for the rich—no law for the poor—but a law for the whole people.

Mr. MILLER of Fulton. I regret that there is so strong an indication apparent by a majority of the members of this Convention to smother debate and action upon this subject. The gentleman from St. Joseph could, with difficulty on this morning, get the floor, so anxious were some of the opponents to the Homestead measure, to have it instantly dispatched. Sir, that gentleman informed you, and I would add, that I know a very respectable portion of the State we represent, are in favor of engrafting into the Constitution the principles of a Homestead Exemption, as it is termed. I stated a few days since, in my place, and I am now prepared to show from the Journals of the House of last winter, that a bill incorporating the principles and details of a Homestead Exemption was introduced into the House of Representative at a very early period of the session, and after having been thoroughly discussed, was laid upon the table; not laid upon the table because it had not friends enough to pass it through the House, but because some of its friends, in view of the fact that the Convention, which was shortly to be in session, might think it right to engraft the principles of such a measure into the Constitution, thought best to wait until such action should be had as the wisdom of the Convention might adopt, after which, laws could be established more permanent and uniform on this subject. And, now, I regret to see such manifestations of indifference, and apparent determination to leave the matter to the uncertain action of the Legislature. And I now say that if the members of the House of Representatives of last winter, reflected the will of their constituents; that such a law was then called for and was only delayed until the Convention would act, hoping that it would lay some foundation on which to build a good Homestead law.

The bill to which I refer, as I stated, was introduced in the early part of the session last winter, and perhaps occupied as much attention as any other measure before the House, as the Journals will show, during which time the enemies of the measure used every means to defeat it. To prove what I have said, I have only to turn to the Journal of the House, where I find the ayes and nays called some twelve or fifteen times, motions made to adjourn, to lay upon the table, to indefinitely postpone, other motions and amendments made and offered, all for the purpose of defeating the measure. The bill, after being engrossed by a majority of some ten, was laid upon the table at a subsequent period, for reasons as before stated. The fact that the bill was engrossed by so large a majority, shows how the current was at that time; as such vote is always considered a test vote. I have given the reasons of some of the members who voted for the engrossment of the bill and afterwards voted to lay it on the table.

And some of the members of this Convention, that were members of the House last win-

ter know this to be the case. And before I sit down, I must say that I regret to find my friend here upon my right from the county of Posey (Mr. Hovey) opposing the measure so strenuously when the Representative of that county (Mr. Carnehan) last winter was one of its strongest advocates, and if my memory serves me right, was on the committee that drafted the bill, and sir, I do not pretend to say that this Convention should look to the action of the House last winter. But I do say that a majority of the members of the House last winter, did expect and desire this Convention to engraft and prepare an article for the new Constitution permanently securing a Homestead to the unfortunate debtor.

Mr. BORDON. I rise, Mr. President, merely to explain the amendment I have offered, and not to go into any lengthy argument on this subject. The fact that we are now in the eighth week of our session and have made but very little progress in our business, should warn us to be careful and not unnecessarily occupy the time of the Convention. For this reason I have refrained from speaking except when the particular interests of my constituents seemed to demand it; and with regard to the present amendment I have offered, perhaps it is necessary that I should make a few words of explanation in regard to it. My amendment, sir, proposes to insert after the word "property," in the section the words "real," and personal."

Several of the States that have revised their Constitutions have inserted provisions of this kind in their Constitutions. The Constitution of California provides as follows:

"The Legislature shall protect by law, from forced sale, a certain portion of the Homestead and other property (of all) heads of families."

This, in my opinion, is as far as this Convention should go. It simply establishes the principle and leaves the details for legislative action. The amendment offered by the chairman of the committee on the subject of the homestead exemption, I think, goes too much into detail; and I am not disposed, either on this question, or that of the rights of married women, to go further than declare the principle—as I do not think a Constitution should go much into legislative details.—I feel myself under the necessity then, of going against the amendment of my friend from Huntington, (Mr. Murray,) and of retaining the original proposition, as I propose to amend it.

I wish here, sir, to allude to an observation that fell from my friend from Posey, (Mr. Hovey,) this morning, which, from the noise that prevailed in the Hall, I was not exactly able to understand. But I think he intimated that those persons who were the advocates of the Homestead Exemption, and who were disposed to go further, and hold to land limitation, were agrarians, or persons disposed to seize upon the property of the rich, and give it to the poor. And



he also asserted that we were identical in principle with the agrarians of Rome, whom, he contended, desired to take the land from the wealthy, and divide it among the poor. Now, sir, I take upon me to say there never was such a party in the Roman republic; that it was a falsehood, first propagated by the historians friendly to the Patricians, and continued from one to another, until it has become to be generally believed.

Mr. B. here stated that the writings of Arnold, Niebuhr, Watchmuth, Schlosser, Savigny, and others—proved that some of the ancient historians were wrong in regard to their version of the circumstances attendant upon, and the persons who introduced the agrarian law.

The historians of Rome, he said, wrote as partizans, to justify the conduct of the Patricians. In the case of Manlius, who was put to death by the Patricians, Livy, and other historians, state that he was put to death by the Plebians; but it is now well established that such was not the fact, for he was put to death by the Patricians, for espousing the cause of the Plebians.

Mr. B. here proceeded to speak of the Licinian law, and read extracts from Arnold's Rome, to show that the position he took in regard to the character of the agrarian laws was correct.

Had not the Gracchi been put to death, continued Mr. B., by the Patricians, for attempting to execute the Licinian law, the nobility of Rome would have been prevented from seizing upon the public lands, and appropriating them to their own use and Rome would have remained forever a republic. The moment that the people were denied their share of the public lands, they were compelled to congregate in the towns and cities of that republic, where they could only obtain a scanty subsistence, and under the peculiar laws of that country, which reduced men to slavery, where they were unable to pay their debts, many of them became bondsmen for life. It was on the return of Tiberius Gracchus from Spain, that he passed through the finest portion of Italy, and he there saw, with deep regret, that vast portions of the country which, in the better days of the republic, had been cultivated by the hands of freemen, each man owning the soil which he cultivated, had accumulated in the hands of the Patricians, and was cultivated by miserable slaves, and by freemen in name, but who became brutalized by the rapaciousness of their creditors, and who, from their poverty and wretchedness, were but a few degrees removed from the slaves, with whom they associated. It was with a view to give these persons an interest in the public lands, that he proposed that the Licinian law should be executed.

In the days of Cincinnatus, the farmers left their plough and teams a field, and went out and fought the battles of their country victoriously, and then returned again to their agricultural pursuits; and this was truly called the better days of the republic; but when men were

denied homes upon the soil conquered by their valor, and gathered in large masses around the cities, after having fought the battles of the republic, were denied, by law, the homestead privilege, what else could be expected than that the idle and vicious should after being employed by her ambitious men, in fighting in Asia and Africa, be induced by such monsters as Marius and Scylla, to turn the edges of their swords against the throats of their countrymen.

Sir, it was the combined evils of land monopoly and slavery, that overturned the republic of Rome. And let me here say, that, while we may never expect that in the free States of this Union, slavery will ever be directly tolerated; yet, sir, unless we shall restrict capital within proper limits, and prevent its having too much the advantage over the labor of the country, the time may come when the lands of this country may be monopolized to a much greater extent than we could now anticipate, and a state of things will be brought about not dissimilar to that which existed in Rome, in the days of the Gracchi.

I think, sir, seriously, that before twenty years shall have rolled around the land question will become the great question of the day, upon which will be decided the destinies of this people. In regard to the quantity of land which a man may own, I would not pretend to give the limitation; but I insist that man is entitled to live and to enjoy a portion of the earth, and that to enable him to do this, we should, under proper restrictions, prevent our public domain from being monopolized, as is now being done to a considerable extent, by large land companies. I do not propose to take from one man and give to another, but I desire that a limitation should be placed upon the amount of property that a man can hold in the soil. Look at the case of John Jacob Astor of New York city, who accumulated house after house, and absorbed them in one vast estate; leaving thousands without a home, because they could not be obtained. At the commencement of this session, I proposed the formation of a committee on homestead exemption and land limitation, but it met with considerable opposition, and the Convention decided adversely to raising a committee on the subject. Now it appears to me that gentlemen must be convinced that it would have been better to have raised such a committee. I will say here, in justice to my countrymen, that I have never seen a person, sir, who desired to have the real or personal property of another taken away and given to himself; but there is a party in this country who are in favor of preserving the public lands, so as to put the poorer portion of the present and the future generation, in some respects, on an equal footing with the more wealthy portion.

I will say, before I close, to the gentleman from Posey (Mr. Hovey) that I can satisfy him of the truth of my position in regard to the

agrarians of Rome, and that he much misconceives the character of the land reformers of this country, if he supposes that we desire to interfere with the rights of those who have already accumulated vast quantities of the soil of the country. Our only object is to preserve this continent so that it may afford a home to the thousands and millions that are to come after us, and that the masses shall not become hewers of wood and drawers of water, as is now the case in the countries of the old world.

I hope, sir, that that the proposition presented by the Chairman of the committee having charge of the subject of homestead exemption, will be voted down, and that we will simply declare the principle, and leave the details to the discretion of the Legislature.

Mr. DICK. Mr. President, I must, upon this subject, claim the indulgence of the Chair and also of the Convention for a short time, whilst I present my own views and those of my constituents upon this important question.

But first permit me to say, sir, that the gentleman from Posey (Mr. Hovey) has not only been unfortunate in his references to Roman history, in support of his views, but he has been miserably so in reference to English and Scotch authorities. He has said that the English radicals entertained the same views and aspirations that the Roman agrarians did; that they desired to appropriate the property which belonged to others to their own use. Now, sir, this is not the case. I myself belonged to the class called radicals when I resided in that country, and I beg to inform the gentleman that a radical reform in political freedom was all that ever was meant or understood by the most ultra of that respectable and intelligent class known by the name of radicals in England.

Mr. HOVEY. I certainly did not mean to be understood as the gentleman seems to have understood me. I alluded to the agrarians of England.

Mr. DICK. I am glad to hear the gentleman say so, for it was a great misconception, indeed.

Sir, this question of a Homestead Exemption is not a novelty in the halls of legislation in these United States. Nine States in the Union have already adopted into their Constitutions such a law. It should not then be looked upon as an experimental or doubtful measure. It is true, these different States vary the amount exempted from \$500 to \$2000.

The principle itself in our own State is conceded, and has been engrafted upon our Statute law, for the last 25 years; during that time varying in amount from \$50 to \$125, which latter sum is now the amount exempted.

If the principle is a correct one, the amount exempted is pitiful. If the principle is wrong, why continue it? On the contrary, if 25 years experience has only confirmed the belief in its utility and augmented the amount, then, at least,

we ought not to approach this subject under the influence of hostile and prejudiced feelings, but on the contrary, with marked deference and respect. The practical results of 25 long years experience are before us, and what evils have grown out of it? I answer, nothing at all.

Then, sir, all that is now asked of this Convention, is a still further augmentation of the amount now exempted; and it is but correct to assume, that from the rapidly increasing value of property in this State, the amount now asked to be established by Constitutional law, (which is \$500,) in a few short years will not cover more property than the present amount of \$125.

I am aware, sir, that this humane and beneficent measure may meet with vigorous opposition. There have been men found in all communities who have denounced every merciful measure proposed for the amelioration of the condition of the poor, excusing their conduct on the sordid and baseless assumption that the imprisonment of the debtor was the only security of the creditor; that, he who is not rich must be naturally dishonest, and would repudiate his debts. Such men, I fear, are still to be found lingering in our midst, yet they forget to describe the miserable condition of the wife and children of the husband who was lingering in jail to satisfy the vengeance of a vindictive heart; for every man knows that the jail is no place to make money to pay debts with.

Sir, it is just to pay debts, and every honest man will pay his debts if he has the means to do so. There is no conceivable condition in life so humiliating to an honorable man as that of being unable to discharge his debts.

But, sir, we must keep in mind that indebtedness is not criminal, and that even rigid justice does not require that women and children should suffer for the misfortunes or indiscretions of those husbands and fathers.

It is still held by the opponents of this measure, that we are indebted to the stringent laws of our land for the payment of our debts; that it is the mandates of our courts, the agency of our sheriffs, the interposition of our constables, that enforce men to be just to men. Nothing is more false; the reverse is the case. See how many thousands of dollars are collected and disbursed monthly, without the operation of law, and how few cents, in comparison, are collected by coercion of law. No, sir, it is that principle which is a constituent part our nature—that sacred monitor within—that fulfills every moral and pecuniary obligation which we owe to our fellows, and not the fear of legal enactments.

There is a point, sir, at which all things must necessarily terminate, and that point is inability. I only ask, then, that this terminating point may rest a few steps short of absolute want. Let a home to our wives and our children be preserved, let this humane object form a sacred



exemption; justice and mercy demands that we should protect them.

Sir, we are all aware that without resources no man can pay his debts. Let us not, however, be misunderstood. In the introduction of this beneficent measure we do not ask, sir, an amount that will shield the dishonest and wealthy debtor from the just claims of his creditor.

This, sir, is far from our intention, and entirely beyond our purpose.

We have put the sum sought to be exempted to an amount that will at once address itself to the sense and sympathies, to the reason and justice, of our fellow men.

We ask only, to save and secure to the unfortunate and distressed part of our people, an humble home to shelter them from the peltings of the storm of adversity—the *innocent*, and *not* the guilty.

To sustain, sir, the proud characteristic of our citizens, is a duty we owe to posterity. We must prevent them, so far as practicable, through every vicissitude of fortune, under any concatenation of circumstances or events, (*less than crime*), from falling below the standard of independent American citizens. We owe it, sir, to our fore-fathers, who bequeathed to us every political blessing we enjoy. It is our duty as freemen, in order to sustain our liberties and to continue them, to guard against the influences of wealth over the necessities of the poor, and through this conservative system, sir, to preserve uncorrupt and incorruptible the purity of the ballot box. If my position, sir, is a correct one, it then raises the question into one of great national policy, which carries along with it every recommendation for its adoption; every feeling of our nature, calmly consulted, responds to it.

I also take the ground, sir, that in a moral point of view this measure presents itself with at least equal force and effect to the favorable consideration of every good man. Sir, it will, to a great extent, prevent crime. We know that in cases of extreme necessity, so strongly has nature implanted the principle of protection to ourselves and our offspring within us, that what we cannot retain with the consent of the law, we will endeavor to retain in violation of the law. Hence the numerous trials in our courts of justice for fraudulent conveyance.

But, sir, let us examine shortly the consequences of our present system, and see whether to strip a man of his means is the readiest mode of obtaining payment, or if that course is likely to make him a better citizen or a kinder neighbor.

When the last article of domestic comfort is swept away—when the family hearth is made desolate—what are the feelings of the victim of our present harsh laws? He is often driven to desperation or despair; he looks upon the world with disgust, his heart once warm is now chilled, and the bitterest misanthropic feelings

are engendered. He asks himself if this is the natural results of misfortune; he is now an outcast from society; and why is it so? himself neglected—his family disregarded and shunned—his poverty makes him ashamed to claim, with confidence, his former acquaintances, who now seem desirous of passing him unnoticed. He dare not now claim a familiar seat at their once hospitable and inviting board; because he cannot yet stoop to accept what he is now unable to return. He dare no more invite his once familiar friends to look upon his squalid home. The world to him is now changed. It is a short but severe lesson in the journey of life. The table no longer presents the comfortable meal—the children no longer appear in comfortable habiliments. The idea of increasing and approaching wants bear heavily upon the sensitive mind. To deaden thought and shut out reflection he seeks to taste of the intoxicating draft, and o'er it repeats the story of the ills that do assail him, even to some transient listener, and *finds*, or *thinks* he finds sympathy with those who do not notice, yet surround him. His judgment gone, his reason fled, he now reels home the victim of a disease that soon carries him to a drunkard's grave.

Man, sir, is so constituted that he cannot stand the marked neglect of his fellow-men; philosophy gives way to circumstances, and all our fine spun theories vanish under the absolute wants of nature; and where, I would ask, sir, is the man amongst us in this august body, of age and experience, that can candidly and openly say with certainty how he would act under the same circumstances? I answer there is none.

What now remains? A destitute family is thrown upon the sympathies of the world, and the children are now bound or farmed out. What mother, sir, I would ask, exists that would not prefer carrying to the silent tomb, the children of her bosom, to seeing them thrown upon the chilling affections of a cold world? If there is a member here present who has seen a mother's anguish on the occasion of dispersing her little children amongst strangers, I would appeal to him. Every hope of maternal love is withered—every fibre of the sensitive heart is unstrung. The dearest, the strongest, the purest, and most holy emotions of our nature are sacrificed to the demands of an unfeeling world.

Who knows, sir, the feeble wants, and Constitutional infirmities of the child like the mother? Or if known, whose but a mother's care and love would watch with the solicitude of a ministering angel over its desires and defects. Who, but a mother, sir, can obey the high behests of Nature's God by instilling and cultivating those natural feelings and sentiments of affection, gratitude, and love? Who, but the mother, next to nature, stamps those indelible virtues on the ductile minds of youth? Who, but the mother, is destined by nature's great

and irresistible decree to cultivate the heart of her offspring, which is often all the noblest and highest principles of our common nature.

And suffer me here, sir, to digress so far as to observe that if the education of the heart is neglected or overlooked, the cultivation of the head alone, can never make a great man or a good woman.

But, sir, apply this positive and unedceptionable rule to the female part of our community and it must necessarily produce the worst of consequences.

Sir, I regard a woman, destitute of those ennobling impulses and affections of the heart, as unworthy of the name of woman. A woman, sir, without a heart is like the gilded but unsilvered mirror. The soul is wanting there.

But, sir, regard for a moment the consequences which follow this system of violence done to the feelings of our natures. The bound child of charity when placed among strangers, looks in vain for the endearing and delightful language of the mother, the encouraging look of love, or the kindly reproof of affection, is not seen or heard or felt. The tongue that first taught the lips to move in prayer is not now near. All is changed. Still other children are caressed, preferred and doated upon; the marked distinction made sinks deep into the sensitive mind of childhood; children so situated reason and ask themselves and others of the cause. The cultivation of the better parts of their natures are entirely neglected in this state of servitude, they learn to reason without feeling, to decide without judgment, and to attribute everything to a selfish and sinister motive, and when the term of their bondage is complete, they go forth upon the world confirmed misanthropics.

This, Mr. President, I consider to be a great moral evil, a blight upon society, that alienates our common feelings, and stamps an equivocal characteristic upon our race, which is artificially produced by unnatural enactments and defective systems of legislation. How different the picture under benign laws. The necessities man like the child in infancy, requires to be nursed into maturity, instead of being chastised for his misfortunes. If by the operation of wholesome laws, he is neither subjected to neglect, nor reduced to absolute want or total destitution, in that case, it may be for the first time, he reflects upon the wisdom and generosity of his country's laws; this indulgence produces a feeling of gratitude, and often a strong inducement to great exertions in order to overcome those temporary ills with which he is beset. With some resources still left, his own honesty unimpugned, his family's necessary comforts unimpaired, he boldly stems the tide of adversity, with a strong arm and a stubbornness of purpose, which seldom fails of ultimate success, especially when seconded by the united industry of his willing family—his debts avertaken, and he again stands

proudly before the world disenthralled. The parsimonious wretch, sir, or the rapacious creditor, would, for a few cold dollars and dull cents crucify the most interesting family in our State. They would not hesitate, sir, to carry distress into our dwellings, to unhouse our virtuous wives and helpless children, and this too, when we are offering an assylum to the oppressed of all the nations of the earth. Shall we, sir, turn upon our own kindred and nation and tongue, and sacrifice our own sons and daughters at the shrine of avarice and iniquitous laws.

Sir, I desire to have this provision engrafted upon our Constitution; I have no confidence in the Legislature. Sir, in ancient times, we are told of the confusion of languages at the building of the tower of Babel. But in modern times, we have improved upon that ancient precedent. In this volume of Statute Law, sir, (which I now hold in my hand,) we have thrust upon us, by our Legislators, a confusion of common sense, mixed with stupidity and folly—at one session they make laws—at another they amend them—at a third they explain them and at last they are palmed upon the people for their guidance and instruction, in such a crude and incomprehensible form, that the best disciplined mind in the State, cannot understand their meaning or intention. I hope, therefore, that the section as amended will pass.

The PRESIDENT. The question is now upon the adoption of the amendment of the gentleman from Huntington (Mr. Murray) to the amendment offered by the gentleman from Allen (Mr. Borden).

Mr. HARDIN moved to lay the pending amendments on the table.

Mr. BORDEN called for a division of the question.

The question then being upon laying the amendment of the gentleman from Huntington (Mr. Murray) on the table,

The yeas and nays were demanded, and being ordered, were taken with the following result: yeas 84, nays 28.

Those voting in the affirmative, were:

Messrs. Alexander, Allen, Badger, Balingall, Barbour, Beard, Berry, Biddle, Blythe, Borden, Bowers, Bracken, Brookbank, Bryant, Carr, Clark of Hamilton, Clark of Tippecanoe, Coats, Davis of Madison, Davis of Parke, Dunn of Jefferson, Dunn of Perry, &c., Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Gootee, Graham of Miami, Gregg, Haddon, Hall, Hamilton, Harbolt, Hardin, Helm, Hendricks, Hogen, Hovey, Huff, Johnson, Jones, Kent, Kendall of Wabash, Lockhart, Logan, March, Mathis, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Morgan, Nave, Newman, Owen, Pepper of Crawford, Prather, Read of Clark, Read of Monroe, Richey, Robinson, Schoonover, Shannon, Sherrod, Shoup, Sims, Smiley, Smith of Ripley, Smith of Scott, Spann, Steele, Stevenson, Tague, Todd, Trimably,



Watts, Wiley, Wolfe, Yocum, Zenor, and Mr. President—84.

Those voting in the negative, were:

Messrs. Anthony, Bascom, Beach, Bicknell, Carter, Chandler, Chapman, Cole, Colfax, Crumbacker, Dick, Hawkins, Hitt, Howe, Kilgore, Kinley, Mather, May, McClelland, McFarland, Miller of Fulton, Morrison of Marion, Murray, Nofsinger, Thomas, Wallace, Walpole, and Wheeler—28.

So the amendment to the amendment was laid upon the table.

The question then recurring upon laying the amendment of the gentleman from Allen (Mr. Borden) on the table,

The yeas and nays were demanded, and being ordered, were taken with the following result: yeas 54, nays 55.

Those voting in the affirmative, were:

Messrs. Alexander, Allen, Badger, Barbour, Berry, Biddle, Blythe, Bowers, Brookbank, Bryant, Carr, Clark of Tippecanoe, Coats, Davis of Madison, Dunn of Jefferson, Foley, Foster, Frisbie, Gootee, Graham of Miami, Haddon, Hall, Harbolt, Hardin, Hogan, Hovey, Huff, Johnson, Jones, Kendall of Wabash, Lockhart, Logan, Mathis, Miller of Gibson, Mooney, Moore, Morgan, Nave, Newman, Pepper of Crawford, Prather, Read of Clark, Read of Monroe, Ritchey, Robinson, Schoonover, Shannon, Shoup, Smith of Ripley, Spann, Tague, Todd, Zenor, and Mr. President—54.

Those voting in the negative, were:

Messrs. Anthony, Balingall, Bascom, Beach, Beard, Bicknell, Borden, Bracken, Chandler, Chapman, Chenoweth, Clark of Hamilton, Cole, Colfax, Crumbacker, Davis of Parke, Dick, Dunn of Perry, &c., Farrow, Fisher, Garvin, Gregg, Hamilton, Hawkins, Helm, Hitt, Howe, Kent, Kilgore, Kinley, Mather, May, McClelland, McFarland, Miller of Fulton, Milligan, Milroy, Morrison of Marion, Murray, Nofsinger, Owen, Sims, Smiley, Smith of Scott, Steele, Stevenson, Thomas, Trimble, Wallace, Walpole, Watts, Wheeler, Wiley, Wolfe, and Yocum—55.

So the amendment was not laid on the table.

Mr. WALPOLE moved to amend by inserting after the word "property," in the third line, the words "an amount not less than five hundred dollars."

Pending the question,

On motion of Mr. WALPOLE, the Convention took a recess until two o'clock.

Mr. GREGG rose and said,—

Mr. PRESIDENT: I rise to a question of privilege, growing out of a communication I have seen in the "Jeffersonian," a paper published in the county of Wayne. And I do not know, sir, that the subject matter to which I desire to call the attention of this body, for a moment, comes properly within the purview of our duties and responsibilities. I am aware, sir, that it would be wholly unbecoming in us to notice the anon-

ymous communications of every irresponsible scribbler outside of this body, who may choose to malign our conduct and motives. Indeed, sir, it would be lowering our dignity, as a grave deliberative body, to undertake to rebuke every impertinent scandal-monger, who may choose to spawn upon the public the ebullitions of a depraved and vicious mind.

But, sir, the article to which I allude, and which I shall proceed to read presently, is said to be the production of an honorable member of this body. And as such—considering the source from whence it comes, if not the character of the communication itself—it may not be wholly unworthy of our notice. I am the more convinced, sir, that its paternity belongs to one of our own number, from the fact that I have seen other communications, over the same signature, and published in the same paper, animadverting upon the proceedings of this Convention, in such terms as go clearly to indicate his identity with, and participation in, those proceedings. I say, sir, I have seen published to the world other communications than the one I now propose to read, emanating from the same source, and reflecting upon the conduct of the Old Hunkers of this body, as he is pleased to term them, in language, which, if used upon this floor, would be promptly rebuked by your Honor.

It is much to be regretted, sir, that any member of this body should so far compromise the dignity of his position, as to seek to bring this Convention into disrepute with the people, by misrepresenting the conduct and motives of its individual members. There is much truth and meaning, sir, in the old but homely proverb, that it is a foul bird that dirties his own nest. But to the article itself—and I will give it to you in broken doses:

"INDIANAPOLIS, NOV. 13, 1850.

"Mr. EDITOR—The time of the Convention has been taken up, for the last week, in the discussion of rights of citizens and powers of corporations. There is a great diversity of opinion as to how far their powers shall extend. Quite a number of the members of the Convention are directors in public works—the White Water Canal has three—the Madison road has its defenders—the Bellefontaine company have their pleaders—and it's a kind of Kilkenny cat fight, as to who shall do the most plundering; but it is to be hoped that the rights of the people may not be everlooked in the general scramble."

A pretty picture, truly, of this dignified and intelligent body! Public plunderers, forsooth! as though a large portion of this Convention were seeking to filch money from the pockets of the people, to enrich themselves!

Now, Mr. President, allow me to say, here, once for all, (and I think I may say the same for nineteen-twentieths of the members here,) that I stand not upon this floor to represent the interests of any corporation whatever, further than

may be consistent with a proper sense of duty to the great body of the people. I come not here to advocate the interests of any corporate body, whether it be the Madison Railroad Company—the White Water Canal—the Bellefontaine Road—or the State Bank of Indiana. I hold not a dollar of stock in any corporation, and never expect to—and what little business transactions I have had with the Madison Railroad, have been of a character not to impress me favorably with the management of its affairs. Considering the relation I sustain to the official head of that Company, I would be the last man in the world, to whom they would look for any particular favor—the last man they would expect to find ministering to their cupidity—ah, sir, the very last who would seek to plunder the public for their particular benefit.

Had I been disposed, as a member of this body, to consult the interests and reflect the wishes of that particular Company, I should have voted very differently from what I did on Saturday last, upon the proposition to tie up the hands of all future legislatures, as to the power of the State to borrow money, or otherwise incur a debt. I say I should have voted very differently upon that measure, which I consider as virtually effecting that, which the Madison and Indianapolis Railroad Company have been vainly seeking to accomplish for the last three or four years. By this measure you have effectually precluded the State from redeeming this important work from the Company, by refunding the amount expended by them on the Road, together with the interest, after deducting the net profits arising therefrom, according to the provisions of the act of 1842, under which the surrender was made. But the responsibility of the measure rests with the majority of this body, and not with me, or my respected colleague on my left (Mr. Dunn). Now, sir, I am as much opposed as any gentleman upon this floor, to the State borrowing money in future, to invest in new works of internal improvement; but I should like to reserve the power, if necessary, to take care of that which we have, in the construction of which vast amounts have been expended by the State. And above all, I am utterly opposed to the State relinquishing her right of redemption in this important thoroughfare, the Madison Railroad, which I regard as one of the most profitable investments in the whole country—and which must continue to increase in importance, as a source of profit, as those various lines of railroad now in process of completion shall be brought into communication with it.

And here permit me to remark, as I pass along, that my votes upon the question pending on Saturday, are not to be construed, as some gentlemen have construed me, as favoring an exclusive State Bank system. No, sir; for I profess to be as decidedly in favor of free banking as any gentleman here, and it will be found

so, whenever the question properly comes up before us. It is true, sir, I am not opposed to the continuance of the present State Bank system, taken in connexion with other systems of banking that may be adopted. It has worked well hitherto, and doubtless would continue to work well, as far as it goes; but then it does not and cannot afford sufficient facilities to answer the wants of the community. But if I must choose between the present State Bank, and a system of free banking properly guarded and restricted, so as at all times to secure the billholder, I will be found going for the latter. Yes, sir, as the gentleman from Jay remarked on Saturday, in regard to the State Bank, so say I in regard to the other, that I will be found voting nine hundred and ninety-nine times in favor of free banking and not once in favor of the present close monopoly.

But, says this very honorable correspondent of the Jeffersonian, "it's a kind of Kilkenny cat fight, between the friends of these corporations, as to who shall do the most plundering." Now I suppose, sir, that my honorable friend from Franklin over the way (Mr. Shoup,) who I believe is a stockholder and director in the White Water Canal, will feel very much complimented indeed by the notice he has received at the hands of this very distinguished letter-writer. But I put it to the Convention in all seriousness, whether the votes of that gentleman have indicated a disposition to favor the interests of that or any other corporation?—whether he has manifested a desire to plunder the public for his own pecuniary benefit, and those with whom he may be associated? No, sir; but, on the contrary, his votes and his speeches upon this floor indicate anything else but a desire to favor the interests of public or private corporations, however he may be identified with them. And here, too, is my friend from Wayne, (Mr. Newman,) who usually sits upon my right, but not now in his seat. He has the honor, I believe, to be the President of the White Water Canal; and doubtless he, too, will feel greatly complimented by this polite notice through the columns of the Jeffersonian—a paper that circulates extensively among his immediate constituents. But let any man look into the honest face of John Newman, and tell me whether he believes that he could be guilty of plundering the public, and trampling upon the rights of the people for the benefit of a soulless corporation, although he may be the President and a large stockholder in it. Sir, it is an unmitigated calumny, to which no honorable man can give credit for a moment; and I hurl it back with indignation into the very face of the calumniator, whoever and wherever he may be—there let it stick until it blisters.

But as to the Bellefontaine Road, I am at a loss to know who is pointed at as being its *pleaders* upon this floor. I confess I have not heard



the interests of that Road alluded to in debate, unless it may have been by the gentleman from Hancock, and then only incidentally. But allow me to read you another extract from this precious document. He says:

"A war of words took place on Monday between Mr. Rariden and Mr. Read of Monroe, in which Mr. Rariden displayed his usual ungentlemanly, uncourteous course of conduct. A man of his age should set an upright and moral precedent to the younger members of the Convention, instead of which, he has become a loathing to all honorable men."

Now, this, I presume, will be news to the greater portion of this body, and especially so to the gentleman from Wayne, himself, who I regret to see is out of his seat at present. But as the question presented involves only a mere matter of opinion, I shall not take up your time in controverting it. I may remark, however, that it is very evident that the good people of Wayne County, who doubtless know that gentleman far better than does this correspondent, entertain a very different opinion of him, or they never would have sent him here to aid in framing the organic law of the State. But not to detain you longer here, let me call your attention for a moment to the most important part of this correspondence—at least of the greatest importance to me personally. The writer continues to say—

"There is another gentleman in the Convention who studies nothing else—who has not an idea above party triumph, and making capital for the whig party. He has not made a speech yet, but what he has endeavored to use some grog-shop witticism, at the expense of the democratic party. I refer to Mr. Gregg of Jefferson."

Now, Mr. President, this matter appears to be assuming somewhat of a personal character; and were I to treat it as it perhaps deserves to be treated, I would pass it over with silent contempt. But I profess to have some regard for public opinion, and do not like to be misrepresented before that high tribunal; and I know of no better way of settling this matter right than to meet it just here upon this floor. And I may fearlessly appeal to every member of this body who has heard me, for the truth of what I say, when I declare most solemnly that since the first speech I had the honor to deliver in this Convention, I have not alluded directly or indirectly to party or party politics, in any remarks whatever, made by me on this floor—nor am I aware of having given a single vote that could be construed into that of a party character. The truth is, sir, since I have been a member of this Convention, I have uniformly eschewed party politics, as I would a moral pestilence; for I would as soon think of carrying party feelings into a Methodist class-meeting, were I worthy to be a member of that body, as into the grave deliberations of this assembly. I

therefore repel the imputation as unjust—as wholly unwarranted by anything which may have fallen from me in debate. It is true, sir, that in the first speech I had the honor to deliver here, and which you will remember was made upon my proposition to dispense with the services of a Stenographer, I did allude to the spirit of party. I remarked on that occasion that I sincerely regretted that it had been introduced here in the organization of this body—but I indulged the hope that the effervescence of party would soon subside, and we should hear no more of it. But I alluded to the matter on that occasion in such terms as I trust gave no offense to any one—unless it may have been the gentleman from Allen, on my right, (Mr. Borden,) who, I fear, was mortally offended at me, as he has not spoken to me since. And here I desire to do an act of justice towards that gentleman, which perhaps I should have done long ago. I desire, sir, publicly to crave his pardon for whatever I may have said on that occasion that was to him personally offensive.

Mr. BORDEN interposed. As the gentleman from Jefferson had alluded to him personally, he desired to know whether he intended to implicate him in any way with the authorship of the communication referred to?

Mr. GREGG. By no means, sir. I believe the gentleman from Allen is too high-minded and honorable to be guilty of the like. And allow me to assure the gentleman, in all seriousness, that I entertain for him none but the kindest feelings—and hope he will forgive the hasty and inconsiderate remarks called forth at the time by what I regarded as an unwarranted interruption on his part.

But, Mr. President, as this is a question of peculiar delicacy to me, personally, I will not longer trespass upon the time of the Convention. I hope, however, I have said enough to place myself and my accuser in a proper light before the readers of the Jeffersonian, should Mr. Elder, the worthy editor of that journal, do me the favor to copy my remarks. More than this I desire not to say.

The Convention resumed the consideration of the section exempting a reasonable amount of property from forced sale on execution.

The pending question being on the amendment proposed by the gentleman from Hancock, (Mr. Walpole,) to insert after the word "property" the words "not less than five hundred dollars in value,"

Mr. WALPOLE. Mr. President: I desire to submit a few remarks upon the pending question before the final vote shall be given.

The section now under consideration is as follows:

"The privilege of the debtor to enjoy the necessary comforts of life shall be recognized by wholesome laws, exempting a reasonable amount of property from seizure or sale, for the

payment of any debt or liability hereafter contracted."

I have observed that there is no gentleman who has addressed the Convention upon this subject, but what has acknowledged the right and justice of this section—excepting the gentleman from Posey (Mr. Owen)—and desires to see it engrafted in the new Constitution, while many would be glad to go much further.

The gentleman from Posey acknowledges the justice of the provision, but prefers that the whole matter should be left to the Legislature.

Sir, I like boldness and frankness in public action. I admire the bold, honest man, who, when he admits the right of a course of conduct, unflinchingly pursues it. It is clearly our duty to settle this important matter in the Constitution, and not leave it, as heretofore, an open matter for legislation. A few days since the Convention refused to submit to the people of Indiana the question whether or not the State should be authorized to borrow money. Those delegates professed that they could not trust the Legislature, nor yet the people, with so important a matter; but the great and vitally important subject of Homestead Exemption, that can safely be left with the Legislature!

Mr. President, gentlemen who have been connected with the legislative department, or at all observant of the past legislation of the State, are aware that there are many Constitutional injunctions and requirements in the instrument which now governs us, which have never been complied with or heeded at all.

I will, in proof of this, refer to the first section of the ninth article of the old Constitution.

SECTION 1. Knowledge and learning, generally diffused through a community, being essential to the preservation of a free government, and spreading the opportunities and advantages of education through the various parts of the country, being highly conducive to this end, it shall be the duty of the General Assembly, to provide by law for the improvement of such lands as are, or hereafter may be, granted by the United States to this State, for the use of schools, and to apply any funds which may be raised from such lands, or from any other quarter, to the accomplishment of the grand object for which they are or may be intended: But no lands granted for the use of schools or seminaries of learning shall be sold, by authority of this State, prior to the year eighteen hundred and twenty; and the moneys which may be raised out of the sale of any such lands, or otherwise obtained for the purposes aforesaid, shall be and remain a fund for the exclusive purpose of promoting the interest of literature and the sciences, and for the support of seminaries and public schools. The General Assembly shall, from time to time, pass such laws as shall be calculated to encourage intellectual, scientific, and agricultural improvements, by allowing re-

wards and immunities for the promotion and improvement of arts, sciences, commerce, manufactures, and natural history; and to countenance and encourage the principles of humanity, honesty, industry, and morality.

Although these provisions were solemnly incorporated in the Constitution in 1816, the Legislature, to this day, has never attempted to comply with the requirements of this section. Nor is this all: in the second section of the same article we find the following provision:

SEC. 2. It shall be the duty of the General Assembly, as soon as circumstances will permit, to provide by law for a general system of education, ascending in a regular gradation from township school to a State university, wherein tuition shall be gratis, and equally open to all.

And now, let me ask of those gentlemen who so strenuously urge this Convention to follow the example of the first, and to leave to the Legislature the settlement of the question of Homestead Exemption, if the examples of the past will warrant such action? For thirty-four years the legislative department has virtually refused to carry out the solemn and direct requirements of Constitutional law, and shall we trust that department with still more important questions—still more vital interests of the people of Indiana for the next thirty-four, or the next one hundred years? (Cries of "no, no.")

But, sir, I have not done yet. There is still another section, more binding in its requirements than those I have quoted, and which the Legislature has neither obeyed or noticed.

SEC. 4. It shall be the duty of the General Assembly, as soon as circumstances will permit, to form a penal code, founded on the principles of reformation, and not of vindictive justice: And, also, to provide one or more farms, to be an asylum for those persons who, by reason of age, infirmity, or other misfortunes, may have a claim upon the aid and beneficence of society, on such principles that such persons may therein find employment and every reasonable comfort, and lose, by their usefulness, the degrading sense of dependence.

The humane and noble spirited framers of the old Constitution made, in this section, a provision which is a lasting monument to their honor. Incalculable would be the amount of good done to the aged, the infirm, and the otherwise unfortunate among the people, had this beneficent provision been carried out by the department upon which compliance was imposed! Our fathers, when they framed this instrument intended to relieve the truly unfortunate by employing them on the public farms, and for the most considerate reasons—that they might "lose, by their usefulness, the degrading sense of their dependence."

If there was time, Mr. President, I might refer to other sections in the old Constitution which have been entirely neglected by the



Legislatures upon whom was enjoined the duty of enforcing their provisions; but have I not cited enough to prove that for thirty-four years, for the whole life of the State, the Legislature has been derelict in the performance of the most solemn duties! (Several voices—"Consent, consent.") Then how can it be seriously proposed to commit the dearest and the nearest interests of the masses to such unworthy keeping for the future? The Legislature will as surely neglect to carry out the provisions of a free Homestead section as they refused to obey the requirements of the first, second, and fourth sections of the ninth article of the old Constitution.

But the gentleman from Posey (Mr. Owen) professes friendship for the principle of a Homestead Exemption. He says he is in favor of the exemption of a reasonable amount of property from sale or execution, but he desires to see the whole matter left to the action of future Legislatures. Sir, I hold that the only manly course with regard to this question, is to walk boldly up to its settlement in the new Constitution. The simple question that addresses itself to every delegate in this Convention is, "Is the principle of Homestead Exemption a true one—is it right?"

The legislation upon the subject has been unstable and changeful. One Legislature, I remember, exempted fifty dollars worth of property; another increased the amount to one hundred and fifty dollars. To-day one amount is exempted, and to-morrow another; and there is no certainty—nothing that either the debtor or creditor can rely upon. This instability in legislation with regard to the homestead, grows out of the want of a provision fixed in the organic law of the State. Bills, increasing or decreasing the amount exempt from execution, are passed or "got through" the Legislature according to the desire of some delegation who are operated upon by local and sectional causes, to effect a change in the exemption laws.

I have seen instances where men came up to the Legislature as the representatives of particular interests, by which they were stimulated to effect a change in the exemption laws—sometimes to get them repealed; and at the next session the same, or a similar law would be re-enacted.

Mr. President, in place of this uncertainty and fluctuation, I wish to see stability and fixedness; and I think it must be evident to every reflecting mind—to every man who has attentively observed the course of past legislation upon the subject—that this stability can only be obtained by a provision in the fundamental law.

Five hundred dollars has been named as a proper amount of property to be exempt from seizure or sale for any debt hereafter contracted. This appears to be every way reasonable; and

if the support of a majority of delegates can be concentrated on this proposition, I should cheerfully vote for it.

In seventeen States in this Union the principle of homestead exemption has been fully recognized and incorporated in their Constitutions. But, sir, in 1850, the delegates chosen by the people of Indiana to seats in this Convention, on account of their firmness, their honesty, and their independence of character, are afraid—yes, sir, many of them are afraid to meet the responsibility of placing a homestead exemption section in the new Constitution! They desire to free themselves of a responsibility they do not feel prepared to take, by referring the whole matter to future Legislatures. Mr. President, you and I know too much of the character of legislation—of the influences that operate in these halls—to place much confidence in the action of that department upon this subject. We know that too many representatives are weak and vascillating, and that if this great measure is left to their settlement, there will be no stability—nothing upon which the people can depend as a fixed and unchangeable law, by which they may guide their business transactions one with another. If, in this Convention of men, selected for the qualities of independence, boldness, and firmness, men are found to be wavering and fearful of taking responsibilities, what is to be expected from the Legislature? If it is really the fact, that time-serving politicians have succeeded in being elected to this Convention of Delegates, chosen by the people because they were supposed to possess precisely the opposite qualities of character, what counsels may we expect to prevail in the General Assembly?

When a delegate here says that he is in favor of homestead exemption, and yet is afraid to take upon himself the responsibility of making his recorded votes correspond with his open professions, I must be allowed to say, without intending to impugn motives, that I think he is sailing under false colors.

The original section, as reported from the committee, is that

"The privilege of the debtor to enjoy the necessary comforts of life shall be recognized by wholesome laws, exempting a reasonable amount of property from seizure or sale for any debt or liability hereafter contracted."

There is a proposition providing that property to the value of not less than five hundred dollars shall be exempted. Now, I desire to see just such a proposition—definite and certain as it is—fixed in the new Constitution. If you leave this matter open, what will the Legislature do? Why, sir, they will continue to exempt an amount of one hundred and twenty-five dollars, which is the sum of property now freed from seizure or sale. The next Legislature might possibly increase the amount; but all is uncertain.

For these reasons, Mr. President, I am utterly opposed to every proposition which would leave this an open matter; and I am decidedly in favor of fixing, not only the principle, but the amount, in the fundamental law of the land. And I call upon every true friend of freehold exemption to stand by the proposition to fix the matter definitely here. If we fail to do this, we shall disappoint the people, who, having lost all confidence in legislative action upon the matter, are looking with hope and anxiety to the result of the deliberations of a body whose constituent parts they have called together with express reference to the settlement of those questions which the General Assembly, either for the want of power or the lack of will, are incapable of settling.

I think, sir, that every one must be satisfied that the arguments of gentlemen, who oppose this proposition on the ground that it should be left to legislation, are without weight and undeserving of the least influence. I have shown clearly that past Legislatures have been recreant to the duties solemnly imposed upon them by the old Constitution; and it is a fair and legitimate inference that future Legislatures will follow their example, and make no adequate provision for freehold exemption.

We clearly have the right to exempt five hundred dollars worth of property in the Constitution, and our opponents should meet us on half way ground, and support a proposition to declare that amount free from seizure or sale; the provision to act prospectively.

Sir, there is but one interest in community which is operating against the beneficent principles of the proposition now in debate, and that is the mercantile, or rather, to speak more generally, and at the same time more accurately, the commercial interest. Go out through every portion of this broad State, and the laboring population—the producing masses of the country—and among them you will hear no dissenting voice to the principle of a freehold exemption. It is the trading and speculating men—it is the non-producing class who stand between the producer and the consumer, and extract the living and wealth from both, who oppose this wise and humane proposition—a provision which is as politic for the State—which contributes as much to its stability and prosperity, as it does to the security and happiness of the citizen. I, for one, do not want to see the trading and speculating class rule the councils and shape the action of this Convention.

We owe it to the State—to the people in the aggregate no less than to the individual citizen—to adopt such a provision as I have advocated. It is to the interest of the State—it is the true policy of every statesman—to make the citizens of Indiana feel an interest in this country—to cultivate an attachment for the very soil. He should be made to feel that the law spreads over his home a shield and protection, and that what-

ever storms of adversity overtake him—whatever misfortunes, in an evil hour, may blacken over his pathway—one spot of earth shall be secure to him, or the amount which will command a comfortable home. He should be made to feel, that, in his hour of sickness or calamity, there is a country that recognizes his right to the comforts of life—a law that preserves him and his family from absolute suffering.

But, instead of pursuing a policy like this, shall we listen to gentlemen, who, in syren tones, would advise us to leave the whole question to the Legislature—shall we thus yield to the commercial spirit, and deny the masses of the country the protection of wholesome and wise laws?

The proposition of the chairman of the committee (Mr. Owen) is without virtue. It proposes to leave the whole matter open; and it is clear that the Legislature will never carry out any mere constitutional recommendations.

I sincerely hope that the pending amendment will be adopted, and that property to the amount of five hundred dollars may be exempted from seizure or sale for any debt or obligation hereafter contracted. And I trust this will be done, not by requiring the Legislature to carry out a recommendation to that effect, but by fixing the principle definitely in the new Constitution.

Mr. PETTIT. I have risen, sir, to assign a reason for not discussing this question, and not for the purpose of addressing the Convention.

I had designed speaking upon the question now in debate, not for the purpose of knocking down the "nine pins" set up by some gentlemen, but thoroughly to investigate this question of Homestead Exemption. But the time to which each speaker is limited by the resolution which a numerical majority has seen fit to adopt, will not allow me to express the views I entertain. This is a subject which cannot be grasped and presented in a moment's time; the truth of the matter lies not upon the surface.

But I would make no distinction between real and personal property, but would exempt from seizure and sale either, or both.

Sir, I had desired to contrast the policy of other nations who had adopted the principle of a freehold exemption with those who have not; but I have not time for such a comparison. I had desired to go farther back than the gentleman from Posey (Mr. Owen) took us; farther than the history of Rome, who, by neglecting this principle, has passed from national existence; I had desired to go back to the Mosaic system, which secured the rights of the individual to a freehold exemption in a better manner than has been done by any nation before or since. The beneficent effects of the Mosaic policy were more lasting than the policy of exemption adopted by any other country in the world. I could have wished to cite chapter and



verse in which this policy is quite fully described, as well as the manner in which all the lands were divided out among the children of Israel, and then to show that so long as that policy was adhered to, so long no foreign power was able to prevail against them. But when that policy was abandoned, when the people, or a great portion of them withdrew themselves from public affairs, took no interest in the general welfare because they had no spot of earth which was inalienably their own. So soon as they could say they had no country and no home, so soon their institutions crumbled and sank to naught.

Then, sir, we have the most instructive lesson from the history of Sparta, where the land and property were divided up into thirty-nine thousand parts, and distributed among the people. And, sir, what indomitable energy, what rare vigor characterized the Spartan of that age. The Spartan name became a synonym for "a lover of his country," and the nation was never vanquished until the system of inalienable homes was abolished.

From four hundred and eighty-four years before Christ until the battle of Leuctra, never were the arms of Sparta reversed, but onward and upward was her career among the nations.

But, sir, I am forgetting that I had only risen to give the reason why I could not address the Convention in support of my views upon the pending question. It is a subject in which the people of my portion of the State feel a deep interest, and a question which my constituents expected I should discuss.

But it is forbidden that this most important question should be liberally investigated, and I yield to the rule of the majority.

Mr. HOWE. Mr. President, this question of Homestead Exemption has been ably, as well as fully discussed, by other gentlemen, and I should not now ask the attention of the Convention, were it not that I desire to allude to a different branch of the subject from that which has already been reviewed.

The arguments of gentlemen who have sustained this measure on moral grounds, I heartily endorse, but I will not discuss that feature of the subject. I wish to call attention to another topic which has not yet been alluded to.

There are two questions involved in this proposition to exempt a reasonable amount of property from seizure or sale for any debts hereafter contracted.

And first, is the measure expedient and proper in itself?

In the second place, if expedient and proper in itself, should it be ingrafted in the new Constitution?

Now, sir, I affirm that the measure of freehold exemption is right and proper, and that it is eminently good policy to ingraft a provision embracing that principle in the organic law of

the State. Every argument, when properly weighed, will be found upon that side of the question.

I will not stop to speak of the propriety of giving men an interest in the country of their residence. If the public mind is fully settled upon any proposition, it is upon that. It makes no difference, sir, who or what party starts the proposition and advocates its adoption, the simple question is, is it right? for if it be right the people will surely endorse it.

I am decidedly in favor of this measure; not because it is ultra, not because it is radical or an agrarian measure, but because it is a conservative and an anti-radical measure. Our true policy, sir, is to ascertain what is the will of the people, and if it has progressed to a certain point, and demand a corresponding advancement in legislation, or in fundamental law, grant to that public opinion, when clearly and fairly expressed, what it demands, and there stop.

Mr. President, this is the policy which will forever prevent revolutions, and that is an object which all true statesmen should have in view.

I am decidedly in favor of the proposition for Homestead Exemption, because I am convinced that it will bring about a wholesome and a salutary change in the credit system. I shall support it on the ground that it is a practical measure, not as a theory or a mere abstraction.

Let me here remark, that it is my belief that every proposition which will have the effect to put the question of debt upon a moral basis, which will tend to assimilate the question of debt with moral obligations, and thus bring about a healthy state of public opinion in this regard, should be adopted.

I recollect reading during the last summer a series of essays from the pen of an able gentleman, a citizen of Southern Indiana—the gentleman from Posey, (Mr. Owen,) perhaps—and that as an abstract proposition the payment of debts ought to be placed among the moral obligations without the aid of legal remedy, although the time has not yet arrived for adopting it in practice, and may not arrive for a long period, perhaps never; but the proposition will aid to place the obligation of paying debts on higher ground, and I consider the arguments of those essays unanswerable. And I support this proposition because I believe it will bring about a healthy moral feeling in the community with regard to debt, and check the spirit of improvidence more than any other legal restraints upon the credit system can ever do.

In illustration of the position I occupy, and of the views I entertain, I beg leave to read an article from the National Intelligencer, which is quite to the point:

"AN UNUSUAL SIGHT.—We yesterday saw in one of the Harrisburg papers a notice of an intended application for the benefit of the insol-

ent laws. A few years ago, preceding every term of an "Insolvent Court," long columns of names were paraded in the newspapers of intended applications for the benefit of the law. We now rarely hear of such an application, and we venture the assertion that *not half so much money is lost from bad debts as was lost before the law exempting from execution three hundred dollars' worth of property was passed.* The hundreds of thousands of dollars formerly spent in legally collecting small debts are now saved to the poor, who had the tax to bear. They are, therefore, to the extent of this saving, the better able to buy for cash."

There, sir, is a practical argument stronger and better than any other that can be made in favor of homestead exemption—it is the argument of experience. And, sir, such results will certainly follow wherever a provision of the kind now under consideration is adopted.

The truth is, that in Indiana we are altogether too much in debt; we are indebted beyond our means to pay without every year anticipating the resources of the next. It is necessary to put a check upon this debt-contracting system. It is a statistical fact that the whole capital invested in farming operations does not yield an interest over three or four per cent. per annum, while our interest laws allow the taking of six per cent. interest. Merchants must have ten or fifteen per cent. profit upon their goods; first the profits of the manufacturer, then of the wholesale dealer in New York, and then of the merchants here. What interest of the State, and especially what people engaged in agricultural pursuits, will be able to stand up against such odds? In view of such facts, I look upon the question in debate as eminently a practical one, and the proposed provision as a most expedient one.

The next question is, should such a provision be ingrafted in the new Constitution? I have but one general principle to guide me with regard to Constitutional reforms, and it is this: if there be a measure—whether of legislative character or otherwise—which time has shown to be important, and experience has proven politic and expedient, place that measure in the organic law, where it may forever remain, beyond the reach of fluctuating legislation. If left to the Legislature a homestead exemption may be placed on the Statute Book this year, and repealed the next; all will be unfixed and uncertain. If gentlemen admit that this measure is a desirable one for the good of the people of Indiana, it is equally desirable that it should be fixed in the Constitution.

Mr. President, we are not contending for something which is new and untried; we are not asking of this Convention to step forward and occupy new and unbroken ground. It has been tested elsewhere, and the responses given are similar to the one I have just read.

And, sir, a measure of this kind is peculiarly

suitable to Indiana, for, of all countries, an agricultural one is least able to sustain a system of credit, as I have already remarked. The system is too expensive for it. The history of the world, from the earliest ages of civilization to the present time, proves, beyond the shadow of a doubt, that while communities peculiarly agricultural have not advanced in wealth, even while the simple habits of the greater number enabled them to procure most articles of consumption without going beyond their own boundaries, those communities in which manufactures and commerce constituted the principal interest, have rapidly accumulated in wealth. Tyre and Carthage on the one hand, Rome, in her early ages, and Greece on the other, are ancient witnesses; England and Poland are modern witnesses of the truth of the position. Our own country furnishes evidence also, to the same effect. And it is manifest upon a little reflection that it could not be otherwise. More than three-fourths of all articles consumed in the world are agricultural products, and the greater part of mankind are employed in furnishing them. In the present condition of things—certainly for several years past, with an occasional and temporary exception—the net value of agricultural productions, in proportion to their cost, has been less than the price of manufactured articles to the prime cost.

And so it will continue to be, although the ratio is constantly altering.

It is demonstrable that in order to be in a truly flourishing condition, we must manufacture as well as plant. This certain truth then, that the cost of agricultural products treads so close on price, demonstrates why an agricultural community cannot afford to run in debt. The merchant or manufacturer may now well use his credit at bank for six months, which will cost him, say three or three and a half per cent. for his operation or adventure. But the farmer cannot stand up under a credit. The plain truth is, that it is too expensive, and the reasons may be briefly summed up thus:

1st. The principal articles consumed by our farmers, over and above the products of the farm, are merchandise brought to the neighborhood by the merchant.

This merchant purchases his goods chiefly on a credit, and this credit, if for six months, costs, 1st, interest, three per cent., 2d for credit, from five to ten per cent. on the average, say eight per cent. The farmer who gets credit is taxed by this merchant, say eight per cent. besides interest, and this is approximatively what the present vicious system of credit costs. Many debts, it will be said, are lost; but they are not lost, for honest and solvent men have to pay them, under this same title of price of credit.

2dly. A community under a cash system, or that which approximates to it, will seldom buy more than their means will warrant; but under our present system they go beyond it, and the



consequence is that the resources of future years are mortgaged in advance for the necessities of the present time.

Our whole system of credit is doomed to fall, and I have no doubt that time will ultimately demolish the whole system, and the present system of banking with it.

Let a healthier system be adopted, and you will see fewer farms abandoned half cleared—fewer fluctuations in value, and a more complete sympathy between supply and demand. But it is urged that credit is useful to individuals, and has helped to improve and embellish the whole western country. This I shall not deny, and all that I desire is that it may be regulated; all that I wish to remedy now is its abuse.

The amendment now under consideration tends to this end, and if there were no other reasons for supporting it—as indeed there are many others—this alone would be sufficient to convince me. It may be regarded as first in a system of measures calculated to bring about a healthier state of credit, and tending to consolidate society, and encouraging honesty and fair dealing. I will sustain every measure which I deem conservative, and as I deem this measure conservative, and not agrarian nor radical, I am bound to support it. The question, what is conservative and what is not, must receive different solutions, and be determined by different standards, in social and political questions. In political questions, when political changes are demanded, too great caution cannot be used, as it is better to continue for a time under the present condition of things, however defective, than to change too suddenly even for a better.

But in social questions, when the political structure is not sought to be changed, we must keep up with the wants and advancing views of mankind and need not lag behind.

But this position is in all its bearings evidently conservative, and I therefore, in addition to the other reasons, gladly support it.

[Mr. WALLACE'S remarks are unavoidably deferred; they will be published hereafter.]

Mr. OWEN. I have a few remarks to submit upon this question. I had made, in my mind, the same division of the subject as that adopted by the gentleman from Lagrange (Mr. Howe). *First*, as to the right or wrong of the abstract principle; and *secondly*, as to the policy of ingrafting it, in detail, on the Constitution.

I voted against the proposition of my friend from Huntington, (Mr. Murray),—and for that gentleman I have the highest respect—not certainly, because I was opposed to the principle of a homestead exemption. I voted against it for a single reason, and that is, because, according to the best opinion I have been able to form a majority of the people, not only in my county, but throughout the State of Indiana, are not, at this moment, prepared for the incorporation into the Constitution of the details of any homestead exemption.

favor of no homestead exemption which does not extend to personal as well as real property. In regard to that, I take the same position as upon the subject of the rights to property of married women; that was, that as we have already secured to them the income derived from their real estate, we should proceed a step further and secure to them, also, their personal property. I am satisfied, also, that a homestead is of little avail if it can be mortgaged, or sold, even with an incumbered title without the signature of the wife.

That period of my life is past, Mr. President, the period of early youth, when I deemed that whatever is right in the abstract, ought at once to become law, without reverence to the progress, say even of prejudiced public opinion. Experience has taught me that it is not enough that a reform be just in itself; it must not too far outrun the popular sentiment of the times. Laws framed far in advance of the age lose their attractive force over mankind.

The argument of the gentleman from Hancock (Mr. Walpole) is a forcible one, when he says, that if the principle be clearly a proper one, we ought not to leave it to a Legislature, which has been remiss in regard to other important reforms. He quotes, as one of these, in the ninth article of our present Constitution, the provision that the General Assembly shall provide one or more farms, as an asylum of the aged poor. That is a very definite proposition; as definite as the section reported by the gentleman from Huntington (Mr. Murray); and if the Legislature, for more than thirty years, have failed to carry out the one, what certainty is there, if public opinion do not urge them, that they will put in force the other?

Mr. WALPOLE (interrupting). The distinction is, that is a public and this is a mere private right.

Mr. OWEN (resuming). That is not the question, and does not weaken the argument. The provision, in either case, is intended for the benefit of a certain portion of the citizens of the State. If the reform, in regard to a homestead exemption, be in advance of public opinion, it is quite as likely to be neglected by the Legislature, as the providing of farms for the aged poor.

On the abstract question of the homestead, my colleague and myself differ. This difference was debated by us during the canvass; he condemning the principle, I supporting it. I believed then, as now, that the homestead provision lies in the path of our future progress. I go even further than this. I believe that in that path of progress, albeit at some distance, lies another reform, more radical yet; the abolition of all compulsory process for the collection of debt. [Cries of "consent."] Let not gentlemen imagine that I am about to propose the insertion of any such principle as a Constitutional provision. I know too well the point

There are various questions connected with the details of this principle, such as whether the exemption shall extend to personal as well as to real property? to what extent the homestead shall be inalienable? and others. I am in which public opinion has yet reached. That will be matter for our children, perhaps for our grand-children, to consider. I but express my opinion—for in regard to such matters I have nothing to conceal—that, some day or other, all compulsory process to collect debts will be abolished; I say, not all suits to determine debts, still less all credits, only all compulsory process. But that is in the future, and for the future, and we need not discuss it now.

Why do I believe that this homestead exemption, and similar reforms fraught with leniency to the debtor, lie in our future path? It is the lesson taught by history. Go back to the earlier provisions for the enforcement of debt, and you will find them severe almost in proportion to their antiquity.

Take, for example, the laws of the twelve tables. By these laws the death penalty was the punishment of insolvency. To the creditor was given the power of life and death over the debtor; and if the author of the "Decline and Fall" may be trusted, that power did not cease even with life, but authorized the partition, among those to whom the dead man had remained indebted, of his mangled remains. I read from what has been called "the luminous page" of Gibbon:

"After the judicial proof or confession of the debt, thirty days of grace were allowed, before a Roman was delivered into the power of his fellow-citizen. In this private prison, twelve ounces of rice was his daily food; he might be bound with a chain of fifteen pounds weight; and his misery was thrice exposed to the market place, to solicit the compassion of his friends and countrymen. At the expiration of sixty days the debt was discharged by the loss of liberty or life. The insolvent debtor was either put to death, or sold in foreign bondage beyond the Tiber; but if several creditors were alike obstinate and unrelenting, they might legally dismember his body and satiate their revenge by the horrid partition."

I pass now to the ancient Greeks, and I find among them, previously to the days of Solon, the law, that a debtor might be condemned by his creditor, to slavery. It was there customary, to pledge the person for the re-payment of debt; and the moment the condition was broken, the law allowed the creditor, without further process or delay, to seize the debtor's body, and at his option, consign him to domestic slavery, or sell him into foreign bondage. The milder laws of Solon, manumitted many of the peasantry of Attica, who, like the peons of Mexico, had thus sacrificed their liberty for debt.

In ancient Egypt, no man was permitted to borrow, without first pledging to the creditor,

the embalmed body of one of his forefathers; a failure to redeem which was reckoned as infamy, worse than death. The whole sepulchre of the debtor was placed in the creditor's power. The debtor if unable or unwilling to pay his debts, was himself deprived of burial, and whilst he lived, he was not permitted to bury any person descended from him. When we call to mind the importance attached to the rites of sepulture among a people who arraigned the dead ere they permitted their consignment to the tomb, and refused burial to him whom the public accuser convicted of a vicious life, we shall conclude, that Egypt was hardly second to Rome in her severities to the insolvent debtor.

A century and a half ago, there was passed, in England, during the reign of Queen Ann, a statute making fraudulent insolvency a capital offense. But this law was short-lived. Its severity caused its repeal.

What has been the progress among ourselves? Is not the principle of imprisonment for debt dropping out of one Constitution after another? Have we not ourselves abolished it, in a section recently passed, in every case but that of fraud?

No man can look around him without perceiving, that the tendency of the age is towards greater and greater lenity to the debtor. Did we not hear, from one of our own members but yesterday, an eloquent eulogy on a departed patriot, the lamented Johnson, and was it not enumerated, and justly enumerated, among the noblest acts of his life—far worthier of record than his achievements, glorious as they were, on the battle-field—that he had been an early and a persevering advocate of the abolition of the imprisonment for debt.

But this is a digression. My colleague (Mr. Hovey) speaking on this subject, asks: "Can it be possible that this Convention will sanction legal swindling?" An intimation, as I understood it, that this homestead exemption principle is nothing better.

Mr. HOVEY (interrupting). I stated the case of two friends, one having five hundred dollars and lending it to the other, upon his promise to repay it at a certain time; and at the time set when the borrower is applied to for the money, he replies that the law exempts him, and refuses to pay. Such a case, I say, amounts to legal swindling.

Mr. OWEN. If that argument has any force, it amounts to this: That if we pass a homestead exemption law securing to the owner five hundred dollars worth of property, real or personal, as permanently his own, that exemption is a law permitting legal swindling. Now I ask the gentleman whether our law, as it now stands, which exempts, in the use of every householder, one hundred and twenty-five dollars' worth of property, is not just as much a



law permitting legal swindling as the proposed homestead of five hundred dollars would be? I am sure his good sense must convince him that there is no difference whatever in principle—a mere unimportant difference in amount of exemption only—between these two cases. A man *may* act the rascal under any law.

If I am not mistaken, the gentleman stated also, that he had little or nothing to say to those who were opposed to the credit system. In one sense, I am not opposed to the credit system. So long as credit is given by one man to another, because he believes that he is honest, and that he will pay without the coercion of law, so long I believe the credit system to be wholesome and good. But when credit is given with a preconceived intention on the part of the creditor to coerce payment by law, in that case I hold the effect of the system to be bad and unwholesome. In such cases I think that credit ought not to be given; and that, when given, it does no good to society, neither to him who gives, nor to him who receives it.

And I believe, sir, it has also been said to-day that honor and honesty are no proper foundations for credit; that the only true foundation for credit is property. Whither does such a doctrine lead? Inevitably to this, that the upright poor man, with no security to offer but a bond that has never been broken, should be denied credit; while his rich neighbor a swindler, and scoundrel, though he be, ought to have it, because he possesses the legitimate foundation of credit, property. I think that credit is better based upon honesty than upon fifty thousand dollars.

I will say, in conclusion, that while I felt myself constrained to say what I have said as to the amendment of the gentleman from Huntington, (Mr. Murray,) I favor the amendment of the gentleman from Allen, (Mr. Borden,) which proposes to insert at the proper place the words "real or personal;" regarding these as an indication to the Legislature, that the general principle of the homestead exemption is adopted and recognized.

Mr. NILES. It was not my purpose to say anything upon this subject, under the operation of the rule limiting debate to the brief period as fixed at present; but while listening to the arguments of gentlemen this afternoon, I have found myself, in opposition to my previous intention, noting down some thoughts suggested by the remarks which I have heard. I am impelled to this course more especially by the views presented by the gentleman who has just taken his seat (Mr. Owen). I need not say that I always listen to that gentleman with great respect, both for his intelligence and his motives; but while I so much respect his opinions, and honor his motives, I am frequently compelled to differ widely from him in my ultimate action upon measures which are presented here. It was with no little regret that I heard

a few moments since, from the gentleman from Tippecanoe, (Mr. Pettit,) that he should not attempt to offer the remarks which he had designed to submit upon this question. I believe it worthy of thorough consideration. The gentleman from Posey, (Mr. Owen,) has made a strong argument in favor of the homestead exemption, and believes it to lie in the path of our future progress, but is unwilling to incorporate the principle in the Constitution, from the fear that public opinion is not ripe for the measure. Now, sir, whatever great principle I believe to be clearly sound and right in itself, and tending to improve and elevate the condition of the human race, I am ready and willing to take the responsibility of ingrafting upon the organic law, and I will trust to the intelligence and calmer thoughts of the people to meet us upon proper ground.

Much has been said during the progress of this debate, in relation to the obsolete idea of imprisonment for debt. We have by unanimous consent, interdicted it forever, and we feel no fears that the people will disapprove of our course. I could not so well have expressed, as it has been done by others, my abhorrence of that old abuse—that remnant of the age of feudal darkness—those times of error and oppression when men were treated as brutes, as mere instruments in the hand of power. We indeed have passed that day. We recognize the truth as clearly as we ever see the sun in the heavens, that it is inconsistent with the first principles of free government, with every dictate of sound reason and benevolence, that a man, because of his misfortunes, should be incarcerated in a dungeon, and compelled to pine and rot in hopeless solitude. The gentleman who sits behind me, (Mr. Thornton,) this morning, in his merited eulogium upon that worthy patriot who has so recently departed from among us, (Richard M. Johnson, of Ky.,) spoke in terms of just commendation of his earnest efforts to abolish imprisonment for debt. Sir, we honor him more, in our heart of hearts, for that single act, than for all his deeds upon the tented field. Now, sir, suppose that instead of meeting in this Hall precisely at the middle of the nineteenth century, we had filled our place upon the stage a quarter of a century ago, and had then been called to occupy these seats for the very purpose for which we are now convened, and suppose that that great measure of reform, then just beginning to agitate the public mind, had been urged upon us, should we, ought we, to have shrunk from so plain a principle of progress? Though public opinion was then just beginning to be aroused upon the subject it would none the less have been a shrinking from the performance of a duty—from an act which, in all its consequences, would have been good, unmixd with evil. With my present views at least, and seeing that measure as I do to-day, I would have gone for it as cordially and earnest-

ly as I have voted for it now, and would have trusted the result to the enlightened judgment of the people. I would not have said, as some gentlemen who favor the principle say in regard to the homestead exemption, let us adopt some provision intimating our opinions, and tending to the prohibition of imprisonment for debt; but I would have forbidden it, in the Constitution, in so many plain unmistakable Anglo-Saxon words.

I, sir, feel equally certain in regard to the soundness of the principle of Homestead Exemption, as of non-imprisonment for debt. And my own individual views would carry me further than would, perhaps, be thought prudent by a majority of the friends of the measure. I should, indeed, be satisfied at present, with the prospective exemption of a home not less in value than five hundred dollars, as proposed in one of the amendments now before the Convention. But were the question to be decided by my individual vote, I would secure to every family a comfortable home against every process of the law, except for taxes, which must be paid, and which no one with a home could be unable to pay—against mortgages, liens, and incumbrances of every description, and that not only during the life-time of the owner, but during the life of his widow, and till the youngest of his children should have become of age. It should be not a stinted shelter, but a comfortable home, worthy of the name.

Gentlemen have talked eloquently of the protection thrown around the homes of England. It is the boast of the common law, that every man's home is his castle, within which neither the prince or his vassal, is permitted to intrude. It is a principle dear to the American heart, as life or liberty itself. It is a ground element of our civilization. Destroy the sacredness of home and the world is thrown backwards towards barbarism. Now, sir, tell me when the public interests can require that the sheriff, with his posse, should be compelled to intrude upon an American home, and drive a family from that sacred spot, thrown bankrupt upon the charities of the world, because, forsooth, the husband or the father had become a profligate or a drunkard? Give me the example and the reasons, and I will tell you in the same words, why an unfortunate debtor ought to rot in jail. The arguments for the one sustain the other, and with equal, but no greater force.

If it be said that the cases in which such protection would be necessary are few, I answer that, though comparatively few, they are often heart-rending in their character, and enough to arouse and enlist the sympathies of every benevolent man. How often does it happen that a young husband and wife, by self-sacrificing industry, secure a comfortable, though humble home; the husband and father, in a too hopeful moment, becomes involved in debts, which, had his life been spared, he might have been able to

pay: but, in the inscrutable ways of Providence, he is taken from his family, and in due course of law, their little home is sold and parted among the creditors, as if it were the spoils of victory. The mother, driven from the shelter which her industry had helped to provide, with no spot on earth which she can call her home, is compelled to tear in sunder the ties of nature and part her children to distant strangers, or to support them by the unaided labor of her hands. And that too, under the laws of a civilized and christian land! Sir, such scenes are a disgrace to the legislation of the State, and a burning shame to the age in which we live.

But it is argued that it is necessary that the home be subject to be sold on execution, in order to secure credit to its owner. I grant you, sir, that, when he or his wife or children visit the neighboring town, traders and sharpers, of a certain class, may be more likely to induce them to purchase on credit, what they are not able to buy, and what they do not really need, than if the little home were beyond their reach. The fact that a judgment could be had at any moment, before a justice of the peace—that a transcript could be filed in the circuit court, becoming at once a lien on land—that at the next term of the court, a judgment upon *scire facias* could be obtained, execution issued, and the homestead sold, would give some assurance to a heartless creditor. But let it be remembered that economy is wealth, and that industry, integrity, and honor are the true basis of credit. Credit will exist wherever these are found, and where these are wanting it is nothing word. It is strange benevolence to the debtor, that, because he may have been unfortunate, or to his family, that, because he may have been dishonest, his and their home shall be sold by the sheriff, under the relentless process of the law. Such scenes can never be an honor to the history or legislation of any country in the world.

But, sir, if there were no great principle of benevolence and humanity involved in this measure, I would favor it for the very reasons upon which others found their opposition—because it will place a wholesome check upon hasty and indiscriminate credit—one of the vices of our time. Have gentlemen forgotten that golden rule in private economy, so often called the true philosopher's stone, turning everything into gold—the time-honored maxim—"pay as you go?" If, by adopting this measure, we help to carry that maxim into practice, however long and tedious and expensive the sitting of this Convention may be, the people will receive back a thousand fold of all it will have cost them.

That credit which is based only upon the homestead of the debtor, is worse than none. If credit and commerce can rest only on such a foundation, and can be sustained only by driving families from their homes; if such is the alternative, then I say, emphatically, let them



perish. The Homestead Exemption would be a fearful check upon credit indeed! Were Baron Rothschild to come among us and locate himself in Indianapolis, to loan out his money upon bond and mortgage, that he might double, treble or quadruple his uncounted millions by usurious gains, the men whose little homes were protected would, indeed, not become the borrowers. But without such protection, they might in unguarded moments, mortgage to him their homes, and always to their injury, if not their ruin. With such protection, so many of the ardent minded and too hopeful citizens of this State could never have made loans from our odious and oppressive Sinking Fund—a Sinking fund, indeed! [applause,] sinking our fellow-citizens by scores and hundreds, into hopeless bankruptcy, and throwing them homeless upon the world. Under that beautiful, Jew-like policy of loaning money by the State to her citizens, on long times and at heavy interest, we see every year, pages of advertisements in the newspapers of this city, offering for sale the farms of the people, on mortgages to that Fund. With a system of *protected homes*, it is true that many of those mortgages could never have been received, but it is no less true that many a worthy citizen would have escaped a load of accumulated evils which have followed in their train.

But gentlemen say, adopt such a measure as this, and you will tempt men to resort to all manner of subterfuges to avoid the payment of their debts. Now, sir, I would ask any member upon this floor to reflect and answer me, who are the men, unless they be knaves at heart, whose property is covered over with mortgages, to shield it from executions? Who are the men who most often have been charged with covering up their property, but the very men who have been mercilessly driven from their homes, because of their misfortunes, and the necessities of whose wives and children appeal to them with a force which they are poorly able to resist? Who, but these are most often found attempting to shield what little property they have remaining, from the reach of executions issued from your courts of justice? Who but such men, are most often charged with subterfuges? And who but these, of all others upon earth, can you least condemn?

And gentlemen not only say that in this measure we strike at the foundations of the credit system, but they call hard names; they talk of radicalism and agrarianism, as if we would overturn the foundations of society. Indeed, sir! notwithstanding the courtesy which is due from one gentleman to another upon this floor, I could but feel my blood tingle in my veins, when I heard such language. Agrarianism indeed! because we would protect a home to every family and to the widow and her infant children against the relentless mission of the officers of the law! Away with such language and such reasoning. Tell us that you despise

and defy the principles of benevolence and of progress, and we will give you credit for consistency at least; but do not come with professions of sympathy for the poor upon your lips. There is no other such great conservative measure now agitating the public mind. The wealthy do not need its protection, but it shall help to raise the middling classes and the poor to a condition of conscious independence and self respect. Who feels humiliated by retaining for the use of his family the hundred and twenty-five dollars worth of personal property, now exempt from execution? And what unfortunate debtor, because his family are left in comfort, shall be less likely to put forth every effort to discharge all the obligations of honor and of conscience, than if his family had been beggared and his spirits crushed? Talk of it as we may, there is no such picture on earth as the homes of the people, rude and homely though they be.

Those will love their country who love their homes. Protect them in their homes and they shall defend their country, her laws and institutions. Make home in very fact, what the common law has dimly seen that it should be, and you shall help to build up a condition of society among us; a state of external and internal peace and beauty, such as the sun has never looked upon in all his course. It is a policy not for a day, but for all time. Its benign influences will not be fully seen in your day or mine, but it shall shed its sunlight upon the homes of our children. It is in harmony with that long hoped for and better state, when every family shall sit peacefully under their own vine and fig tree, with none to molest or to make them afraid. It will go hand in hand with Christian civilization, whenever and wherever its influence is extended, and it will never be abandoned till that light goes down in darkness.

It may be thought unsuited to the place and the occasion to refer to the recollections and associations which make up the crowning felicity of life. But I respond with all my heart, to the touching and beautiful appeal of the gentleman from St. Joseph (Mr. Colfax). I am not ashamed to own that my feelings are enlisted no less than my understanding is convinced. I go for the measure because it is right in itself, right against all forms of sophistry, right against all appeals to prejudice and passion, and the love of gain, right against the world. The home where the ivy and the woodbine have been taught to twine by tender hands and loving hearts—where the children were born, and some of them have died—where the aged parents still remain, and whither the sons and daughters return from their distant emigrations to pay their tribute of filial homage—the home where all that is sacred in life in death and in religion centres—that home I would protect, not by unstable laws enacted to-day and repealed to-morrow, but by constitutional provisions immutable as truth and justice

and enduring as the everlasting hills. [Applause.]

Mr. NAVE. It would seem, Mr. President, from what has taken place this afternoon, that almost the entire Convention is in favor of the proposition of the gentleman from Hancock, (Mr. Walpole,) securing a homestead exemption to every citizen of Indiana, of not less than five hundred dollars in value. But, sir, I rise in my place to enter my solemn protest against the proposition. I am opposed, sir, entirely, to an absolute exemption of five hundred dollars worth of property, over which the creditor shall have no control, either in his person or through a sheriff. I am not here to protect the interests of the wealthy, as it seems to be charged upon those who are opposed to this exemption. The majority of the citizens of Indiana, sir, are not worth five hundred dollars; I therefore ask if in protecting those who are worth five hundred dollars, you are not protecting the wealthy. I insist then that the amendment of the gentleman from Hancock, does not give protection to the poorer class of citizens in this State, who compose the majority of the inhabitants.

I recollect, sir, that a general bankrupt law once passed Congress, and that its passage was hailed as one of the greatest blessings that could be bestowed on the American people; and yet it proved a blighting curse to them; and the same will be the result of this celebrated homestead exemption law, of which gentlemen speak so flatteringly.

I ask gentlemen to meet me on a practical and correct proposition, to protect the poor. I am for saying to the sheriff, so far shalt thou come, and no farther; and if you give the heads of families an exemption of two hundred dollars, sir, you protect the poor. If the proposition of the gentleman from Hancock is voted down, I shall propose a substitute in the following words: "not to exceed five hundred and not less than two hundred dollars." Thus we will have a maximum and minimum to control the Legislature in their action on the subject. If you say you will exempt a man owning property worth five hundred dollars, the man worth one thousand, or two thousand dollars will come forward and say, you must protect me to the full value of my property, or you fail to carry out the principle of the homestead exemption. A gentleman not long since who was building a house worth twenty-three hundred dollars, told me that he considered if the principle of the homestead exemption was carried out, he would be protected to the full value of his property. I take the ground, sir, that until you destroy the system of credit that prevails in Indiana, you should not protect from execution for debt, except in small amounts, and for the benefit of the wives and children of intemperate and profligate husbands.

By way of enforcing their arguments gentlemen have referred to the practice that pre-

vailed in Judea on this subject. Well, sir, the principle in operation there, was that no man needed credit. Sparta, in like manner has been referred to, where, as in the case of Judea, no system of credit prevailed, and therefore, there was no necessity of protection to the homestead. The references of gentlemen amount to nothing, and prove nothing, except the fact that they wish to secure to the wealthy citizens of Indiana an absolute protection against the payment of honest debts. I enter my decided protest against such an effort.

Mr. HOVEY said: I wish to make a few remarks in answer to the comments which have been made by gentlemen, upon the historical facts which I presented, and the views which I expressed this morning. A spectator to the debate this afternoon, would suppose that the delegates who have had the floor for the last two hours, were declaiming to some popular assembly. The tears of the widow and the orphan—the destitution of the wife, with her helpless children—the grave, with its ivy and myrtle, creeping and twining over and around it—all in short that can awaken our sensibilities, or touch the feelings of the heart, has been dragged into this discussion. Are we to be guided simply by the impulses of the heart? And shall we not listen to the dictates of reason? Have gentlemen forgotten to argue, and is declamation the most trivial and fulsome to be advanced? I thought that this deliberate body was one of argument, of thought, of reflection, one, sir, whose judgment was not to be guided by light and sophistical declamation.

I would tell my honorable colleague, (Mr. Owen,) erudite and talented as he is, that he has read history but to little purpose, if he is prepared to believe the cruel and bloody picture, which he has just portrayed to this Convention. The story of cutting the body of the debtor in pieces and dividing it among his creditors, is now regarded as a mere fiction by the best legal antiquarians. If the gentleman doubts this statement, I refer him to Kent's Commentaries, which I think will fully convince him of his error. But even for argument admit his statement is correct, does it follow because the creditor has been by law deprived of the power of the dungeon, and ceased to take an arm or a leg of his debtor, that he should also give up the whole of his debt, by the adoption of laws that might deprive him of it? Surely not. The idea of over-riding plain principles of justice by appealing to the feelings, through the arguments of the widow, the orphan, the grave, the dungeon, and even the imaginary bloody fragments of the unfortunate debtor, is to me, to say the least, a new mode of argument.

The gentleman from Tippecanoe (Mr. Pettit) has brought before the Convention, the fact that the ancient Jews lived under institutions giving to each a home, and argues their happiness and prosperity from that fact. Now, sir,



I think there was some higher cause than that institution, which guided that favored nation to happiness and prosperity. Yes, the same God that led their fathers through the wilderness, and the Red Sea, was around and about them for protection, until they forsook him, and then even their homesteads could not shield them from destruction.

Immediately after my conclusion this morning, the gentleman from Allen (Mr. Borden) arose and made an attack upon the historical part of my remarks. He brought forward Arnold, an English, and Neibhur, a German historian, who pretend to have discovered in the nineteenth century, that all the ancient Roman historians were wrong in their statements in regard to the Gracchi and the agrarian laws of Rome. They, Arnold and Neibhur, (he says,) prove the Gracchi patriots, and that the Licinian law did not take the property of one class to divide amongst another.

It is not uncommon for historians, as well as writers on science and philosophy, to attempt to make the credulous believe some great new discovery of their own. Such I should feel disposed to think were the gentleman's favorite authors, as they have pretended to discover that more than one half of Roman history is fabulous. And I would not be at all surprised, sir, if these favorite authors were placed somewhat in the situation described by the very poetical, classical, and beautiful quotation made by the honorable gentleman a few days ago. It was this:

"Tickle me, Tommy, do, do, do;  
You tickle me, and I'll tickle you."

I would not be surprised, sir, if Arnold was tickling Neibhur, and Neibhur Arnold in regard to their respective grand discoveries. I should be obliged to the Secretary if he would read a few extracts for me. I wish to show by better authority than that cited by the gentleman, that the position assumed by me this morning in regard to Roman history, is correct.

"The tribunes had not yet begun to make their complaints, when they were anticipated by the consul Sp. Cassius, who, being already in high favor with the popular party, continued to flatter the passions of the inferior class, and is said to have aimed at an improper and dangerous influence in the State. He affected great zeal for the rights of the people, and proportional indignation against their oppressors. He complained, in particular, of the improper use which had been recently made of the conquered lands by suffering them to become the property of persons who were already too rich. Having himself made some conquests, he showed how the lands of the Republic ought to have been disposed of by making an equal division of his own acquisitions among the more indigent citizens."

"But while Cassius alarmed the rich with the danger to their property, he at the same time alarmed every citizen with danger to his personal consequence by offering the freedom of the city to every alien, &c."

\* \* \* \* \*

"And, though the author perished in the attempt, the subject itself was entailed on the commonwealth as a subject of dissension and became the source of repeated demands on the part of the people." See Ferguson's Rome, page 18, sec. 2; Livy, lib. II., c. 41.

Here is the argument of Tiberius Gracchus, to the patricians, urging them to submit to the agrarian law. He certainly would not use language or arguments such as are here set forth, unless he wished to divide the lands of the patricians amongst the plebeians—

"He exhorted the present proprietors of land whom the law of division might effect, not to withhold, for the sake of a trifling interest to themselves, so great an advantage from their country. He bade them consider whether they would not, by the secure possession of five hundred jugera, and of half as much to each of their children, be sufficiently rewarded for the concessions now required in behalf of the republic; put them in mind that riches were merely comparative, and that in respect to this advantage, they were still to remain in the first rank of their fellow-citizens." Ferguson's Rome, 94; see also Appian; do. Bell Civ.

I will now call the attention of the Convention to the writings of the great Cicero, who ought on such subjects to be good authority, especially as he was a Roman by birth, and her greatest orator—a little better, I should judge, than Arnold:

"But those, who, designing to curry their favor, attempt new laws about the leveling of estates, so as to force the right owners from their lawful possessions; or proposing to make creditors remit all debts which in justice are due to them; plainly undermine the two principal pillars and supports of the government. In the first place, concord and unity amongst the citizens; which can never be kept up while some are deprived of what is justly their due, and others discharged from the necessity of payment. Secondly, justice; which immediately must sink into ruin and nothing if men cannot be secured in the possession of what is their own; for that, as we before remarked, is the chief end and aim of men's getting into societies; and building of cities, that each one might freely enjoy without any danger or fear of being deprived of it. Besides this, the authors of these pernicious designs never get that good will which they propose from the citizens. For as for those men who are losers by such a method; it is certain they will be their enemies for it; and those who are gainers will be sure to pretend that they never desired it."

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"Besides, what reason or equity is there when estates have been held for a great many years, or perhaps ages, that the rightful owner should be thrust out from them, and others that never had any, should come and possess them." Tully's Offices, book 2, chap. 22.

In the succeeding chapter of the same work one of the causes which led to the suggestions of the great Cicero which have just been read is plainly apparent. He says—

"Pray what is it that ruined our own two Gracchi sons of the famous Tiberius Gracchus, and grandsons of Africanus, but only these controversies about *leveling estates*?" Chap. 23, lb.

I will cite but one more authority, the great Roman historian, Livy, to show that my position was correct:

"Accordingly, Caius Licinius (or Stolo) and Lucius Sextus were elected tribunes, and proposed several new laws; every one of which was injurious to the power of the patricians, and in favor of the interests of the plebeians. One related to debt, enacting that whatever had been paid as interest, being deducted from the principal, the remainder shall be discharged in three years by so many equal instalments. *Another, setting bounds to landed property, enacted that no one should possess over five hundred acres (jugera?) of land.*" 2 Livy, VI. Book, Sec. 35—see also Ferguson's Rome, page 27.

I have had these authorities read, sir, for the purpose of showing not only what the history of the agrarian movements was, but also to show what some of the great Romans thought on such subjects. I think it will scarcely be doubted that Cicero and Livy were not only competent, but the very best of judges on such subjects, and should be far preferred to any modern writers.

It has been urged, that because seventeen States have adopted the Homestead principle, that Indiana should also adopt it. In other words, if seventeen States should adopt any bad law, we should follow their example. Do gentlemen forget with what enthusiasm the general bankrupt law was hailed in 1841? That law was received by the united voice of twenty-six States; and yet the breath of life had been scarcely breathed into it, before it was repealed. And yet, sir, in my opinion, that bankrupt law, though to me odious, is preferable in some respects to the provisions embraced in the amendments offered by the gentleman from Huntington.

The bankrupt law took all the property of the applicant, (except what the court might allow,) and discharged him from his debts. The amendments propose to allow to the applicant \$500, if he should own land, exempt from execution, which would virtually release him from his indebtedness. The bankrupt law would not have materially injured the credit of the poor, while the amendments proposed would strike at

its very root. Besides this parallel, doors to fraud would, in my opinion, be much wider open under these amendments, than under the bankrupt law of 1841.

Mr. WALPOLE (in his seat). The gentleman from Posey does not say how it impairs credit.

Mr. HOVEY. That, I think, I have already shown in my remarks this morning. No man who is permitted by law to hold back five hundred dollars will be able to get credit. Especially the poor man, because the creditor will say to himself, "this man must be worth more than \$500 before I can make my debt, and therefore I will not credit him."

I wish now to make a few remarks in regard to the original section reported by the committee. I cannot look upon that section with any allowance. I regard it as a demagogical section, calculated to make favor with the friends of the homestead. Sir, it means nothing—it has neither soul nor body. It is an empty declaration that the Legislature may obey or evade at their pleasure. They have all the power without it that they can have with it. I do not like to see gentlemen sneaking behind such a provision, and declare, "we voted for the principle of the Homestead." The gentleman from Hancock (Mr. Walpole) and the gentleman from Marion (Mr. Wallace) view this section in the right light. Come out, gentlemen, you pretended friends of the Homestead, come out; show your hands; don't dodge the responsibility; do not attempt to throw upon the Legislature the duty of enacting a law which you yourselves are ashamed or afraid to endorse. Go the full figure; vote for the minimum of \$500, and you will have the labors of this Convention thrown back upon your hands with a withering rebuke.

My colleague says, that we have abolished imprisonment for debt, passed laws allowing one hundred and twenty-five dollars exempt from execution without injury, and hence he argues the propriety of establishing by law some Homestead provision similar in details to these amendments. Now, sir, I am willing to admit that the abolishing imprisonment for debt, and the exemption of the one hundred and twenty-five dollars, are wise and humane provisions; but I think the conclusion that he attempts to draw from those facts, will not sustain the exemption of five hundred dollars. If five hundred, why not a thousand? and if a thousand, why not abolish all laws for the collection of debt? We would then be with the gentleman fully up to his anticipated reforms.

Again: he alludes to the poor boy which I presented by way of illustration, and asks if property is the principal basis of credit, how he would be able to obtain it? The gentleman must have misunderstood me—probably in consequence of my rapid style of utterance. I



gave the reason why that young man could get credit, without having the actual possession of property, under our law as it now is.<sup>a</sup> I said that the man who had the muscular strength, the bones and sinews, with industry and economy, had within himself a gold mine which would always produce the means of payment. And on the contrary, no difference how honorable and good a man's intentions might be, if he should be feeble, diseased, and without property he could not procure credit, thus plainly showing that honor is not the basis of credit.

In conclusion, I wish to call the attention of the Convention to the course of action which we have taken in regard to our old Constitution. We were sent here to make a few simple amendments to that instrument, and now we are entirely revolutionizing it. Not an article, scarcely a section, a sentence, a word; scarcely a comma of the old Constitution left by our committees with the tail side down! All is novelty, and the motto of some of the great men of this Convention is, "radical reform and destruction to all our old laws and institutions." I trust in God, however, that such will not be the final result.

Pending the question,

On motion of Mr. PEPPER of Crawford, the Convention adjourned until 9 o'clock tomorrow morning.

#### SPEECH OF MR. WALLACE,

*On Mr. Pettit's Resolution proposing to abolish the Grand Jury system, delivered Monday Afternoon, October 21st, 1850.*

I am very much obliged to the gentleman from Switzerland (Mr. Kelso) for offering the amendment now under consideration. It, in my humble estimation, changes the character of the original resolution offered by the gentleman from Tippecanoe (Mr. Pettit) in a most material point. Instead of being imperative as the terms of that resolution are, it proposes to make it the duty of the committee simply to inquire into the expediency of abolishing our Grand Jury system. And surely, sir, so radical a change as this would be, in a matter so important in the administration of our criminal law, deserves to be approached by us with great caution, and not to be made only after the most searching and careful examination. My experience in legislation teaches me that all investigations can be better and more satisfactorily made by and in committees, than by and in an assembly so numerous as this is; but unless we sustain the proposed amendment, the committee can have no discretion whatever; they can make no investigations; and no matter how clearly they may be convinced of the impolicy of the measure, they are nevertheless bound to report it back to us with all its errors and imperfections. I trust, therefore, that the Conven-

tion will adopt the amendment, and let the subject go to the committee untrammelled by any imperative instructions whatever.

In the course of the last two or three years, the Legislature of the State made various changes in the mode and manner of administering the criminal law in this county. They took from our Circuit Court, and consequently from our Grand Juries, original and exclusive jurisdiction in many of the offenses recognized in our criminal code, and gave it to the justices of the peace. This, sir, has enabled me, in some degree, to see and realize what would be the practical working and effect of the public examinations contended for by the gentleman from Tippecanoe; for, as the law stood prior to the enactments of last winter, unless some one voluntarily came forward and made oath, charging another with the commission of some offense, crime went unpunished, and simply because our magistrates had no power to compel any person against his will to become an informer. To obviate this defect, the Legislature last winter made it the duty of the prosecuting attorney to file informations, and upon such informations, empowered the magistrates to subpoena witnesses, and to compel them to divulge all they knew touching the matters charged therein, thereby giving, or attempting to give, to the prosecuting attorney and the magistrates Grand Jury powers. This, sir, I protest against. I desire to see no man or officer vested with such tremendous power; and more especially when that man or officer's fees or living is made to depend on the number of accusations they can make, or the number of convictions they can procure. But, sir, what does all this prove? Nothing short of this, in my opinion: Criminal justice would fail to be administered in ninety-nine cases in a hundred, if we were to rely exclusively on voluntary accusations. The power, therefore, must be vested somewhere to compel involuntary informations—a point conceded by gentleman on all hands. Where, then, is it safest to place it? In the hands of one, or two, or three interested persons, or in the hands of eighteen or twenty impartial citizens drawn indiscriminately from the body of the people of your county! For my part, I cannot hesitate a moment where I would place it. I would give it to the eighteen or twenty independent freeholders of the county, where the common law placed it a thousand years ago.

But the gentleman from Tippecanoe zealously asks to have the privileges of facing his accusers. Sir, whenever that accuser can be found, (for it most frequently happens that this is the most difficult part of the business,) he will be sure to have him face to face when put upon trial, in court, before the petit jury. But this is not what the gentleman wants. He wants the opportunity of suppressing an accusation, in order that a public trial may be avoided. In

other words he would make the tribunal of inquiry a court of trial. Instead of finding the the simple fact that a crime has been committed, and that a certain person committed it, he would have it invested with the powers and duties of a petit jury, also, and thereby not only to accuse, but to try and acquit, or condemn. What a beautiful scene our Grand Jury rooms would often present under such a system. It would make it a perfect bear garden—a place of strife and confusion, where the poor would be made to succumb to the rich, and the weak to the strong and influential. Let the gentleman's system be once established, and my word for it, we would find it a system calculated to suppress prosecutions, and to encourage the commission of crime—for a bold man, truly, would he be, then who would dare publicly and voluntarily to file an accusation against any one, and especially if that one happened to be a man of high standing and influence in the community.

Sir, it is not my object at present to discuss this question fully. I know it would be out of order, but I hope at some other time to be able to speak of it more at large. One point, at least, is certain. We should be exceedingly careful how we attempt a radical change in a measure so important as this is, lest in the endeavor to avoid the evil we should run into a much greater one. I hope, therefore, that the amendment will prevail.

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TUESDAY, Nov. 26, 1850.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. MYERS.

The journal of yesterday was read and approved.

There being no reports from committees,

The Convention resumed the consideration of the section exempting a reasonable amount of property from forced sale and execution.

The pending question being on Mr. WALPOLE'S amendment, fixing the amount of property to be exempted at not less than five hundred dollars in value,

Mr. FOLEY moved that the amendment be laid upon the table.

Mr. WALPOLE demanded the yeas and nays; and ten delegates rising to second the demand, they were ordered, and being taken, were—yeas 81, nays 39—as follows:

YEAS.—Messrs. Alexander, Allen, Badger, Balingall, Barbour, Berry, Blythe, Bowers, Brookbank, Butler, Carr, Chandler, Chenoweth, Clark of Hamilton, Clark of Tippecanoe, Coats, Davis of Parke, Davis of Vermillion, Dobson, Dunn of Jefferson, Duzan, Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Haddon, Hall, Harbolt, Helm, Hendricks, Hogin, Hovey, Huff, Johnson, Jones, Kent, Kendall of Wa-

bash, Lockhart, Logan, March, Mathis, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Morgan, Newman, Pepper of Crawford, Prather, Rariden, Read of Clark, Read of Monroe, Ritchey, Robinson, Schoonover, Shannon, Sherrod, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Steele, Stevenson, Tague, Tannehill, Thornton, Trimbley, Watts, Wiley, Yocum, Zenor, and Mr. President—81.

NAYS.—Messrs. Anthony, Bascom, Beach, Beard, Bicknell, Biddle, Borden, Bright, Bryant, Chapman, Cole, Colfax, Dick, Hamilton, Hawkins, Hitt, Howe, Kelso, Kilgore, Kinley, McGuire, Mather, McClelland, Miller of Clinton, Miller of Fulton, Mowrer, Murray, Niles, Nofsinger, Pepper of Ohio, Pettit, Shoup, Spann, Taylor, Thomas, Walpole, Wheeler, and Wundelrich—39

So the amendment was laid on the table.

Mr. WALPOLE moved to amend by inserting the words "not less than four hundred dollars."

Mr. CARR of Jackson moved that the section and the pending amendment be indefinitely postponed.

Mr. HALL. I wish to call the attention of the Convention to a resolution adopted at a public meeting in the county that I, in part, represent, in relation to the subject now before the Convention. The delegates on this floor, who represent the northern portion of this State, seem to think that the people call for the incorporation of this provision in the Constitution. I doubt not but that is the opinion of the constituents of those gentlemen who support this proposition. At the same time, I must be permitted to say, that such is not the opinion or wishes of the people in the south, or at least that portion of them I have the honor, in part, to represent. They want no such provision embodied in their Constitution. And if they shall desire to change the amount of property now exempt by law from execution, they want to be left free to do so, through their representatives in the General Assembly.

On yesterday, when this question was before the Convention, the delegate from Fulton, (Mr. Miller,) in order to give this question strength, stated, that, at the last session of the Legislature, a proposition similar to the one now before the Convention was ordered to be engrossed for a third reading in the House of Representatives; and that it would have passed that body, had it not been for the consideration that the Convention to amend the Constitution was soon to convene, and that it was thought to be a subject that would certainly be agitated before that body. The vote in favor of engrossing the bill was quoted by the gentleman as a declaration of public sentiment, expressed through their representatives. Now, in relation to that matter, I will give the gentleman this piece of information. The representative from the county I represent in this Convention cast his vote in

favor of the measure; and I am fully authorized by the state of facts to say, that the people whom he represented disapproved of his vote on that question. In fact, I believe I may further assert, that, but for that vote, the gentleman referred to would have been elected a delegate to this Convention. It is true, he was not a candidate, but from his high standing in society, I believe, but for that vote, the people would have placed him in nomination, and then have elected him.

But this is not all the evidence I have that the people of my county are opposed to ingrafting this provision in the Constitution. Early last spring, the people of the county held a convention at Princeton, (of which due notice was given,) for the purpose of expressing their sentiments in relation to such amendments as they thought ought to be ingrafted in the new Constitution. Amongst other resolutions, they adopted the following:

"Resolved, That it is inexpedient to adopt a homestead exemption."

Sir, such a provision ought never to be ingrafted in a Constitution, but should be left free to be acted upon by the Legislature. An amount of property to be secured to the debtor free from execution at one time, may be very inadequate at another time; and such has been the experience and practice in this State upon that subject. Go back twenty-five years, and you will find that the Legislature then thought that fifty dollars' worth of property was the proper amount to be exempt from execution. At a subsequent period, as the people in the country became more wealthy, the subject was again brought before the Legislature, and one hundred dollars' worth of property was exempted. And, following the same principle of passing laws to suit the exigencies of the people, at a still later period, the amount exempted covered one hundred and twenty-five dollars. And who can tell, but that the gold coming amongst us may be increased in amount so far beyond the anticipation of the most sanguine, as to work an entire change in the value of property. If such shall prove to be the case, and if a cow and calf, now worth ten dollars, shall, in consequence of such influx of the precious metal, be advanced in value to one hundred dollars, then the amount of property in value to be exempted, should be increased in a corresponding ratio.

The power of the Legislature to exempt from execution such an amount of property as may be deemed expedient, has never been questioned. It has been done by the Legislature time and time again; and such acts have always received the sanction of our courts of justice. Why, then, insert a clause in the Constitution giving the Legislature the power to exempt such property from execution as may be thought right? It is useless—wore than useless. It is incumbering the Constitution with

such matter as has no business there. I shall, therefore, vote for the indefinite postponement of the whole subject.

Mr. MAY. Nothing but the very deep interest which I take in the question which is now before us, induces me to trouble the Convention with the few remarks I now desire to offer. I am well aware, sir, that there are many gentlemen on this floor who can so speak on this and other questions as to interest the Convention, far more than I can possibly do. I know, also, that there are many gentlemen, some of whom have not yet spoken upon this question, who can do that, to which I certainly make no pretensions, namely, instruct members of this Convention by their remarks. And, sir, in addition to all this, I know very well that the question now before us, has been already fully, and, as it seems to me, very ably discussed, sir, in a manner far beyond my power, and leaving nothing which is really important to be added. But yet, Mr. President, notwithstanding all this, I am desirous of saying a word or two, and for the following reason solely: I take so deep an interest in the question now under discussion, that I am unwilling it should pass in review before us, and receive from me no other testimonial of my opinion than that which will be afforded by the record of my silent vote.

I am not aware, Mr. President, that I have any overweening sympathy for that portion of our community known as the debtor class—the insolvent, the "bankrupt" portion, as some gentlemen in their speeches have styled it. As I look around and about me, I fancy that I can see all the elements of prosperity existing in such abundance that I am justified in coming to the conclusion that in the vast majority of instances when a man comes into a condition of destitution, it is the result of his own misconduct. I repeat it, sir, I have usually found it true that pecuniary misfortune results either from wanton mismanagement or gross negligence.

I know, sir, that misfortune frequently comes upon a man unawares. I know there is a tide in the affairs of men into which if a man falls, when at the ebb, he may be swept on to adversity, just as there is said to be a tide in the affairs of men, which taken at the flood, leads on to fortune; but I believe that, in a large majority of cases success is the result of earnest and persevering endeavor, and that a reverse of fortune is but the just and righteous retribution which always follows in the wake of negligence and misconduct. I say then, it is not on account of any great sympathy with the debtor class in community that I espouse the cause of a liberal Homestead Exemption.

But, sir, while I say this, while I say I have no peculiar sympathy with the debtor class in community, I say that I now have, and hope ever to have, a sympathy, a deep sympathy, with the families of men who are thus involved in

embarrassment; and it is for this reason, and for this reason alone, that I advocate the principle which is embraced in the proposition now under consideration.

I will ask gentlemen to consider, in the first place, of what every man's family consists. It consists, as all know, in the first place, of the mother of the family, and, secondly, of the children of the family. Now, sir, are not these, every one of them, from the oldest to the youngest, members of society who, as society is now constructed, though we know not how radical a change may soon come over us in this respect, utterly helpless and dependent? We know, sir, that they are dependent—every one of them dependent, wholly dependent upon him who is their natural protector, the head of the family. Now, sir, let us take the instance of a man, who, by reason of his own negligence, or dishonesty if you please, for I am willing that the case should be an extreme one—let us, I say, take the case of a man, who from his own gross negligence or from palpable dishonesty has brought his pecuniary affairs to the verge of ruin. I admit—I have already admitted—this ruin which threatens to overwhelm him, to be but just and righteous retribution for his misconduct, but I ask gentlemen if it is right that others should be as fully involved in this ruin, who are wholly guiltless of wrong? It seems to me it is not right. More than this—it seems to me it is our duty to prevent this calamity from falling upon the innocent and helpless, if by any interposition of ours it can be averted.

Sir, as we acknowledge the principle that, when for his misconduct, a man is deprived of his life or liberty, the family of that man shall not in consequence of that misconduct, lose their life and their liberty, so upon the same ground I think we should recognize this principle, that when a man is deprived of his property, his home, his all, the family of that man need not necessarily be deprived of their property, their home, their all.

It seems to me, Mr. President, I can clearly see in this Convention—and, sir, it is a thing which I have been much gratified to see—I say, it seems to me I can see a strong determination to secure to the young and rising generation, the right to demand of the State a reasonable education. There is apparently, amongst us all, a warm sympathy for the institution of Common Schools. From every portion of the State we hear propositions to cherish and extend the benefits of this humble, but useful institution. And, sir, this is as it should be. Well, sir, why is it that our Common Schools are a desirable institution? The answer is plain. Because, thereby those who are to succeed us will be qualified for the better discharge of the duties which will ultimately devolve upon them. Now, sir, it seems to me that we have in our midst a more important institution, if I may so call it, than the Common Schools of our land.

It seems to me that there is a place where the young are more effectually trained to become worthy members of society than they can ever be made in any system of Common Schools ever yet devised. That place is the family circle, the child's home.

It may not be here, sir, that their intellectual training is completed, but it is by the fire-side, it is at home, sir, that every one, I care not who he is, has received the principal part of the moral training that he has ever received. I believe, sir, that the convictions of every member of the Convention will bear me out in this. Yes, sir, I undertake to say that so much moral education as we have ever received, so many moral principles as have ever been instilled in us, have been received by us at our homes, at our firesides, under the influence of our parents' teaching. Then, if this be true, I say that any system, any honorable system, which tends to ensure the perpetuity of the homes, and of the fire-sides in our land, is a system which deserves to be encouraged by us, whether sitting here as legislators, or whether acting in our private and individual capacity.

From some remarks which have been made, I understand it to be charged upon the advocates of Homestead Exemption, that they urge its adoption as the favorite measure of one portion—a single section—of the State. It has been intimated, sir, by the gentleman who has just taken his seat—though it was, I confess, nothing more than an intimation—that this is a sort of sectional measure. So far as I recollect, it is true that those who have advocated it have come, perhaps, from the extreme northern portion of the State; and, sir, I believe those who have opposed the measure—and not many, thus far, have opposed it—have come from the extreme southern portion of the State. But, sir, notwithstanding all this, it seems to me that this is not, in any sense of the term, a sectional measure. I know it has not, heretofore, been so considered. It was not so considered, at any rate, to mention a single instance, during the last session of the Legislature of this State. I recollect very well, sir, that this same question, as has been already stated by gentlemen, was agitated before the members of that body. And, sir, I recollect somewhat of the circumstances attending that agitation. My impression has ever been, that the project, so soon as it was introduced, was received with great favor by the representatives not only of one, but of every portion of the State. And, sir, I have before me that which I think will conclusively satisfy every gentleman on this floor, that at that time this measure was regarded with favor in all sections of the State. Gentlemen cannot deny this if they concede that those who were then representatives fairly expressed the will of their constituents. I say I have that before me which I think will satisfy honorable members that the people of this

State were, at one period at least, as a general thing, in favor of the principle of Homestead Exemption. On the 390th page of the Journal of the House of Representatives of the last Legislature, it will be seen that the Homestead Exemption bill which was then pending before that body, came up for its second reading. The proceedings on the second reading, as every gentleman on this floor well knows, are generally decisive of the fate of a bill. It is upon the second reading of a bill that the disposition of members is manifested either to receive it with favor or hostility. Well, sir, on the second reading of the bill to which I have referred, a motion was made by a gentleman, who is now a member of this Convention, to lay the bill on the table. Upon that motion, sir, there were then and there given nineteen votes in the affirmative and seventy in the negative. I say, sir, that at that stage, a stage of the proceedings when it was expected by all that members would manifest their aversion to, or their acceptance of, the general principle involved in the bill, by a vote of nearly four to one, the representatives of the State expressed their satisfaction with the principle, and their desire to have it incorporated in the laws of the land.

Now, sir, a gentleman has risen here and stated that one representative who favored the bill then under consideration, misrepresented the will of his constituents. Unquestionably that is so, and as unquestionably other like instances can be found. But I believe that for every one who misrepresented the will of his constituents in the manner which the gentleman intimates, namely, by voting in favor of the principle of Homestead Exemption, there can be found at least a corresponding one who misrepresented them by voting the other way.

Well sir, I might trace this bill through from the beginning to the final vote on which it was lost, for it did not become a law. But sir, I should trespass in so doing, too much upon the time of the Convention. This I have no desire to do. I certainly need not say to gentlemen on this floor, gentlemen of so large experience as most of those whom I see before me, that that is a way in which a few enemies of a measure may finally succeed in killing it. I will merely say, in regard to this bill, that it was killed, as many bills are, by being loaded down with obnoxious amendments, amendments which were never intended by those who proposed them to improve the bill, but to destroy it.

This, sir, in addition to the facts already suggested by the gentleman from Fulton, (Mr. Miller,) that there was a conviction in the minds of members of the Legislature, that some principle would be, by us who are now here, ingrafted in the Constitution, contributed to prevent the passage of the bill in the House of Representatives. What may have been the reason of the defeat of a similar measure in the other branch of the last Legislature, I don't

know. But, sir, whatever may have been the feeling of the Senate during the last winter in regard to it, I am informed that this same measure has heretofore been before them, and that it has been not only earnestly advocated, but has repeatedly received a vote in its favor almost sufficient to make it the law of the land—at least so far as one branch of our General Assembly can make anything the law of the land.

I say then it is not true, at least so far as I can come to a conclusion in regard to it, it is not true that the public sentiment of the State is adverse to the general principle contained in a homestead exemption law, as we design to frame it. I sincerely hope, Mr. President, that the principle will be incorporated in our Constitution. I regret that the matter was introduced, because I fear it will not finally carry in this Convention. And should it finally fail I think I can plainly foresee that the vote here taken will lead to the same result as the votes that have been taken in times past in the Legislature, on the same question. The inference will be drawn that because this measure has been introduced into this Convention and failed to be adopted, that therefore the people of the State are hostile to it. But, sir, while I recognize the wisdom and experience of the Convention, I must be allowed to say that in many respects we do not fairly and fully reflect the popular will. The most of us, sir, are persons of mature age; we have most of us fought the battle of life, and moreover, we have fought it successfully. The time has passed with many of us when we would sympathize with those who are struggling with adversity.

A VOICE. That is the idea.

MR. MAY. I repeat it, and I ask gentlemen if it is not an idea worthy of their consideration. We have most of us so far passed down the vale of life that we have forgotten the obstructions of our early career. If we could place ourselves back where we were twenty or thirty years ago—if we could revive feelings then entertained—I ask if gentlemen would receive this proposition as they seem now disposed to receive it? Memory rests chiefly on the sunny spots of our past lives, and those passages which were clouded with difficulties are forgotten. When we are contending with difficulties we more correctly appreciate them than when we have surmounted the obstacles.

But, Mr. President, I will not detain the Convention by enlarging on this topic. Gentlemen can bear me witness that I do not often trouble the Convention with any remarks. I rose simply to express the deep interest which I feel in the question that is before us, and to say that it is a question which I will at all times and in all places sustain. I care very little how it may be disposed of at the present time; but, sir, as surely as the sun now circles through the Heavens and sets to-night to rise to-morrow, so surely will the principle of homestead exemption

be ultimately ingrafted into the law of the land. I think, sir, that in this matter I can plainly foresee the current of popular sentiment. I think that I have, perhaps, for the last few years, mingled more freely with the class who are in favor of this law than some gentlemen on this floor who are otherwise of larger experience than myself; and, sir, I am almost ready to say I *know* that, as in time past, there has been a determination on the part of the people that a man's liberty should be sacred, so now there is a like determination that every man's home—that fireside around which he has set up his household gods—shall be sacred from the intrusion of his enemies.

Gentlemen may say, as I know gentlemen have already said, that this is a matter for legislation alone, and not suitable to be ingrafted into the Constitutional law of the land. My idea of a Constitution, sir, is, in a few words, as follows: It is the deliberate recognition and solemn enunciation of certain general truths to which we, as a whole people, declare we will adhere. Legislation, on the other hand, I conceive to be made up of the details which grow out of those truths. I ask gentlemen whether it is any more or less than the recognition of a general truth, to declare that a man's homestead should be exempted to him and his family?

I have regretted, Mr. President, to see the attempts that have been made, though made, I am aware, in a friendly spirit, to encumber this general principle. I have already declared, I believe, that I would willingly have let the whole matter go by, and would have consented that nothing should have been attempted by this Convention. I would have consented to this for the reasons which I have already stated. But, sir, the subject is now before us. It has been brought here by other agency than my own. Inasmuch as something has been attempted, I, of course, desire to see it carried through. But, sir, even now, I desire that no more shall be done than simply recognize and declare the general truth, the general principle, that a man's homestead shall be at all times safe from the hostile intrusions of others.

I had designed, Mr. President, and if an opportunity offer, still design, to bring up before the Convention, something which will enable us to vote upon the general principle by itself, not encumbered with any specifications concerning the valuation of the homestead to be exempted, nor by any other details. I have accordingly drawn up, and have now before me, an amendment, in which, sir, I propose to amend the section reported by the committee, as follows:

After the word "property," in the third line, I propose to insert the following words: "Including the homestead owned by any debtor, the head of a family."

If any gentleman will take the trouble to examine the section, he will find it will then read as follows:

"The privilege of the debtor to enjoy the necessary comforts of life, shall be recognized by wholesome laws, exempting a reasonable amount of property, including the Homestead owned by any debtor, the head of a family, from seizure or sale, for the payment of any debt or liability hereafter contracted."

Now, sir, the words which I have proposed may not, perhaps, be the most suitable—they may not be inserted in the proper place. In inserting them, my only desire was that the section should be amended in such a manner as that it would recognize and be moreover mandatory upon the members of the Legislature to recognize this general principle, that a homestead, belonging to the head of a family, shall be exempted from seizure and compulsory sale upon execution. And, sir, all details and specifications respecting the value of property, or of the homestead to be thus exempted I would leave entirely to the Legislature, upon whom I would make it compulsory to recognize the general principle. Of course, I hope sir, that the vote about to be taken will not sustain the motion to indefinitely postpone. I hope the question will not be indefinitely postponed. My opinion is that though such a vote may carry with us, though it may be indefinitely postponed by us, this same question will be revived and perhaps at a much earlier day than is anticipated by gentlemen on this floor.

Mr. HOVEY. I wish to make a personal explanation. In the heat of debate on yesterday evening, I used language which was calculated to wound the feelings of the committee who reported the section under debate.

I wish to say to the members of that committee, collectively and severally, that I had no wish or intention to wound any one's feelings or impute bad motives to any member of that committee.

My aim was to show the character of the section—that it was a mere shadow that might appease and satisfy the friends of the homestead principle, without accomplishing the end proposed. I hope that no gentleman will regard the language I used on that occasion as personal.

Mr. BOWERS. I do not rise, Mr. President, for the purpose of making a speech. Indeed, sir, I have formed a resolution that, under no circumstances shall this Convention be detained by a lengthy speech from me. Speech-making is not the business for which I came here. The people whom I have the honor to represent, entrusted me with a seat on this floor for a different purpose. They believe that we already have a good Constitution; which, with a few slight amendments, would meet the wants and expectations of the people. They sent me here to assist in making those amendments. They, as well as myself, expected that every delegate would come here prepared to vote for every amendment which they deemed necessary and

proper, and to vote against all others. And, sir, if every member of this body would act upon this principle, our work would be as well done, as it is likely to be as we are now doing, and the labors of this Convention would shortly come to a close.

To say the least, Mr. President, if members would curtail the length of their speeches, and lessen them in number, the business of this Convention would be quite as well done, and the length of the session very much shortened.

The people of the State already begin to think (and not without reason) that something is wrong. Frequent inquiries are made as to when the Convention will get through? Sir, these questions will never be answered with any certainty, so long as days and weeks are spent in arguing questions that could be as well disposed of without a word of discussion, as they can after a long and windy debate. Members had better do their voting here, and go home and make their speeches to their constituents. They will then cost the State nothing, and will be more likely to accomplish the purpose for which they are designed.

Mr. President, I hope the Convention will pardon this digression from the purpose for which I rose. My object was to correct an error that my friend on the right (Mr. May) has fallen into. He infers, because a motion to lay the Homestead Exemption law of last winter, upon the table, failed by a large majority, that the people of the State are in favor of adopting the measure in the Constitution, and that the action of this Convention is not likely to reflect the will of the people.

On examining the vote to which he refers I find the vote of the representative from the county that I, in part, represent in this Convention, recorded against laying that bill on the table; yet, sir, I can assure the gentleman that a majority of the citizens of that county are opposed to ingrafting any provision of this kind in the Constitution.

Mr. MILLER. Your representative voted against engrossing the bill.

Mr. BOWERS. Aye, sir, and by that vote he secured a seat in the other end of this building for three years. I recollect, sir, that, when his vote against laying the bill upon the table was first made known to his constituents, it produced no little excitement; and when he became a candidate for a seat in the Senate, he found it necessary to refer to his vote on the engrossment of the bill, to remove the prejudice that his former vote had produced.

I recollect further, that when the canvass for seats in the Convention commenced, some one or two of the candidates seemed to favor the measure, but before we had gone far in that journey of life that candidates alone are allowed to enjoy, they became satisfied that they were on the wrong scent, and I will venture the assertion that a candidate who would have avowed

himself in favor of going further than to recognize the principle as it is now recognized in the existing Constitution, and the courts of justice, could not have obtained three hundred votes out of nearly three thousand, that might be cast in that county. I do not doubt that my colleague will fully endorse this assertion, and yet this vote of the representative of that county last year is produced to show that the people of that county are in favor of this measure.

I, sir, am not opposed to the principle of exemption, but I wish it left as the more appropriate business of legislative enactment.

Mr. STEVENSON. There is probably no question that is better settled in the minds of the people of this country, than the principle of exemption. I believe you will scarcely find a man anywhere, who will deny the right of the unfortunate debtor to have a reasonable amount of property exempted from seizure for debt. And I doubt whether there is any man in this Convention who fears that if such a provision be incorporated in the Constitution, it will in the slightest degree endanger its adoption by the people. It will be for the Legislature to determine what amount shall be exempted; and they will, of course, exempt such amount as they think reasonable. I say the principle is so well established, it has been acted upon so long that there need be no apprehension that, if incorporated in the Constitution, it will not be acted upon by the Legislature.

The main question here, it seems to me, is as to the propriety of placing it in the Constitution at all; for the question is not now as to Homestead Exemption, but merely exemption—merely a declaration of the principle. Well, sir, there have been many arguments advanced in favor of the propriety of placing it in the Constitution, that struck me with a great deal of force. It was said by the gentleman from Lagrange, that the reason why this principle should be placed in the Constitution, is that it is right—that it is a correct principle. This is certainly a very plausible reason why it should be placed there, but when you examine the matter carefully, you will see that it is not necessary that it should be inserted in the Constitution, merely because it is right. It is not necessary to place everything that is right in the Constitution; if you do, you will have a pretty large volume. I ask you if it is not right that the man who commits murder, should be punished? Yet you do not think it necessary to declare explicitly in the Constitution that he shall be punished, and what his punishment shall be. It is right that a man who commits theft, should be punished. Yet no one contends that we should place any such declaration in the Constitution. It is right that a man should pay his honest debts; yet you do not put that in the Constitution. Then we see, from a very short examination, that there are many things that are right in themselves, which it is not necessary to put in the Constitution.

Nor is it proper to insert in the Constitution a declaration of every principle that is right. And, as has been justly remarked by the gentleman from Gibson, it is improper to place this in the Constitution, for the reasons that I have given, and for another very plain reason. The amount necessary to be exempted cannot be ascertained for a period of ten years to come. What may be the correct amount to-day, may not be a sufficient amount five or ten years hence. But I will ask this Convention whether they can determine what should be the amount exempted twenty years to come? You cannot fix the amount, because the value of property is uncertain. And this uncertainty makes this question one concerning which you should not form a Constitutional provision. Why, no proposition that has been submitted to the Convention in relation to this subject, has attempted to fix the amount.

A MEMBER. Leave that to the Legislature.

Mr. STEVENSON. That is exactly where it ought to be left. Now if, in consequence of the value of property being uncertain, you cannot fix the maximum amount, neither can you fix the minimum. I recollect the time, and it is not very long ago, when a horse could be bought for eighty dollars, which now would cost a hundred. Hence, no precise amount can be fixed so long as the value of property is fluctuating. Such matters, then, should be left entirely to the Legislature. And I should have no fears of leaving it with the Legislature. What is your Legislature? It is a body which reflects the public sentiment; and whenever the community desires that there shall be an increase of property exemption, it will be so enacted. The Legislature carries out the popular sentiment as it exists from time to time. And if at any time the representatives of the public fail to vote for such measures as meet the wishes of those by whom they are elected, they are, at the ensuing election, left at home, and others selected in their stead.

But there are some difficulties about this Homestead Exemption which probably should be noticed a little further. A proposition was offered the other day by the gentleman from Huntington. Now if any man will examine that proposition, he will find that notwithstanding the friends of Homestead Exemption desire to put it in the Constitution because, as they say, it is right, yet its friends have failed to make it permanent.

You will notice that the proposition of the gentleman from Huntington provides that a Homestead shall be secured to the amount of not less than five hundred dollars. But an individual who has not a home is turned over to the tender mercies of the Legislature. No provision is made for him; it is left to the Legislature to provide a reasonable amount, according to his wants.

Mr. WALPOLE. I desire to correct the gentleman. The proposition of the gentleman from Huntington is not now before the Convention. The proposition before the Convention provides that the holders of personal property and of real estate shall be precisely in the same position, in regard to the amount of property exempted.

Mr. STEVENSON. Precisely so.

I was going to show, sir, that the gentlemen themselves do not attempt to fix the amount above or below which the exemption shall not go, and that they cannot fix the amount. I am alluding to this in the way of argument, to show that the amount cannot be fixed, and I say that the gentlemen themselves, in the propositions they have submitted, have not attempted to fix the amount.

The gentlemen are beset with difficulties on all hands, and are driven at last to leave the matter to the Legislature; and even the proposition of the gentleman from Hancock (Mr. Walpole) only fixes the amount below which the exemption shall not go. This shows that they have to leave it at last to the Legislature. Well, now, when this kind of absurdity is exhibiting itself, I ask, is it not best to leave the whole matter there? When you have ascertained that there is any danger that the Legislature will not regulate that matter, then it may be proper to frame a Constitutional provision on the subject.

And, sir, there is one thing about this that should satisfy gentlemen. Your Legislature has been increasing the amount of exemption every year; they have never reduced it. This very fact should satisfy the Convention that it ought not to be put in the Constitution, where, if you undertake to fix the amount, you can never alter it; but if you trust it to the people themselves, through their representatives, to say what it shall be, if they make it too great they can reduce it; if too little, they can increase it.

But, sir, suppose you have carried out the proposition that the friends of Homestead Exemption desire should be carried out. See the difficulty that you will get into; with a Homestead to the amount of five hundred dollars exempted from forced sale—and the gentleman from Laporte desires that the provision should be a little firmer than human laws can make it—suppose, I say, you have a Homestead of the value of five hundred dollars exempted, how will you be able to collect any taxes? You cannot collect taxes upon this property, because you cannot enforce payment by sale of the property.

Mr. NILES. If the gentleman will allow me to make a correction, I will say that I have never assumed or even dreamed of any such thing as that property should be exempt from taxation. Taxes for the support of government

are a debt which all good citizens can and must pay.

Mr. STEVENSON. I speak of the provision upon the evidence that I have before me on paper.

I have been endeavoring to show the danger of putting in the Constitution a permanent provision of this kind, and the propriety of leaving it to the Legislature; and I say that if you declare that a certain amount shall be exempted, I defy any Legislature that can be convened here to take that property for taxes, either from the owner or from the individual who may have it in charge to manage on behalf of the owner. If you introduce this provision into the Constitution it will carry this construction along with it. I maintain, then, that it is dangerous and improper to place it there. I believe the gentleman from Hancock said, the other day, that there were seventeen States that had made provision for Homestead Exemption.

Mr. WALPOLE. I have not the Constitutions of all the States, but I believe there are about that number that have adopted the principle of Homestead Exemption. The gentleman from Posey can perhaps inform us.

Mr. OWEN. Sixteen States have adopted it.

Mr. STEVENSON. Sir, I have seen but two instances in which it has been made a Constitutional provision; those are the State of Texas and the State of Wisconsin. And, sir, I will refer for a moment to the Constitution of Wisconsin. I believe it is an exact copy of this—to show that they saw the same, and that their position on the subject really amounts to nothing at all.

Well now, sir, this thing amounts to nothing, because it leaves the whole matter discretionary with the Legislature. It leaves it in the power of the Legislature to determine what amount is reasonable and right, and if the Legislature does not determine, the provision is a nullity. It has no vitality, no force or effect. Your Legislature, under the old Constitution, could pass a Homestead Exemption law if they chose. They had a right to do anything in reference to the subject that they might deem right, and prudent, and proper, that you had not forbidden them to do, in that Constitution. You may, to be sure, recognize the right of exempting property. I have no objection to that. It can do no harm. Leave it to the people to say, from time to time, what the amount of the exemption shall be. If the Legislature make it too great, they can again reduce it; if not large enough, they can enlarge it from time to time. The difficulty is then in their hands, and they will be responsible. It will do neither good nor harm to adopt a provision of this kind if you leave it discretionary with the Legislature whether they will carry it into effect or not. If you say not a word about it, they will exer-

cise their discretion quite as well. Your provision, then, amounts to nothing.

But as I have said already, gentlemen insist that this provision shall be a permanent one. I say they have not attempted to make it permanent, and for the very best of reasons.

Now I wish to say one word about the matter of credit. And I have no great fears in regard to the effect of such a provision upon a man's credit. A merchant will credit a man whom he believes to be honest and solvent. So far as credit is concerned, it is affected, not generally, but partially, by Homestead Exemption. The man who is worth a thousand dollars can obtain credit as before. It does not affect the rich; they are safe; but it affects the man who owns no greater amount of property than the amount exempted. So it does not affect credit generally but partially. If any one is to suffer it is the poor man. If any one suffers so far as credit is concerned, it is not the merchant or the wealthy farmer, it is not the wealthy belonging to any class, but it is the man who is worth less than the amount exempted. If a want of credit is an injury to an individual, he is injured and no one else.

Well, sir, I was going to say, and my acquaintance, to be sure, is limited, for I have not mixed much with the people of the country generally, but in the county that I represent, we have a few politicians who made a great deal of noise about this matter, and professed to be greatly in favor of Homestead Exemption, the question having been started at the canvass in that county. But, sir, when we got amongst the farmers we found they were opposed, almost universally, to a Homestead Exemption. They were ready to vote against it from one end of the county to the other. If there is any one act of the Convention that will, more than another, endanger the adoption of the Constitution, so far as the vote of that county is concerned, it will be the ingrafting of that principle in it.

Now I say this without any feeling whatever on the subject, because, in relation to this matter, I have little preference, personally, one way or the other; but I have examined the matter carefully, and I can see but little difference between Homestead Exemption and the Bankrupt Law.

Mr. WALPOLE. The gentleman can see no difference between homestead exemption and the bankrupt law.

Mr. GIBSON. It is even worse.

The PRESIDENT. The gentlemen are out of order.

Mr. STEVENSON (continuing). I have examined the arguments that have been adduced carefully. Sir, the great difficulty is for a poor man to make a home for himself. A home must first be obtained before a homestead exemption law can be of any use; and the man who commences poor and acquires by his exer-

tions a farm worth five hundred dollars in ninety-nine cases out of a hundred is able to take care of it without the protection of a homestead exemption law. The difficulty is obtaining, not in holding a homestead. Your law will do a man no good while he is acquiring a farm; it only affects those who have farms, and who are improvident and run into debt.

I can see no necessity for taking a step which leads you in advance of public sentiment. My own opinion is that the present exemption of \$125 by law is too small, and should be increased in amount. But it is a matter that can be done by the Legislature without your interference, and it should be left to them. Whatever it is right to do, they will do, and they will do it in a proper manner, and at the right time, and it will be much more satisfactory to the people of the State than if you attempt to regulate it by Constitutional provisions.

Mr. BORDEN. It appears to me that the argument of the gentleman who has just taken his seat in many respects carries its own answer along with it. The objection that he suggests to inserting in the Constitution a provision on this subject is that it would be improper to make a permanent provision respecting the details. That only shows that there is a necessity for defining and declaring the principle. There is no necessity for prescribing the details. That is, as has been truly said, a matter for the Legislature to arrange and determine. But the question now before the Convention is upon the indefinite postponement of the whole subject. Well, sir, when that course is taken by a deliberative body with respect to any measure, it is regarded as the most emphatic expression that can be given of the entire disapprobation of the principles involved in the measure; it is tantamount to a declaration that it is not worthy of further consideration. I do not say that the gentleman who made the motion intended that it should be regarded in that light, but I ask him if he is willing to make such a declaration in regard to this proposition. What is the proposition? The section reported by the committee reads as follows:

"The privilege of the debtor to enjoy the necessary comforts of life shall be recognized by wholesome laws, exempting a reasonable amount of property from seizure or sale for the payment of any debt or liability hereafter contracted."

That is the question to be decided, is it true or is it not? If it be true why should we not say so? Why should we not declare it? The gentleman says we are under no obligation to put into the Constitution everything that is true, merely because it is true. Certainly not; but this is one of those subjects which is now agitating the public mind, and concerning which we are assembled here to deliberate. The gentleman says that details should not be put in the Constitution. Very true, and there is no necessity

for any such thing. But we may by a few brief comprehensive words declare cardinal principles; and this is what I hope we will do, and nothing else. Those gentlemen who agree with me in this view will of course vote against the motion for indefinite postponement, in order that we may have a direct expression of the sense of the Convention upon the proposition. Surely the Convention is not prepared to say that the privilege of the debtor to enjoy the necessities of life shall not be recognized by law. That is the proposition, and it is one that I recognize. I believe that the privilege of the debtor to enjoy the necessary comforts of life should be recognized by law, and I wish to see it so declared in the Constitution that we are about to form, so as to place it beyond the power of the Legislature to refuse it.

Before taking my seat, I wish to make an observation in regard to a matter of controversy that arose yesterday between the gentleman from Posey (Mr. Hovey) and myself. I rose yesterday, not for the purpose of entering into the discussion of this question—because, as I remarked, I saw that the House was impatient with the debate, and was anxious to come to a vote—but to explain what I understood in reference to a statement made by him.

I may have misconceived what he said at the time. The gentleman, in his remarks, alluded to the couplet that I quoted the other day, and intimated that it was not in good classical taste. The gentleman is a better judge of such matters than I am, and I will not for a moment contend with him in matters of taste; it served, however, at the time, to express my idea, in my own humble way, and that was all that I desired. The gentleman went further, and reiterated the assertion that there was, in the Roman Republic, a party which desired to take the property of the rich and give it to the poor; and, to sustain this position, caused several extracts from authors which he produced to be read at the Secretary's table, and intimated, as I thought, in rather a sarcastic manner, that he thought them much better authority than myself. Now, sir, I again repeat that there never was such a party in Rome as he describes, or at least, if there was, the agrarians, to whom he alludes, never advocated such principles. If I understand the matter, sir, the agrarian laws of Rome were simply the land laws of that country—nothing more nor less. They simply provided that the public lands which were conquered from the Italian tribes by the Romans, after reserving a certain portion for the patricians, that the remainder of it should be divided among the Romans who were landless; but no one was to have more than seven acres. This position he denies.

Now it is very evident that the gentleman and myself use different translations of the original Latin authors—as I suppose he is, like myself, not very familiar with the original—and

the different translators, it is well known, give sometimes constructions very different from each other. All that I have to say is, that I judge of the men of those times very much as I judge of men now. Do you suppose that Cicero differed in feeling, and habits of thought, and action from the great men of the present day? Sir, the gentleman has introduced an extract from this great orator to sustain his position; but let me say to him that I presume that Cicero thought as a partisan, felt as a partisan, and spoke as a partisan. He always sided against the mass, and for the few; and I am not disposed, for one, to give much credit to what he says in regard to his opponents. Go to the British Parliament, and take the speeches of her great statesman and orators, and tell me whether the friends of liberty would be willing that the speeches of their opponents should be taken as true history in regard to their character and objects. And I presume that the followers of Mr. Jefferson would hardly be willing that the speeches of their opponents should be brought up and arrayed against them as true evidence of their character.

As to Fergusson's Rome, from which the gentleman quoted, I apprehend a pensioner of the British crown, whose business it was to slander and misrepresent the friends of freedom in his own country, would naturally be disposed to give such a view of Roman affairs as would always put the people in the wrong. He also quoted from a translation of Livy.

Who was Livy? Did he write for the toiling millions? No, sir. He wrote for those who had the means to buy his books; and he wrote as a partisan. For the same reason that those who wish to do justice to the friends of liberty in England are not willing to be guided by Hume as an author, for the same reason, they should not be willing to take *implicitly* everything that Livy says in regard to his opponents. I do not desire to take up the time of the Convention; but, if they will permit me, I will read one or two authorities to sustain the position I have taken. I have in my hand, sir, the second volume of Neibhur's History of Rome; and if the gentleman will hereafter turn to the 124th page, and carefully read the chapter entitled "The Agrarian Law of Spurius Cassius and his Death," he will there ascertain the origin of the "Land Laws" of Rome. I have not time, sir, to read any extracts from it. He seems to think that Arnold quoted Neibhur, and Neibhur, Arnold, to sustain each other. In this he is greatly mistaken. Not only these authors, but Heeren Schlosser, Savigny, Wachsmuth, each and all sustained the position I have taken. I have before me a history of Rome translated from the German of the latter author, and I hope the Convention will excuse me for reading from it. It is an extract from the laws of Licinius Stolo, usually called the

Licinian law, by modern authors called the Agrarian law. It is as follows:

"The common *land ager publicus*, of the Roman people shall be strictly ascertained and defined in its boundaries. Such portions of it shall be reclaimed by the State as may have been taken possession of by private persons without authority." p. 72.

Now, sir, do we not see that this regulation has reference not to the private property of individuals, but to the public lands which had been conquered from the different tribes of Italy by the valor of the plebeians. Again, sir, on page 73, in the same regulations, we find the following:

"Such portion of the public land over and above five hundred jugera, as are in the present possession of individuals without authority, shall be divided amongst all the plebeians in lots of seven jugera, as property."

Now, sir, this is all there is of the celebrated agrarian law. It had no reference whatever to private property, but was a regulation effecting the distribution of lands which belonged to the republic.

Gracchus simply insisted upon the enforcement of a law that was already in existence, and for doing this, he and his brother were both put to death by the patricians. He never advocated taking away one man's property and giving it to another. The more this subject is investigated, the more will the truth of history be vindicated, and of that I am fully satisfied.

I ask pardon of the Convention for having taken up so much of their time with a matter which is rather personal to myself, and perhaps not very interesting to some of them.

Mr. OWEN. If there be one single vote which I have given upon this floor, or which I may yet have to give up to the day when this Convention shall adjourn, in regard to which I am sure that I am right, it is the vote that I shall cast against the indefinite postponement of this section as reported by the committee on rights and privileges. If there is one vote which the people of the State will heartily approve, it is, I am convinced, this vote against postponement. If we reject this section, what is it that we are rejecting? Is it homestead exemption? Not at all. We are rejecting the principle incorporated in our statute book; the principle which, as the gentleman from Gibson reminded us, has been gathering strength from year to year. The gentleman from Putnam himself admits that it has. He expressly told us that the principle of exemption is ever increasing in favor. Then, when we reject the section, let us not conceal from ourselves that we are rejecting a great principle heretofore recognized among us by law—heretofore approved by the people of the State. The gentleman from Putnam confesses that the principle is a just and proper one; nay, that the present law does not go far enough. Why,

then, shall not such a principle, politic in itself, already sanctioned by our people, be incorporated in the Constitution?

All just and good things, he says, need not go there. But is not this important enough to find a place among Constitutional provisions? Is there a single right which the poor man values more than this, that there shall be set apart for him beyond the reach of legal process, a small amount of property as security against absolute want; so that in case of sickness or other sudden misfortune overtaking him, the last article of furniture in his little cabin shall not be subject to seizure and sale?

This section is reported by the committee to come in immediately after the article on imprisonment for debt. Twin brothers are they; and they ought to stand together. What is the abolishing of imprisonment for debt? It is a declaration that the privilege of the debtor to the enjoyment of liberty shall not be encroached upon merely because he is a debtor. What is this exemption? It is a declaration that not the person only, but the necessities of life also, shall be sacred from the legal clutch of the creditor. Let us not make an unwarranted distinction in this matter. Shall we make of the one of these principles a sort of fugitive, at the mercy of the changing winds of unstable legislation, while we erect the other into a permanent constitutional provision?

The gentleman from Putnam has said he doubts not that the incorporation of this principle into the new Constitution would go far to produce its rejection. He might say this if he were speaking of the amendment introduced by the gentleman from Huntington. He might argue that the people are not prepared for the fixing of the amount of the exemption at five hundred dollars. But there is no such question; and not the slightest risk of endangering the result of our labors.

All gentlemen, of course, have a perfect right to take their own course; but I suggest to those who are about to go for the indefinite postponement of this principle, to consider how such a vote may be construed. We have already voted against the proposition of the gentleman from Huntington. We have already put that down. Shall we also vote down the principle which recognizes the right of the debtor to the benefit of some exemption; for example, of the present hundred and twenty-five dollar law?

Not only is that exemption right in itself, but the proper place for it is in the Constitution; there by the side of its kindred principle, the abolition of imprisonment for debt.

What danger, what inconvenience or impropriety can there be in inserting it? Is it not worth the space occupied by three lines to declare the principle, that a creditor shall not follow his debtor to utter ruin? shall not take from him his last bed, or from his wife and

children their last morsel of food? Is this not worthy of a small space in the Constitution? I repeat it, sir, there is not a vote that will more certainly be approved by the people than the vote against the indefinite postponement of this section.

MR. GORDON. I hope that the motion to postpone this subject indefinitely will prevail. And as considerable time has already been devoted to the discussion of the question, I shall not trouble the Convention to listen to any speech from me. I simply desire to state the reasons which will govern my vote. It is admitted that the State Legislature possesses ample power to exempt any amount of real and personal property from seizure and sale under execution for debt. If, therefore, a majority of the people of the State desire that there should be a homestead exemption, they can, by applying to the Legislature, procure the passage of a law for that purpose. But it is mainly because I believe that a majority of the people do not favor such a law, for if it were otherwise they would ere this have obtained its passage, that I am opposed to the adoption of any such provision into the Constitution. The gentleman from Gibson (Mr. Hall) has stated that there is a deep seated and strong opposition to a homestead exemption in his county. That is not the only place where opposition to the homestead exemption exists. I know that there is a strong opposition to a homestead exemption in the breasts of thousands of the voters of our State. If, therefore, we incorporate a provision of this kind in the Constitution, we may expect thousands of votes to be cast against its adoption, that would otherwise be cast for it. As far as I am individually concerned I am in favor of a homestead exemption; but it is because I do not wish to be instrumental in incorporating in the Constitution that which I believe a majority of the people are not in favor of; that I shall vote for indefinite postponement, in order that the whole matter may be left where the framers of the present Constitution very wisely left it, viz.: to the discretion of the Legislature. I hope therefore that the motion will prevail.

MR. PEPPER of Crawford. As has been remarked, sir, this debate has taken a very wide range. It has been an interesting debate, and I would not now say anything in relation to the question under consideration, were it not for the amendments that have been offered, and the various forms and changes through which the measure, in its true sense, has passed.

I agree with gentlemen that this is strictly a legislative matter, and that there is sufficient power now given to our State Legislature to pass such laws upon the subject as may from time to time be necessary, so that if we refrain from acting upon it altogether, the people may, through the Legislature, if they choose, at any moment, procure the passage of just such a law as we propose to prescribe to them, or as their

interests may demand. It strikes [me that this is the true position to take upon a question of this kind—a question strictly legislative in its character.

Mr. President, a great deal has been said about the will of the people, in this matter, demanding a provision for homestead exemption to be inserted in the Constitution which we are about to frame. I propose for a moment to notice this point. In the last annual message of Governor Dunning he recommended to the Legislature the passage of a homestead exemption law, and says if it should fail to meet with encouragement, then he hopes that this Convention will place the matter beyond legislative control.

Well, sir, the democrats were then speaking through their Executive, on this thought to be popular question. The whigs, unwilling to be outdone—unwilling that the democrats should steal their thunder on this popular question, as was then thought,—met in this Capitol and passed a series of resolutions, among which is the following:

Resolved, That the exemption of a homestead, or its equivalent in personal property, from forced sale, for debts contracted after the adoption of the new Constitution, would be a measure of policy and humanity—that it would be in consonance with our republican institutions—that this Government owes protection to the wives and children of its citizens, and that a home for innocence and infancy is demanded alike by the impulses which operate upon the human heart, no less than by the teachings of the Divine Law—that such a provision in our Constitution would tend to repress, in this country, that fatal abuse so long existing in the systems of the old world, overgrown land monopoly (the fruitful source of bloodshed and attempted revolution)—that it would create a spirit of true independence in the political action of the masses of the people, and prove the means finally of perpetuating the wise, just, and glorious institutions of our beloved country. Adopting the language of Mr. Jefferson, we declare, "Our national independence will never be complete till the homestead of the citizen shall be secured against the misfortunes incident to human life."

And, with the permission of the Convention, I will read a short extract from the message of Governor Dunning, on the same subject. He says:

"Believing that the interest and welfare of our country demand greater security to the families of a large and respectable portion of our unfortunate fellow-citizens, who are often overreached by the superior knowledge and cunning of their fellow-men, or become embarrassed in their pecuniary affairs by the vicissitudes of trade, it is respectfully recommended that such a change be made in our execution laws (to

operate prospectively) as will exempt from execution and sale, in favor of any resident defendant and his family, a specific number of acres of land, or a specific amount in value; in all cases to include the homestead, or so much thereof as it will embrace. The details of such a law are left to the better judgment of the General Assembly. Should a law embracing this humane principle not meet with favor at the present session of the General Assembly, I trust that before the next assembling of the People's Representatives, this principle will become a Constitutional provision, thereby placing it beyond the power of unfavorable legislative action."

I refer to this message and resolution for the purpose of showing what was thought by politicians to be public opinion less than twelve months ago. Each political party tried to excel the other.

Both parties adopted it as one of their cardinal principles, and urged that the same may be engrafted in the amended Constitution. An appeal was made to the people to sustain the principle of homestead exemption; they were called upon to act. They did act, and what was the result? If we can judge correctly from the feelings of delegates in this Convention, representing the whole State, they decided in a voice not to be misunderstood, against placing the details of this proposition in the organic law.

The gentleman from Hancock has very earnestly contended that this homestead exemption should be incorporated in the Constitution, and placed beyond the reach of the Legislature. And I recollect that only a few days ago he eloquently argued that another subject, more fundamental in its nature than this, should be left to the Legislature. I concurred with him on that occasion, and adhere to the same doctrine now. We are told that the people will not reject the amendment of the gentleman from Hancock, exempting not less than five hundred dollars from execution.

It may be, sir, that if the homestead exemption be incorporated in the Constitution, the people may adopt it for the sake of the other provisions contained in it; they may be prevailed on to swallow the bad for the sake of the good that accompanies it; but it does not follow that, if they could vote upon each proposition separately, they would sanction such a measure.

The gentleman from Laporte, if I understood him, in the course of his remarks last evening, asserted that a course of policy which requires a man to pay as he goes, should be the true doctrine of this progressive age. If a man pay as he goes, where is the necessity of a homestead exemption? If he did so would there be any chance of the sheriff selling him out of his home?

But, sir, it is contended here that men will be moral, virtuous and patriotic if they have an

interest in the soil. Who pretends to deny the right of any man to have an interest in the soil. It is the privilege of every citizen to acquire, possess, and enjoy property. It is also one of our republican principles that we shall be amenable only to our Creator for the exercise of our religious duties. Laws were not made for the honest, but for the dishonest. The honest man needs no law but the law of conscience, which is higher than all human laws. You cannot give a man a conscience by any law that you may enact. The principle comes from a higher source than the supreme power of the State. Kent, in reviewing the history of Rome, and of other ancient and modern nations, in reference to the subject of acquiring and possessing property, does not as gentlemen on this floor who advocate the homestead principle, seem inclined to do, come to the conclusion that property makes a man more patriotic. It does not make him love his country better. Sir, when "grim-visaged war put on his wrinkled front," when the call to arms was sounded throughout the land, a few years since, who first unfurled the American flag and marched under it to the seat of battle? Was it the man who possessed his thousands, the man who owned large real estate, that made haste to avenge his country's wrongs in a foreign land!

I admit there were many honorable exceptions. But of whom constituted the majority of those who rushed to the rescue of the country? Sir, I ask gentlemen if those foremost in the ranks were not men who owned no real estate, not a foot of land and but little personal property? And yet we are told on this floor, that property endears man to his country, that unless he is the owner of real estate, he is not to be trusted in the affairs of government to the same extent as the man who can boast of wealth. Sir, this is not so. I hold that property makes a man no more virtuous or patriotic than he is without it. It should form no test of merit, further than its influence is used for noble purposes. I am sustained in my position in regard to the effects and influences of acquiring and enjoying property, by Chancellor Kent. In the second volume of his Commentaries he uses the following language:

"A state of equality as to property, is impossible to be maintained, for it is against the laws of nature; and if it could be reduced to practice, it would place the human race in a state of tasteless enjoyment and stupid inactivity, which would degrade the mind and destroy the happiness of social life. When the laws allow a free circulation of property by the abolition of perpetuities, entailments, the claims of primogeniture, and all inequalities of descent, the operation of the steady laws of nature will of themselves preserve a proper equilibrium, and dissipate the mounds of property as fast as they accumulate."

Continuing the same subject, he says:

"Liberty depends essentially upon the structure of the government, the administration of justice, and the intelligence of the people, and it has very little concern with equality of property, and frugality of living, or the varieties of soil and climate."

Here, sir, we have it from good authority that equality of property is impossible and against the laws of nature—that liberty does not depend upon equality of property, but upon the administration of justice and the intelligence of the people. Leave the channels of acquiring and enjoying property open, alike to every person, and you will have a free and prosperous people.

Chancellor Kent comes to these conclusions, as I have said, after a review of ancient and modern history on the subject of property and its influences. Gentlemen tell us that the principle of a homestead is right, and hence it should be engrafted on the Constitution. Make it a fixed rule, place it beyond the control of the Legislature. Now, sir, it does not follow that because a principle is right it should be affirmed in the fundamental law. Not at all. There are a thousand principles *right within themselves*, which daily govern life, liberty, and property, which are not found in any written Constitution.

If a man steal your horse, it is right he should be fined and imprisoned. If he commit murder, he should be punished according to the offense, but does it follow that these and the whole calendar of crimes, shall be written in the Constitution? Clearly not.

You might swell the Constitution to a size large as the Revised Statutes of your State, and then not contain one hundredth part of the principles, right within themselves, but which properly belong to the common law and the statute.

Sir, I would not be understood to say that I am opposed to the principle of exemption. By no means. I am for having a reasonable amount of property exempted from forced sales on execution. This is right—humanity demands it; and I will be the last man to oppress the poor and unfortunate. I am willing that the debtor shall have just such exemption as the interests of his family demand. Not an amount that will make the debtor feel that let what may come, he is provided for, even at the suffering of his creditors—not an amount that will make him lazy or shiftless, but an amount fully sufficient unto the day of his absolute need.

But can we determine what exemption will be right for the next ten years? Sir, I take the ground that \$125 exemption is, at this time, sufficient. But five years from this time it may not be half enough. And as we still increase in wealth, so property will become comparatively higher in value, as money becomes more plenty, and it would consequently become nec-

essary to exempt a still larger amount of property for the benefit of the unfortunate debtor.

Therefore, sir, it appears to me that it would be wiser to leave this matter to the Legislature, to be regulated from time to time as the condition of things may require.

But, gentlemen seem to be afraid to trust the Legislature with the regulation of a matter which it is their exclusive right to control. Sir, it is an insult to the intelligence of the people to say that this subject cannot be regulated by them through their representatives.

Whenever such a law is demanded, it will be speedily adopted, and in just such form, exempting such amounts as the wants of the country require.

I am prepared to vote, first for the indefinite postponement of the section—not that I am opposed to the principle, as originally reported from the committee, or to the section as it stands amended by the amendment of the gentleman from Allen, but because it is wholly a legislative matter, and ought not to be made a part of the organic law. But if it be not indefinitely postponed, I am prepared to vote for it in its original form, leaving, as it does, the amount to be exempted and the details of the law to the sound discretion of the Legislature.

Mr. FARROW said—

MR. PRESIDENT, I feel reluctant to detain the Convention, but I cannot reconcile it with my sense of duty to let the present discussion close without presenting my views upon this important provision that is proposed to be ingrafted in the Constitution of Indiana. The section now under consideration proposes to secure to the debtor the necessary comforts of life, free from forced sale under execution for debts hereafter contracted. This, sir, is one of the provisions that I advocated before my constituents as being entitled to a place in the amended Constitution, and I present it to the consideration of the Convention as being one of the inherent rights to which every man that lives is fully entitled. It is true, sir, that this right was never recognized by any of the older Constitutions of the States of this Union, and for a long time the laws that were enacted under those Constitutions were as far from recognizing that right as the Constitutions themselves; for even in this land of boasted liberty the privilege of the creditor to strip his debtor of the last dollar of his property, was not so much as called into question, but was actually sanctioned by public opinion; but, in addition to that, he was authorized by law to shut him up in prison as a punishment for being too poor to pay his debts. All this, sir, was considered, at the time to which I allude, to be in accordance with the Constitution under which such laws were enacted. But, Mr. President, most of the Constitutions under which such desolating laws were made, remain as they were, so far as this right is concerned; yet, sir, legislation on this subject has been

greatly changed. So far as I know, there is not a State in this Union but what has not only abolished imprisonment for debt, but in addition to that, have exempted at least as much property from execution as was deemed necessary to keep the family of the debtor from becoming a public charge. All this has been done, sir, by legislative enactment, without any Constitutional provision on the subject. Now, sir, if, without any sanction by the Constitution, the Legislature may act on the subject of exemption according to the interest of the creditor or debtor, as their interests may at different periods prevail, is it not necessary for this Convention to establish a permanent rule by which all future Legislatures shall be governed on this important right of man. Mr. President, I do not ask this Convention to secure to the debtor a certain amount of property, either real or personal; but I do ask them to recognize the right, and that right too, upon which all other rights depend, that is, sir, the right to live. Would it not be a contradiction to say that all men have the natural and inherent right to acquire and possess property, and at the same time refuse to secure to him, by Constitutional provision, the common comforts of life, which is all the section under consideration proposes to do? Then, sir, if we definitely postpone this section, will we not virtually say to succeeding Legislatures, you have no right to interpose between creditor and debtor in the slightest manner whatever; but if the creditor should require it, let the debtor be stripped of his last dollar and reduced to the necessity of feeding his family by his daily labor; and if the avarice of the creditor is to be further gratified, let him place an officer at the door of his debtor to wrest from his hands the meagre earnings of the day, which may consist only in a small amount of provision to feed his starving wife and children.

Mr. President, the Convention may establish this principle, but the good sense of the people never will approve that decision. Sir, we only ask that the principle upon which our own Legislature have acted when they, from time to time, have exempted property from execution, may be recognized in the Constitution, and then the people will, through their representatives, use that right as to them may seem best to accomplish the object for which it was conferred. I trust, sir, the section will not be indefinitely postponed.

MR. RITCHIEY. I had not intended to say a word on the subject, but as I find that the Convention is disposed to go very thoroughly into the debate, I wish to occupy their attention for a few moments, while I give the opinions that I entertain in relation to the subject.

Sir, this is one of the questions that were not discussed during the canvass of last summer, in our county, but I am willing to say this, that I am anxious to see the principle, just as it has been presented to us from the committee, incor-

porated in the Constitution. The privilege of the debtor to enjoy the necessary comforts of life should be recognized by wholesome laws. And, sir, the debtor should be protected. I believe this policy should be encouraged.

It has been practiced on by our government over and over for a number of years past. There is now an exemption to the amount of \$125. The universal sentiment of the country is that that sum is not sufficient to afford the necessary comforts of life to any family in the country. Deprive any member on this floor of all but \$125 worth of property, I ask you if he can enjoy the comforts of life!

Sir, my heart was moved a short time before coming to this Convention, by a conversation that I had with a poor man of my county. He was deeply indebted to several individuals, and among the rest to myself. I was talking with him about his embarrassments. He said he was discouraged—he had no longer any heart to labor. The moment he got any property in his possession his creditors came and took it under execution. He said he sometimes wished he was dead. I felt there was a great deal of force in what he said. The gentleman from Putnam has remarked that it is far easier to keep a homestead than to acquire it. Sir, I admit it. Under the law as it is at present, it is impossible for a poor man to acquire a comfortable home. Every thing he acquires is taken from him, and he is subjected to perpetual poverty. Sir, the poor men of this country are the men who are blessed with large families, and \$125 will hardly shield them from the inclemency of the weather.

I hope, sir, that the principle of exemption may be ingrafted in the Constitution just as it was presented to us by the committee, and that the Legislature will then act upon it, and guarantee to all the citizens of Indiana hereafter the privilege of being secured in the possession of such an amount of property as will afford to them the comforts of life.

Mr. READ of Monroe. When I look around and see the impatience of the Convention to come to a vote, I certainly shall not inflict upon it a speech.

I cannot, sir, consent to bluff down the great sentiment of humanity contained in the section before us, by voting its indefinite postponement. If it were even my wish, to prevent its adoption into the Constitution, I would from respect to the principles it contains, rather move that it be gently laid on the table.

Are we prepared to go backward, and say to our future Legislatures, to the people of Indiana, and to the whole world, that there ought to be no exemption of property from execution? For one, I cannot say that. Nor, sir, am I prepared to vote a homestead exemption into our Constitution. All that can be said of home—its blessings and its comforts—I most deeply feel. Home—there is not another word in our Eng-

lish language so sacred—so full of meaning—so fraught with associations dear to the human heart. It is a Saxon word—and it contains a Saxon idea. The home—the separate home for every family—is an idea innate in our very race. No form of *socialism* can ever take root among Americans. It is foreign to all our habits and feelings. According to all our sentiments, there is nothing more miserable than to be homeless. When you have said of an individual, he has no home, you have said that which represents a condition of great misery. But when you have said of a family—that family has no home—it is a picture of extreme and heart moving wretchedness, such as will bring tears to the eyes of any child of our families, to whom it may be presented.

Sir, had I my will, I would gather up the families from the garrets and the cellars and the hovels, of our towns and cities, and I would give them a home, without money and without cost, in the woods and the prairies of our vast western domain. [Cries of “consent, consent.”]

I am willing, sir, to adopt the reported section. I am willing to say “the privilege of the debtor to enjoy the necessary comforts of life shall be recognized by wholesome law.” Yes, sir, the word “comforts,” another good old Saxon word, the synonym of which is not found in any other language, I am willing to retain.

This leaves the whole to the Legislature. It leaves them to retain the present amount of exemption—to increase it—to accommodate it to the varying circumstances and sentiments of society. This is as far as I can go. I speak but the voice of my constituents, and as I think of the whole Southern portion of Indiana, when I say, they are opposed to a homestead provision for the Constitution. The farmer, the man in moderate circumstances, those commencing the business of life—I speak in general terms—oppose it, as forming a part of the organic law.

The average wealth of all the families in Indiana is but about eight hundred dollars to a family. If you estimate our population at a million, the families of the State will be one hundred and sixty-six thousand, and the whole property of the State as exhibited upon the tax duplicates being but one hundred and forty millions of dollars—something less—the amount to each family, will be in round numbers as I have stated. A homestead of five hundred dollars, is then equivalent to an abolishment of all process for collecting debt, as to a majority of the people of Indiana. This is surely going too far in the organic law; further, as I think, than the public sentiment of the State will warrant.

On the other hand, there is no disposition to harass and destroy the debtor, and to punish him and his family as felons.

I hope, sir, the section will be retained, and pass as reported, without change or modification.

Mr. SHERROD. I desire, sir, to make but a single remark. I think that it would be well for this Convention to ask the question whether this is a Convention of the people of Indiana assembled to revise and alter the Constitution of the State, or whether by some hocus pocus we have converted ourselves into the Legislature of the State. Now, sir, we are far advanced in the eighth week of the session, and what have we done? And what are we doing? We are consuming the time of this Convention day after day, in discussing what? The details of a homestead exemption, a matter that clearly belongs to the legislative department of the government. Well, sir, if we are to continue in this course we had better adopt a code of laws, and abolish the Legislature altogether. ["Consent."] Now, sir, as to the practical details of homestead exemption, or rather as to the principle, it is beautiful in theory, and may work very well in practice; this is a matter yet to be tested by the people of Indiana. So far as concerns the people whom I have the honor to represent, I did not discuss the question before them as a Constitutional provision. I spoke of it, when I spoke of it at all, as a matter of law that belonged exclusively to the legislative department of the government.

Now, sir, this Convention has expressed an opinion upon this question, and what is that opinion? It is that it is not advisable to adopt the practical details of a homestead exemption in the Constitution that we are about to make. Then, sir, I ask the Convention if it is necessary that we should continue to consume the time of this body in discussing this matter, inasmuch as they have expressed a decisive opinion upon the point. I am in favor of recognizing the principle of homestead exemption. Thus far I go, and no farther; leaving it to the Legislature of the State, leaving it to the people of Indiana, to adopt, at any future time, if they should deem it proper and expedient to do so, a homestead exemption, and carry it into practical operation by legislative enactment.

Mr. MURRAY said: I will not detain the Convention more than five minutes.

I rise only to express a hope that the subject will not be indefinitely postponed. I hope the question will be taken directly upon the measure, and that it will be determined upon its merits. For what purpose, Mr. President, have we met here? Is it not to provide for the welfare and happiness of the people of the State? Yes, sir, in this short sentence, is comprised the whole sum of our duties. And, sir, is it not for the welfare and happiness of the people that every family should have a Home?

Does not wisdom and beneficence make it proper they should have a permanent home? Would it not relieve society of many burthens, and greatly increase the comfort of community? If so, then why neglect the opportunity of se-

curing a measure through which they can acquire and permanently possess a home?

Mr. President, we are the only power that can make this provision permanent. Why shall we not do it? If we leave it to the Legislature it will be subject to be enacted, and again repealed by every successive Legislature. At least such has been the history of it. Sir, this subject has obtained the consideration of our Legislature in some form for many years. Sometimes they have given a family a Bible and a spinning wheel—perhaps half a dozen sheep to boot; sometimes they have given them fifty dollars, sometimes a hundred, and sometimes a little more. The measure has been changed as often as the wages of Jacob, when he was with Laban, serving to obtain his wife. It has been like "keeping the promise to the ear, and breaking it to the hope."

Sir, it has been remarked by an honorable member, that, in his opinion, \$125 was enough for a family? Well, Mr. President, I can only say, I envy not the gentleman in his sentiments. Why, sir, a tolerably good pair of horses, would be worth \$125. Suppose then a debtor selects under the law, a pair of horses to plough a rented farm. The sheriff sells, under the legal forms of the law, all the rest of the goods. We are a law abiding people, and the poor debtor submits perhaps, without an audible murmur. His wife and children can lay upon straw, and by diligent labor the husband can earn them bread.

But, sir, suppose a thief in the night steals his horses. His plough is left in the furrow, and his means of support is taken from him. How then can he support his family? Again: suppose when the sheriff leaves him in possession of the small pittance of personal property, that his family is stricken down with sickness. A few days of the freezing chills and burning fevers, that prevail in our new country, leaves their attenuated forms blanched and prostrate. The physician's bill, and attending expenses, has swallowed up his \$125, and like Job he is as destitute as when he was born. Shall we reduce men to such extremities, when we have the power to relieve them? Is there any member of this Convention that would like to try the experiment of living on \$125 with a family to support? I think not.

Mr. President, it has been said by another honorable gentleman, that the prudent and industrious need no protection, and that the improvident would not profit if he had more than the law now provides for him. Sir, if that gentleman had looked but a little over the field of his experience, he would have seen many prudent and industrious persons, who by unforeseen events, have been reduced from affluence to poverty—from abounding in the comforts of life, to the most painful penury. And if he should look a little into the vista of the future, he might see many more doomed to similar dis-

appointments. Sir, the instability of human affairs exposes the most prudent and deserving to many misfortunes.

Another honorable member has said that an interest in the soil—a home secured by law, would not make a man feel a deeper interest in his country's safety and welfare; and alludes to the homeless soldiers of the Mexican war.

Sir, Americans are always brave; but how many of those gallant fellows had homes in expectancy? Did not their country promise them a home? Did not the hopes of enjoying domestic bliss, around the bright fireside they expected to receive as the reward of their bravery and their toil, nerve their arms in the day of battle? True preferment is the bright star at which the soldier grasps. "A soldier's wealth is honor." But this does not preclude his love of home. Sir, the soldier, whose body is made a breast-work for his country's defense—whose bosom is open to the hissing bullet, the booming cannon, and the flashing steel, deserves well all the immunities, and all the rewards, a grateful country can bestow. Sir, how many of those brave men are this day in penury? Shall we not provide for them a home.

Sir, I regret exceedingly that my favorite amendment has been rejected, but I still cling to the little that is left in the report, as the shipwrecked sailor clings to a floating plank. I was deeply imbued with compassion for the poor, when I was yet a little child. Will the Convention allow me to relate an incident. ["O yes! O yes!"]

Well, sir, one morning, before the hour of school, my father took my tiny hand, and led me to the house of woe. The mirror was clothed in drapery, and the family in mourning. The body of my father's friend, (Col. R——n., of Johnstown, N. Y.,) had lain three days unburied. An execution had been levied on his corpse. The Sheriff, whom I knew, for he too was my father's friend, sat in the corner of the room. My father approached him, and after a few words, the Sheriff presented him a paper, which I afterwards knew to be a bond. My father signed it; the Sheriff retired, and the family fell upon my father's neck with tears of gratitude. That day my father's friend was buried, and from that day I have never ceased to mourn, with a burning sympathy, for the afflicted and destitute debtor.

I sincerely hope, Mr. President, that even this shadow of a substance, that is left to the bill, may become a provision of the Constitution. If we do not provide for the poor and the laborer, the sure possession of a home, it is to be hoped that the clause which is left, urging the subject upon the attention of the Legislature, may have the effect, at no distant day, which I so ardently desire.

Mr. KELSO. Mr. PRESIDENT, having been for some time necessarily absent from the deliberations of the Convention, I am greatly at

a loss to understand the different propositions, as they severally come before us; I should therefore be glad to know, sir, what it is, that is proposed to be indefinitely postponed. I will ask the Secretary to read the proposition.

The Secretary accordingly read the section and the pending amendment.

Mr. KELSO. Then, sir, as I understand the proposition, it is to ingraft into the new Constitution, a provision that the Legislature, shall pass laws exempting to the citizen of Indiana a home for his family exempt from execution, of an amount not less than four hundred dollars. That, in substance, is the proposition that is asked to be indefinitely postponed.

Mr. OWEN. I will suggest to the gentleman that the motion to postpone indefinitely, if agreed to, applies not only to the amendment of the Gentleman from Hancock, but to the section itself.

Mr. KELSO. I am aware of that fact, sir. Now, sir, we are told here, and by men who act and talk as though they were in earnest about it, that the people do not expect us to do any thing about this matter, it being a subject for legislative action exclusively. Now, I ask, is there a single question that can be brought before the Convention in which the people feel a more deep and abiding interest, than they do in this question? I say there is not. Then why should it be left to be disposed of by a body whose action is continually varying, who pass a law to-day and repeal it to-morrow, whose action is as changeable, as that of a public meeting, to which a question might be submitted in which the interests of the people of Indiana are concerned. There is no good sense in it. What is the proposition? It is to secure a homestead to each citizen of Indiana. Then why not make it certain, why not make it permanent? Why not fix a minimum below which it shall not descend.

One gentleman is alarmed for fear he may be considered a mere member of the Legislature, instead of the Convention. [A laugh.] Why, I can remember the time when the gentleman was proud to be a member of the Legislature, and I ask him, is it descending from our duty to fix land-marks for the Legislature, beyond which they shall not travel? I say it is our duty to fix upon a minimum in this case. We are dictators to the Legislature. That is the very business for which we have been chosen. It is our duty to say to them: Thus far you shall come—Here you shall stop. It is our province to settle this matter permanently. If four hundred dollar's worth of property be too much, make it less. If it is not enough, make it greater. I maintain it is not a dollar too large. What is the intention of it? It is to secure homes for the citizens of Indiana. How are you to do it? Can a man make a living for himself and family from less than twenty acres of land? The fair average price of land

in Indiana is ten dollars an acre. He will then pay two hundred dollars for his land. Can he erect a respectable log cabin for less than two hundred dollars? Well, sir, there you have four hundred dollar's worth of property—little enough, in all conscience. I say, let us fix upon a sum, certainly not less than four hundred dollars, below which the Legislature shall not go.

My young friend from Crawford, (Mr. Pepper,) who seems extremely patriotic, talks very eloquently about those of our citizens who went into the Mexican war, not being landholders. That is true enough, and another thing is certain, that neither he, nor I, went to Mexico. But let him be assured, that those who went, went upon the assurance that they should be rewarded with land for their services; and let me ask him, if he believes that the company which went from his county, were so neglectful of their duty, as to lose sight of their reward, or as to go without being well assured that they should receive land enough for a home.

Mr. GIBSON. The first companies that went, had no assurance that they would receive any land.

Mr. KELSO. But the first that went got their land, nevertheless. The American people are too just, to allow services to be rendered them without making adequate compensation.

I maintain that we cannot do better than to fix a certain amount, below which the Legislature shall not go. But the gentleman says, that the democracy have spoke through their Governor, in favor of homestead exemption, in 1848, and that the whigs, not being willing to be outdone, even appealed to Holy Writ, to Divine authority, in favor of the insertion in the State Laws of such a provision. Now he asks the gentleman, have the people sanctioned this? He does not know whether they have or not.

Mr. PEPPER of Crawford. I answer the question by saying, that we must judge of the sentiments of the people by the action of their delegates on this floor, and of their representatives in the Legislature. If the Legislature of the State, or if members on this floor are in favor of the measure, then we may presume that the people sanction it.

Mr. KELSO. Now let me say, in reply, that there has been no direct action upon the question, and the gentleman takes upon his shoulders, all that he is able to stagger under, when he says, that the people have ever, either directly or indirectly, decided the question. Sir, it does not follow that because some of us got here by accident, without expressing any opinion upon this question, that the people are opposed to it.

I say that more than one-third of the delegates to this Convention never cheaped before their constituents about the Homestead Exemption; it was not made a leading question in one-half of the State.

I feel safe in saying that the question was not made among the candidates for this Convention. The democratic convention to nominate candidates in my district for delegates, decided in favor of Homestead Exemption. But all the candidates who expressed an opinion upon this subject, expressed it in favor of the measure. Now we are told that we are not to legislate in regard to this matter. I ask you what part of legislation it is to say that there shall be a Homestead Exemption created by law, which shall not be more or less than so much. That is all that we propose to do; there we stop.

But the gentleman from Orange, (Mr. Sherrod,) talks about the details. Who has asked that the details shall be fixed? That is a matter that properly belongs to the Legislature. But, I ask you, if it is improper, or out of place to say, there shall be certain provision made in favor of the citizens of Indiana, not less in amount than a given sum. Certainly that would not be improper.

Well, sir, a certain learned gentleman from Putnam has taken it upon himself to say, and no doubt he believes it, that such a provision would injure the poor man. Now I cannot see the force of this argument. It may be owing to the dullness of my apprehension.

Mr. STEVENSON. I was referring to the amendment of the gentleman from Huntington which makes no provision for the protection of those who have no land.

Mr. KELSO. I thank the gentleman for his explanation. I have no disposition to do him injustice. But as I regard this matter, it is an exemption that may be held in property of any description. Well, now, if a man chooses to vest his means in real property, can he, for a less sum than four hundred dollars, provide a home for himself and family? I thought that once a Senator from Dearborn county made as fair a calculation as could be made, regarding the expense of a family. He certainly made it as low as possible, and it would require \$164 to provide a family of six persons with the personal goods necessary for house-keeping. For my own part, I think five hundred dollars little enough.

If you hold out encouragement to a man to provide for himself a home, you will improve the character of that man. He feels a pride that the government has provided a protection for him, and he would be ashamed to do a dishonest act. His family is sure of support; he feels safer; and then he goes perseveringly on, and will succeed in paying to his creditors the debts he owes.

My friend from Putnam took occasion to bring this proposition in comparison with the old bankrupt law. I was against that law in all its stages, and I confess that two-thirds of my opposition to it was before I understood it as I should have done. I would like to have

the gentleman point out to me now the serious evils that have resulted to the people of this union from that law. It has been denounced as an odious law, and perhaps justly so. But I ask gentlemen to point out the evils that have flowed from it. Many a man lost a just and honest debt, and many a man was relieved from the payment of a debt that he never could and never would have paid. Many a man was placed upon a level with his creditor, who would, without that law, have been crushed; having no means by which to pay, and no encouragement to try to pay. And hundreds of men who were relieved by that law, have since paid at least a part of their debts, which, if the law had not been passed, they never could have paid. By its operation the means were placed within their reach. It has certainly done much good, and if you take the trouble to examine the matter, you cannot point out any injury that it has done without, in some quarter, finding a corresponding good. So if we can get the outline in the Convention, so as to compel the Legislature to do their duty in the matter, and it prove no worse than the bankrupt law, I say let us ingraft the provision, and let us make it strong and plain. Let us try it. It has been justly remarked, that perhaps the amount proposed might be proper at present, but that it would be improper hereafter—that the amount that would be proper to-day would not be proper next year—that it might be too great or too small. That is true, and I reply in this way: we ought to have judgment enough to know what is a fair minimum.

A VOICE. No, we have not.

Mr. KELSO. Well, then, we had better go home. We ought, I say, to have judgment enough to be able to fix a fair and a reasonable minimum, which would not be too high, and leave the Legislature to improve upon it as circumstances might demand. Then let us fix upon that minimum, leaving to the Legislature the power to increase the amount, but not to diminish it below the sum fixed in the Constitution. The Legislature will be composed of men like us, and they will resort, perhaps, to subtleties, as we do; they will come, instructed as we have, and give pledges to their constituents. I am not for shrinking from responsibility. I dispise a political coward, here, or elsewhere. What I do, I do boldly. I am for taking my share of the responsibility. I shall vote for the amendment to the amendment, and then for the amendment as amended, and then for the section.

I once more insist, sir, that we should put this matter beyond the possibility of doubt as to what amount a man of family (or a woman) shall be entitled to, under all circumstances, which shall be exempt from execution.

Let us fix upon such amount as will enable the citizen to support his family, such an

amount as will place them reasonably beyond the pale of suffering. By so doing, you increase the wealth of the country by encouraging improvements in the country. You thereby make a freeholder of every good citizen in your State; you thereby increase the revenue of the State by increasing the value of the taxable property therein, and you furthermore give stability, character, and permanency to the community generally.

Every step you take in this matter (if prudently taken) will tend to the advancement of the general welfare of your community, instead of retarding its progress.

There never will be such a thing as a true system of credit in Indiana, until that credit shall be given with reference to the moral honesty of the debtor, instead of looking to the amount of his property. If you credit the property of the debtor instead of his honesty, he may, with great propriety, leave you and the officers to make the money out of his property, provided you can find enough of it to do so when the debt falls due. And you certainly have no right to complain if you get that to which you gave the credit. But let me remind gentlemen that this thing called property is fluctuating and uncertain, and so long as you keep the law as it now is, so long will men resort to the practice of smuggling and covering up at least enough of their property to keep their families from suffering. And who, I ask, can blame them? Self-preservation is the first law of nature; and it is written, that "He who provides not for his own household, hath denied the faith and is worse than an infidel."

As the law now stands, exempting \$125 worth of personal property, it is regarded by many as being exceedingly liberal to the debtor. But, sir, is it not as essential that they shall have a home, a shelter to protect them from the peltings of the pitiless storm, as that they shall have food and raiment? It certainty is. And we now invariably see the poor man, who is oppressed with debt here, so managing as to put something secretly into his pocket, and with the slender pittance of \$125 worth of property, which is protected, he leaves the State and goes elsewhere, to seek an assylum from the importunities of his unrelenting creditors, and we thereby loose many good citizens; whereas, if we would fix upon a reasonable amount as a minimum, and make the thing permanent and certain, we would elevate the character of our community, the character of our State, and greatly advance the general prosperity of both.

On motion by Mr. FOSTER, the Convention adjourned.

AFTERNOON SESSION.

The Convention resumed the consideration of the subject of the exemption of property from forced sale for debt.

Mr. FOSTER. I do not rise, sir, for the purpose of making a speech, but merely to define my position with regard to this question. It is a subject, sir, that was not discussed at length in my county, but it was always adverted to in every stump speech that was made; and there was no diversity of opinion among all the candidates, the successful or the unsuccessful. A large majority of the people of that county are opposed to a Homestead Exemption in toto, and even the minority are divided in opinion. Some are for making it a part of the organic law; others are for making it a part of the statute law. But when I say a large majority were opposed I do not mean the commercial part of the community. So far as my observation extends, those engaged in commerce are favorably disposed; but it is the yeomanry, the bone and sinew of the land, that, or as some gentlemen say, the musket bearing portion, that are opposed to this provision being incorporated in the organic law.

They argue, that even supposing the law is a good one, if made a part of the Constitution it will remain there forever; if the result of our labors should be approved by the people, the presumption is, that it will last as long as we last, and perhaps for succeeding generations. And I think, with them, that a law of this kind should be a statute law, because then the details can be arranged and altered as often as there may be a necessity for altering them. The existing law provides that when a mechanic builds a house, he has a lien upon it for the amount of his claim for his labor; but suppose, for argument sake, that an individual has a lot worth fifty or an hundred dollars, and employs a mechanic to build a house for him, and that by the labor of the mechanic the property is increased in value to the amount of five hundred dollars, and that when the work is completed he turns round and says to his creditor, "Sir, the law declares that I shall have five hundred dollars' worth of property exempted." What sort of propriety is there in such a law?

Well, sir, would it be right to go into detail in regard to all these matters, in a law that is to be permanent? I think not.

We have been carried into Greek, and Roman, and Egyptian history, in search of precedents for a homestead; but, with deference to the opinions of the learned gentleman who has taken this course, I think it must be apparent that a great portion of his research was irrelevant, and cannot be made to bear at all upon the issue.

The gentleman from Laporte (Mr. Niles) has described home and its endearments in most eloquent and glowing language; and I subscribe to all that has been said in this vein. The gentleman's remarks brought up anew to my own mind the recollections and reminiscences of by-gone days. When I have sailed upon the pathless ocean, I have myself often

thought of home; and the first toast of a warm-hearted sailor, assembled over a glass with his comrades, is always, "To our sweetheart's and wives."

The gentleman from Huntington, also, was very eloquent in his remarks upon this subject. His speech was, as I think, one of the most chaste and exquisite productions which has been delivered upon this floor. I subscribe to all the positions he assumes, in principle; but I cannot concur with him in making the Homestead a part of the Constitution.

I know, sir, that gentlemen are anxious to have this question decided. For myself (as I have before remarked) I did not rise to make a speech, but merely to define my position. I have no hesitation in saying that the people of my county are opposed to what, in common parlance, is called the Homestead Exemption. Accordingly I shall vote not for postponement; but I shall vote against the amendment, and in favor of the original section as reported by the committee.

Mr. DOBSON. I do not rise to make a speech, but merely, in common parlance, to define my position. [A laugh.] I wish to say to the friends of the section, which confers no Homestead Exemption, that so far as the section goes I am willing to retain it. I would not like to have it encumbered with amendments, so that we would be compelled to vote it down, because that would be such an indication as might prevent the Legislature from acting in the premises at any future time. For this reason I hope the Convention will take the section just as it is. I am satisfied that the true policy, for the majority, is neither to postpone nor to amend. This is all. I merely rose to state my understanding of the case, and why I shall vote against postponement.

Mr. PRATHER. I am satisfied that the minds of members are pretty well made up. And concurring, generally, in the remarks of the gentleman from Owen (Mr. Dobson), I move to lay the amendment and the amendment to the amendment upon the table.

Mr. BORDEN. I call for a division of the question. There are two propositions embraced in these amendments.

The Convention refused to divide the question; and the yeas and nays being demanded, ordered, and taken upon the motion to lay on the table, the Secretary reported—yeas 82, nays 43—as follows:

YEAS.—Messrs. Alexander, Allen, Badger, Balingall, Barbour, Berry, Blythe, Bowers, Brookbank, Bryant, Butler, Carr, Chandler, Chenoweth, Clark of Tippecanoe, Coats, Davis of Parke, Davis of Vermillion, Dobson, Dunn of Jefferson, Dunn of Perry, &c., Duzan, Fisher, Foley, Foster, Frisbie, Gibson, Gootee, Gordon, Graham of Miami, Haddon, Hall, Harbolt, Hardin, Helm, Hendricks, Hogin, Hovey, Huff, Johnson, Jones, Kent, Kendall of Wabash,

Kilgore, Lockhart, Logan, Mathis, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Morgan, Mowrer, Newman, Owen, Pepper of Crawford, Prather, Rariden, Read of Clark, Read of Monroe, Ritchey, Robinson, Schoonover, Shannon, Sherrod, Sims, Snook, Smith of Ripley, Smith of Scott, Steele, Stevenson, Tague, Tannehill, Thornton, Trimble, Watts, Wiley, Wolfe, Work, Zenor, and Mr. President—82.

YAYS.—Anthony, Bascom, Beach, Beard, Biddle, Borden, Chapman, Clark of Hamilton, Cole, Crumbacker, Colfax, Davis of M., Dick, Farrow, Garvin, Gregg, Hawkins, Hitt, Howe, Kelso, Kinley, Maguire, March, Mather, May, McClelland, McFarland, Miller of Clinton, Miller of Fulton, Morrison of Marion, Murray, Nave, Niles, Nofsinger, Pepper of Ohio, Ristine, Shoup, Smiley, Spann, Thomas, Walpole, Wheeler, Wunderlich, and Yocum—44.

So the amendments were laid upon the table; and the question recurred upon the engrossment of the section.

Mr. PEPPER of Ohio. I wish to offer a small amendment, which I think will not be objectionable. If the friends of the section desire not to change it, I am not inclined to elicit further debate. I hope, however, that my amendment will be concurred in. It is as follows:

“Amend by inserting after the word ‘debtor,’ the words ‘if the head of a family.’”

Mr. CLARK of Tippecanoe (in his seat). The question is on postponement.

The PRESIDENT. The gentleman’s amendment is not in order.

Mr. WALPOLE and **Mr. PEPPER** of Ohio. **Mr. President**—

The PRESIDENT. The gentleman from Hancock.

Mr. WALPOLE. I propose to amend by inserting the following immediately after the word “property,” in the third line:

“Not less than three hundred dollars.”

Mr. MILLER of Gibson. I demand the previous question.

This demand was seconded by the Convention, and the main question was now ordered to be put.

The PRESIDENT. The first question is upon the amendment of the gentleman from Hancock, (Mr. Walpole,) and the next question will be upon the engrossment of the section.

The yeas and nays having been demanded, ordered, and taken upon Mr. Walpole’s amendment, the vote was announced—yeas 42, nays 87—and recorded as follows:

YAYS.—Messrs. Anthony, Balingall, Bascom, Beach, Beard, Biddle, Borden, Chapman, Clark of Hamilton, Coats, Cole, Colfax, Crumbacker, Davis of Madison, Dick, Garvin, Hamilton, Hawkins, Hitt, Howe, Kelso, Kilgore, Kinley, Maguire, Mather, May, McClelland, McFar-

land, Miller of Clinton, Miller of Fulton, Milligan, Murray, Niles, Pepper of Ohio, Ristine, Shoup, Spann, Thomas, Walpole, Wheeler, Wunderlich, and Yocum—42.

NAYS.—Messrs. Alexander, Allen, Badger, Barbour, Berry, Blythe, Bowers, Bracken, Bright, Brookbank, Bryant, Butler, Carr, Chandler, Chenowith, Clark of Tippecanoe, Davis of Parke, Davis of Vermillion, Dobson, Dunn of Jefferson, Dunn of Perry, &c., Duzan, Farrow, Fisher, Foley, Foster, Frisbie, Gibson, Gootee, Gordon, Graham of Miami, Gregg, Haddon, Hall, Harbolt, Hardin, Helm, Hendricks, Hogin, Hovey, Huff, Johnson, Jones, Kent, Kendall of Wabash, Lockhart, Logan, March, Mathis, Miller of Gibson, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Mowrer, Nave, Newman, Nofsinger, Owen, Pepper of Crawford, Prather, Rariden, Read of Clark, Read of Monroe, Ritchey, Robinson, Schoonover, Shannon, Sherrod, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Steele, Stevenson, Tague, Tannehill, Thornton, Trimble, Watts, Wiley, Wolfe, Work, Zenor, and Mr. President—81.

So the amendment was rejected.

The yeas and nays being also demanded, ordered, and taken upon the engrossment of the section, as reported by the committee, the vote was announced—yeas 116, nays 11—and recorded as follows:

YAYS.—Messrs. Allen, Anthony, Balingall, Barbour, Bascom, Beach, Beard, Berry, Biddle, Blythe, Bowers, Bracken, Brookbank, Bryant, Butler, Chandler, Chapman, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Colfax, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, &c., Duzan, Farrow, Foley, Foster, Frisbie, Garvin, Gootee, Graham of Miami, Gregg, Haddon, Hamilton, Harbolt, Hardin, Hawkins, Helm, Hendricks, Hitt, Hogin, Howe, Huff, Johnson, Jones, Kelso, Kent, Kendall of Wabash, Kilgore, Kinley, Lockhart, Maguire, March, Mather, May, McClelland, McFarland, Miller of Clinton, Miller of Fulton, Milligan, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Mowrer, Murray, Nave, Newman, Niles, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Prather, Rariden, Read of Clark, Read of Monroe, Ristine, Ritchey, Robinson, Schoonover, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Stevenson, Tague, Tannehill, Thomas, Thornton, Trimble, Wallace, Walpole, Watts, Wheeler, Wiley, Wolfe, Work, Wunderlich, Yocum, and Mr. President—117.

NAYS.—Messrs. Badger, Bright, Carr, Fisher, Gibson, Hall, Hovey, Logan, Mathis, Miller of Gibson, and Zenor—11.

So the section was ordered to be engrossed for a third reading on to-morrow.

RIGHTS OF MARRIED WOMEN.

The PRESIDENT. The next thing in order is the consideration of the second section of the report of the committee on rights and privileges, and pending amendments, which the Secretary will read.

The Secretary then read the section as follows:

SEC. —. Women hereafter married in this State shall have the right to acquire and possess property to their sole use and disposal; and laws shall be passed, securing to them, under equitable conditions, all property, real or personal, whether owned by them before marriage, or acquired afterwards, by purchase, gift, devise, descent, or in any other way, and also providing for the registration of the wife's separate property.

Mr. HOLMAN's amendment was then read by the Secretary, as follows:

"Every married woman shall have the right to the exclusive use and benefit of all real estate and every interest therein of which she may be seized or possessed at the time of the marriage, or of which she may become seized or possessed at any time, during coverture, by devise or descent, or in any manner other than by gift from her husband or in fraud of third persons; and laws shall be passed, securing to the wife, on equitable principles, the use, issues, and profits of her separate property, and a just interest in her husband's estate, in the event of the dissolution of the marriage contract by the death of the husband or otherwise."

Mr. NAVE's proposition to amend the amendment was also read by the Secretary. It is as follows:

"No law shall be passed whereby the property owned by a *feme covert* at the time of her intermarriage, or by her acquired subsequent thereto, either by inheritance, gift, grant, devise, or otherwise, shall ever be taken for the debts of the husband, contracted before or after said marriage."

Mr. BLYTHE's amendment to the original section, by way of substitute, was also read in the following words:

"The real and personal property of women, whether owned before marriage, or afterwards acquired, by purchase or gift, devise or descent, shall be and remain secured to them under equitable conditions by law."

The PRESIDENT. The question is upon the amendment, by way of substitute, to the original section, proposed by the gentleman from Vanderburg (Mr. Blythe).

Mr. BASCOM. I move to lay the amendment upon the table.

This motion was agreed to, upon a division of the House—affirmative 60; negative 36.

So Mr. BLYTHE's amendment was laid upon the table.

Mr. RITCHEY now moved to lay the section and pending amendments upon the table.

The yeas and nays were demanded and ordered upon this question.

Mr. OWEN. I desire to say to the gentleman from Johnson, (Mr. Ritchey,) that the gentleman from Vanderburg (Mr. Blythe) has, I believe, an amendment which he desires to offer to this section, and I would ask the gentleman to withdraw his motion till that can be done.

Mr. RITCHEY (in his seat). I propose to test the strength of the section at once.

The yeas and nays were then taken upon Mr. RITCHEY's motion and reported—yeas 65, nays 64—as follows:

YEAS.—Messrs. Alexander, Allen, Badger, Balingall, Barbour, Bascom, Beard, Biddle, Bowers, Bracken, Bright, Butler, Carr, Chandler, Clark of Hamilton, Clark of Tippecanoe, Coats, Davis of Madison, Davis of Parke, Davis of Vermillion, Dobson, Dunn of Jefferson, Farrow, Fisher, Foley, Frisbie, Gootee, Gordon, Haddon, Hardin, Helm, Hendricks, Hogin, Howe, Huff, Johnson, Jones, Kendall of Wabash, Lockhart, Logan, Mathis, May, Morgan, Newman, Nofsinger, Rariden, Read of Clark, Ritchey, Schoenover, Shannon, Sims, Snook, Stevenson, Tague, Thornton, Trimble, Wallace, Walpole, Watts, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President—65.

NAYS.—Messrs. Anthony, Beach, Berry, Blythe, Borden, Brookbank, Bryant, Chapman, Chenoweth, Cole, Colfax, Crumbacker, Dick, Dunn of Perry, &c., Duzan, Foster, Garvin, Gibson, Graham of Miami, Gregg, Hall, Hamilton, Harbolt, Hawkins, Hitt, Hovey, Kelso, Kent, Kilgore, Kinley, Maguire, March, Mather, McClelland, McFarland, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milligan, Miller, Mooney, Moore, Morrison of Marion, Mowrer, Murray, Nave, Niles, Owen, Pepper of Ohio, Pepper of Crawford, Prather, Read of Monroe, Ristine, Robinson, Sherrod, Shoup, Smiley, Smith of Ripley, Smith of Scott, Spann, Steele, Tannehill, Wheeler, and Wiley—64.

So the report was laid on the table.

The PRESIDENT. The next business in the order of the day, is the last section of bill number four.

The section was read as follows:

"Laws shall be passed securing to women now married the right to all property hereafter to be acquired by them, in every case in which such married women, in conjunction with their husbands, shall file for record in the Recorder's office in the county in which they reside, a declaration duly attested, expressing the desire of the parties to come under the provision of such laws."

The PRESIDENT. This is the second reading of the section, and the question is, shall it be engrossed for a third reading?

Mr. BLYTHE. I move to strike out the section and insert the following:

"The real and personal property of women, whether owned before marriage, or afterwards acquired by purchase, or gift, (other than from the husband in fraud of his creditors,) devise, or descent, shall be and remain secured, under equitable conditions by law."

I do not design, Mr. President, either to renew or prolong the discussion which has taken place here on this question. My object is simply to explain the effect of the amendment which I have offered. Gentlemen will doubtless remember that during the early part of the debate on this question, a statute passed in 1847 was referred to, and once or twice read. By the terms of that statute the *real* property of married women is protected from seizure and sale for the debts of the husband. The effect of that statute is, that the real property of the married woman remains secured to her as her *separate property*.

The object which I had in view in offering the amendment which I offered some days ago to the second section of this article, was simply to extend the provision of the statute of 1847 to the personal as well as to the real property of the wife. I was led to this from listening carefully to the arguments which have been adduced, both for and against the section, as reported by the committee. I gather from the arguments of the author of this proposition that he did not seek to effect anything more than what I seek to accomplish by my amendment. The committee, however, in framing the section used language which, in the opinion of many gentlemen of the Convention, would necessarily lead to consequences much to be regretted—consequences which I am sure could not for a moment have been contemplated, either by the author of the proposition, or by the committee reporting the section. I gathered, also, from the arguments on the other side of the question, that those who opposed the proposition founded their opposition mainly, if not entirely, on the peculiar language of the first two lines of the second section. They said that we were about to introduce a new principle—one which would disrupt, perhaps entirely destroy, our domestic and social relations. For the purpose of avoiding any effect of this kind, it occurred to me that a simple declaration of right, by which declaration the personal and real property of the wife would be secured to her, was all that was necessary. With that view I drafted the amendment which I offered some days ago. The present one is substantially the same, differing only in its phraseology, and seeks to accomplish this purpose, and this only—that the personal as well as the real property of the wife should be secured to her. This amendment, therefore, I regard as being free from that class of objections which have been urged against this section; and I will only

say further that I am at a loss to conceive of any good reasons, any valid arguments which can be assigned for its rejection. I am prepared, however, to listen to any objection which may be urged against it, and if I can be satisfied that it is obnoxious to serious objections, I will withdraw it. But until I am so satisfied I must insist upon its passage.

Mr. NEWMAN moved to amend the amendment by inserting after the word "gift" the words "other than from the husband in fraud of his creditors."

Mr. BLYTHE. I would suggest to the gentleman from Wayne (Mr. Newman) that the words "equitable condition" would cover the whole ground. However, to avoid delay or debate, I will accept the gentleman's amendment.

Mr. BASCOM moved to lay the section and the pending amendments on the table, and the yeas and nays being demanded and ordered on the motion, they were taken, with the following result:

YEAS.—Messrs. Barbour, Bascom, Biddle, Bowers, Bright, Butler, Chandler, Clark of Hamilton, Clark of Tippecanoe, Davis of Madison, Davis of Vermillion, Dobson, Dunn of Jefferson, Farrow, Fisher, Foley, Gootee, Hardin, Howe, Huff, Logan, Mathis, Morgan, Nofsinger, Ritchey, Robinson, Schoonover, Tague, Walpole, Watts, Work, Wunderlich, Yocum, and Zenor—34.

NAYS.—Messrs. Alexander, Allen, Anthony, Badger, Balingall, Beach, Beard, Berry, Blythe, Borden, Bracken, Brookbank, Bryant, Carr, Chapman, Chenoweth, Coats, Colfax, Crumbacker, Dick, Dunn of Perry, &c., Duzan, Foster, Frisbie, Garvin, Gibson, Gordon, Graham of Miami, Gregg, Haddon, Hall, Hamilton, Harbolt, Hawkins, Helm, Hendricks, Hitt, Hogin, Hovey, Johnson, Jones, Kelso, Kent, Kilgore, Kinley, Lockhart, Maguire, March, Mather, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Morrison of Marion, Mowrer, Murray, Nave, Newman, Niles, Owen, Pepper of Ohio, Pepper of Crawford, Prather, Rariden, Read of Clark, Read of Monroe, Ristine, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Scott, Spann, Steele, Stevenson, Tannehill, Thomas, Thornton, Trimby, Wallace, Wheeler, Wiley, Wolfe, and Mr. President—87.

So the motion to lay the section and amend on the table was not agreed to.

Mr. RARIDEN. I move to amend the amendments by adding the following:

"And upon the death of the husband, the wife shall succeed to the rights of the husband in the use of the estate, both real and personal, during her life, when the husband may die without making a will."

I think that would be a very suitable provision. No one can deny at any rate that it would

be good for the widows, and would give them another chance to get married. [Laughter.]

Mr. OWEN. I hope the proposition of the gentleman from Vanderburg will not be embarrassed by any extraneous matter, and that the Convention will proceed to take the vote on the real merits of the question involved.

The question being taken on the amendment of Mr. Rariden, it was rejected.

Mr. HALL. This subject has undergone a great deal of discussion, and I do hope the Convention will not do injustice to the question embraced in the amendment of the gentleman from Vanderburg (Mr. Blythe); but meet it fairly. As so much of the time of the Convention has already been taken up, I trust that this subject will not be further postponed, but that the Convention will proceed to vote upon it. I believe that at least two-thirds of the Convention are in favor of the amendment.

The question being taken on the amendment, it was adopted.

The PRESIDENT. The question is now on ordering the section to be engrossed for a third reading.

Mr. BARBOUR moved so to amend the section as to provide that the husband should not be liable for the wife's debts.

The amendment was rejected, and the section was then ordered to a third reading.

COUNTY AND TOWNSHIP OFFICERS.

The PRESIDENT. The next business in the order of the day is report No. 5. Is it the pleasure of the Convention to consider this report section by section, or to take up the sections altogether.

SEVERAL MEMBERS. Section by section.

The first section of the report was then read as follows:

"There shall be elected in each county by the qualified electors thereof, a sheriff, coroner, recorder, county auditor, county treasurer, and a clerk of the circuit court, at the time and places of holding elections for the members of the General Assembly. The clerk, auditor, and recorder shall each continue in office four years, and until their successors shall be chosen and qualified. But no person shall be eligible to the office of clerk, recorder, or auditor more than eight years in any term of twelve years. The sheriff, coroner, and treasurer, shall each continue in office two years and until their successors shall be chosen and qualified. Provided, that no person shall be eligible to the office of sheriff or treasurer more than four years in any term of six years."

Mr. WOLFE proposed to amend the second line by striking out the words "county auditor." He would merely remark that there were a number of counties in this State, of which his own county was one, that did not elect county auditors, and which did not require them. He could

see no reason why an office of this kind should be made to depend upon a Constitutional provision, and he thought that such a provision, so far from having a tendency to recommend the instrument to the favor of the people when perfected, would only endanger its final ratification. The people in the several counties could have county auditors if they desired them without a Constitutional provision, and to make such a provision, would only render it necessary for each county to have a county auditor, whether the people of such county desired to have such an officer or not. He knew that there were many counties that did not wish for such an officer, and could do very well without him.

It was a very different thing with a county surveyor. Under the old Constitution no provision was made even for a county treasurer, and he very much questioned whether the people would not reject the new Constitution entirely on the ground of so many new offices being created. It was his candid opinion that the people never contemplated the immense augmentation of State and county officers for which gentlemen seemed so anxious to make provision. If gentlemen would reflect for a moment they would remember that this was a new office. It was only created in the year 1841. The people get along very well without county auditors, and he was satisfied that in many counties they could get along without them yet. The business was generally done by the clerks of the circuit courts, for which they receive a salary of perhaps not more than seventy dollars per annum. Was there any complaint in these counties when the business was thus performed? Certainly not. Now in the thinly populated counties, he was of opinion that the people could get along very well without county auditors. The business could be done as well by the clerks of the circuit courts, and it was not necessary to create more officers. The people whom he represented did not send him there for any such purpose. The whole object they had in view was to economize—to make such alterations in the general scheme of government as would save expense, so that the State might be able to discharge the great debt which hung so heavily upon her, and be placed in that enviable position which she occupied a few years ago.

Mr. NAVE. The speech of the gentleman from Sullivan has had one good effect, and that is to induce me to move to lay the amendment on the table.

Mr. WOLFE demanded the yeas and nays on the motion, which were ordered and taken with the following result:

AYES.—Messrs. Alexander, Allen, Anthony, Balingall, Barbour, Bascom, Beach, Beard, Berry, Biddle, Blythe, Bracken, Brookbank, Carr, Chapman, Clark of Hamilton, Clark of Tippecanoe, Coats, Colfax, Crumbacker, Davis of Madison, Davis of Vermillion, Dunn of Jeffer-

son, Dunn of Perry, &c., Duzan, Fisher, Foley, Foster, Graham of Miami, Gregg, Hall, Hamilton, Hawkins, Helm, Hendricks, Hogin, Hovey, Howe, Huff, Johnson, Jones, Kelso, Kent, Kinley, Lockhart, Maguire, March, Mathis, May, McClelland, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Mooney, Morgan, Morrison of Marion, Murray, Nave, Newman, Niles, Nofsinger, Owen, Pepper of Crawford, Prather, Rariden, Read of Clark, Read of Monroe, Ristine, Ritchey, Robinson, Shannon, Sherrod, Shoup, Sims, Snook, Smith of Ripley, Spann, Steele, Tague, Tannehill, Thomas, Thornton, Walpole, Watts, Wheeler, Wiley, Work, Wunderlich, Yocum, Zenor, and Mr. President—91.

NOES.—Messrs. Badger, Borden, Bowers, Bright, Butler, Chandler, Chenowith, Dick, Dobson, Farrow, Frisbie, Garvin, Gootee, Gordon, Haddon, Hardin, Hitt, Logan, Mather, McFarland, Moore, Mowrer, Pepper of Ohio, Schoonover, Smiley, Smith of Scott, Stevenson, Trimble, and Wolfe—29.

So the amendment was laid upon the table.

Mr. LOCKHART. In the absence of the chairman of the committee on the practice of law and law reform, and the organization of courts of justice, I will move to strike from the section the words "clerk of the circuit court."

Mr. SMITH of Ripley observed, that he was aware that the committee on the organization of courts of justice had reported a section providing for these clerks. The matter, however, was not referred to that committee, but to the committee on county and township organization, and in compliance with that reference they had reported this section. He hoped the motion to strike out would not prevail.

The question being taken on the motion to strike out the words "Clerk of the Circuit Court," it was decided in the negative.

Mr. PRATHER moved to amend the section by inserting after the word "recorder" in the fourth line, the word "surveyor."

The amendment was adopted.

Mr. BASCOM proposed further to amend the section by inserting after the word "treasurer" in the eighth line, the word "surveyor."

The amendment was agreed to.

Mr. BORDEN said, that before offering an amendment which he desired to make to the section, he would state that with regard to the State officers, the judges of the circuit courts, &c., he was prepared to favor the idea that they should all go out of office: but not so with the county officers until at the expiration of their respective terms. He would therefore move to amend the section by adding the following proviso:

"Provided, That nothing herein contained shall be so construed as to prevent those persons now holding office from serving the time for which they were elected under the present Constitution."

The people hardly anticipated when they called this Convention, that the Convention would legislate these men out of office. He was favorable to the judges going out of office and submitting to a new election; but he saw no reason why the county officers should be legislated out of office. He thought it would be productive of less difficulty if those persons now holding county offices were permitted to remain in them until the expiration of their respective terms; and then the provisions of the new Constitution could operate upon them. This seemed to him to be reasonable and proper. He should not further detain the Convention except by saying that he hoped this amendment would be adopted.

Mr. SMITH of Ripley said, that in regard to the amendment offered by the gentleman from Allen, (Mr. Borden,) it might be very proper that the Convention should discuss what officers should remain in office, and who should go out, but he did not think that this was the proper place in which to make the amendment. There ought to be a general provision to cover the whole ground.

Mr. READ of Clarke moved to lay the amendment on the table.

The yeas and nays being demanded and ordered, were taken, with the following result:

AYES.—Alexander, Anthony, Barbour, Beard, Beeson, Berry, Blythe, Butler, Carr, Chapman, Chenowith, Clark of Tippecanoe, Coats, Davis of Parke, Dick, Dobson, Dunn of Perry, Duzan, Fisher, Foley, Gordon, Graham of Miami, Haddon, Hall, Hovey, Jones, Kent, Lockhart, Logan, Mathis, May, McFarland, Miller of Gibson, Mooney, Moore, Mowrer, Nave, Nofsinger, Pepper of Crawford, Rariden, Read of Clarke, Ristine, Schoonover, Shannon, Sherrod, Smiley, Snook, Smith of Ripley, Spann, Stevenson, Tague, Tannehill, Thomas, Thornton, Trimble, Wiley, Wolfe, Work, Yocum, Zenor, and Mr. President—61.

NOES.—Allen, Badger, Balingall, Bascom, Beach, Biddle, Borden, Bowers, Bracken, Bright, Brookbank, Bryant, Chandler, Clark of Hamilton, Colfax, Crumbacker, Davis of Madison, Davis of Vermillion, Farrow, Foster, Frisbie, Garvin, Gootee, Gregg, Hamilton, Hardin, Hawkins, Hendricks, Hitt, Hogin, Howe, Huff, Kelso, Kendall of Wabash, Kinley, Maguire, March, Mather, McClelland, Miller of Clinton, Miller of Fulton, Milligan, Milroy, Morgan, Morrison of Marion, Murray, Newman, Niles, Owen, Pepper of Ohio, Prather, Ritchey, Robinson, Shoup, Sims, Smith of Scott, Steele, Walpole, Watts, Wheeler, and Wunderlich—62.

So the amendment was not laid upon the table.

Mr. BORDEN. This vote tests the principle, and I am satisfied to withdraw the amendment, if gentlemen think it can be put in a more appropriate place.

The PRESIDENT. The gentleman cannot now withdraw his amendment.

Mr. HALL. I voted against this amendment not because I am opposed to it in principle, but because I think this is not the proper place for it. There will be a miscellaneous article with a number of sections, in one of which I think this provision might be made.

Mr. BORDEN. The chairman of the committee on miscellaneous subjects informs me that this subject is before them. I believe that it is usual in a schedule to provide for matters of this kind, and the Convention having expressed its willingness to retain these officers, I would like to have the privilege of withdrawing my amendment.

The PRESIDENT. The amendment cannot now be withdrawn.

Mr. KELSO maintained that this was both the proper time and place to dispose of this amendment. There were seven offices, all of which the Convention were willing to retain, and it would be better to decide upon retaining them now than to leave the whole question open to the last, when some gentlemen would go for retaining one class of officers and others for retaining another class. There are members who would be willing, for instance, to retain the officers of the judiciary and not county officers, and *vice versa*. Were it thus left to the last, it would inevitably create confusion, and a compromise would most probably have to be effected. Now was the time to retain all those officers which they had determined to retain.

Mr. SMITH of Ripley. I wish to say a single word on this provision. It does appear to me that notwithstanding the usual good sense of my friend on the right, (Mr. Kelso,) he has mistaken the correct view of this subject. I take it that there will be a general provision upon the subject reported, and at that time I think we should have a general vote, and not quarrel and fight upon the different sections, and in regard to the different officers. I am satisfied that that would be the proper mode and the proper time to decide on this matter. From the indications which we have already had, it is evident the vote will be a close one, and gentlemen may not perhaps yet have thought over the subject sufficiently to make up their minds. Now let us look at this matter for a moment. The new Constitution, if it should be ratified, will not likely go into effect until a year from next August. Next August another third of the Clerks will have to be elected, and their term of office is seven years. Before the new Constitution can go into operation there will be two elections, and the officers elected under the old Constitution will be running beyond their term. If we calculate to do equity and justice to the people of the State, we will take such a course as will make them all elective. So far as the Clerk of my county is con-

cerned, I know that he cares nothing about it; but then it will not be so throughout the State. It is of much more importance to continue judicial officers in office, than any county officers; but suppose it was possible that we could have a Supreme Judge in every county of the State, what then? This is a very important office, and would you continue the incumbent in it for life, according to his tenure. I think the country expects that when we put into the Constitution the several officers, we will put them all in at the due time and make them all elective. It occurs to me that this is the correct mode in which to act, and is what I believe the people will expect of us.

Mr. BROOKBANK. I do not rise to occupy much of the time of the Convention, but I must say that if there is any subject in which I feel interested more than another it is this one now under discussion. It was admitted to be a principle worthy of being acted upon, that all officers should be elected by the people. These county officers who have been elected so recently, are a fair expression of the popular will, and this expression of their voice should not be cut off by any wholesale action of this Convention.

The gentleman last upon the floor says, that it would be an act of injustice to those who might desire to seek office, that the Clerks elected for seven years should hold their offices for the remainder of their term under the new Constitution. What man is there whose services would be worth having, who would be willing to accept an office under the old Constitution, for the term of one year? No man. Now notwithstanding this attempt to commit a kind of wholesale manslaughter upon these officers, I maintain that in every department of the public service you will obtain better men, and give more satisfaction to the people, by permitting those who are elected by the people to hold their offices for the full term for which they were elected.

Mr. RITCHEY. I do not rise to prolong the discussion, but I would ask members if they do not think there will be enough to break down the new Constitution when its adoption comes to be voted upon by the people, without enlisting against it the opposition of every office holder throughout the State? These men have influence, and the Convention may rely upon it that that influence, in conjunction with other influences, will be thrown into the scale against the new Constitution, if any such limitation is adopted here. I am fully of opinion that any officer elected under the old Constitution should serve out the full period of time for which he was elected; and I can see no necessity for us to step out of our way to abridge the term of service, either of a Clerk of a circuit court, or a recorder, or any other officer, when we could just as well let them step from the one Constitution to the other.

Mr. NAVE. It is growing dark, and as there appears to be no probability of getting a vote on this question to-night, I move that the Convention do now adjourn.

The Convention then adjourned.

WEDNESDAY, Nov. 27, 1850.

The Convention met, pursuant to adjournment.

Prayer by Rev. Mr. CARY.

The journal of yesterday was read and approved.

The PRESIDENT laid before the Convention a communication from the President of the State Bank, and also a communication from the Cashier of the State Bank, in relation to the several branches of that institution.

They were, on motion, laid on the table, and fifteen hundred copies of each were ordered to be printed.

Mr. MAGUIRE presented a petition from citizens of Marion county, respecting the privileges to be allowed to negroes.

On his motion it was referred to the select committee that was raised for the purpose of reporting upon this subject a few days ago.

On motion of

Mr. THORNTON, the petition which he had presented on a former day, in relation to this subject, from citizens of Floyd county, was taken up and referred to the same committee.

Mr. BORDEN moved that the rules be suspended, to enable him to introduce a resolution that when the Convention adjourns to-day, it will adjourn to meet on Friday morning, at 9 o'clock.

The Governor, he observed, had issued his proclamation, setting apart to-morrow as a day of thanksgiving; and notice had been given in the several churches of the city that divine service would be performed. He thought, therefore, there would be no disposition on the part of the Convention to do business on that day.

The rules were suspended and the resolution was adopted.

ORDERS OF THE DAY.

The Convention then proceeded to the consideration of the orders of the day, being the section in relation to the exemption of the property of debtors, on its third reading.

Mr. PEPPER of Ohio moved to re-commit the section to the committee on rights and privileges, with instructions to insert the words, "of the head of a family."

I presume, said Mr. Pepper, it is not intended to make this provision—which, I believe a majority of this Convention are decidedly in favor of making, for the benefit of the debtor,—to secure the debtor a certain amount of property. I think it is not intended to make the provision extend to transient persons, or to young men,

or, if you please, to old bachelors, if they be not heads of families. I am in favor of the provision, provided it be amended as I propose.

Mr. SMITH of Ripley addressed the Convention. [His remarks will be published hereafter.]

Mr. GIBSON moved the following as a substitute:

"It shall be the duty of the Legislature to exempt from sale on execution, a reasonable amount of property, proportioned to the necessities of the debtor."

The question being taken on the motion of the gentleman from Clark, (Mr. Gibson,) it was not agreed to.

Mr. ANTHONY moved to amend the instructions so as to exempt the homestead of the debtor from forced sale on execution, to such value or extent as the Legislature may prescribe.

The question being taken, the amendment was not agreed to.

Mr. KELSO. I believe, sir, that the motion is to re-commit the section with instructions, and the question will first be upon the instructions moved by my colleague; by which he proposes so to change the section as to apply its benefits only to heads of families. I wish to enlarge those instructions, sir. I wish so to amend as to give the Legislature the power to exempt a sufficient amount of real or personal property, or both, for the benefit of the debtor, as the Legislature may think proper. Now, take this section as it reads at present, and if it does not come a little nearer meaning nothing at all, than any section that has yet been reported, then I am greatly mistaken. In our present Constitution there is nothing said upon the subject; yet no one will deny that the Legislature has the power to pass an exemption law, for the benefit of debtors, and such laws have been passed ever since Indiana has been a State. There certainly is no additional power conferred by this section. It is as follows:

"The privilege of the debtor to enjoy the necessary comforts of life, shall be recognized by wholesome laws, exempting a reasonable amount of property from seizure or sale for the payment of any debt or liability hereafter contracted."

And there is the whole of it.

This principle has always been recognized in every christian country, that debtors should be allowed the necessary comforts of life. I believe there is no law anywhere which declares that if a man does not pay his debts, he shall be starved—that he shall have no shelter. In countries where they do punish for non-payment of debts, they shut up the debtor it is true; but they furnish him with sufficient food and lodging. This is the case everywhere—there is no exception. Well, this is a matter that should be reg-

ulated by wholesome laws, just such as the Legislature may choose to pass—no more and no less. And our Legislature has exercised this power ever since we have been a State. They have from time to time passed wholesome laws upon the subject of property exemption, commencing by exempting fifty dollars worth of property, and increasing the amount from time to time, until it has reached the amount of one hundred and twenty-five dollars in personal property, which, as has been said by the gentleman from Ripley, is barely sufficient to furnish the necessities of life for a small family, making no provision for a home of any kind.

A MEMBER. It is not the family, but the debtor that is provided for.

Mr. KELSO. I know this provision is for the benefit of the debtor, and therefore, the amendment of the gentleman from Ohio is perfectly correct and proper. I cannot believe it is the intention of this Convention, that it shall be considered compulsory upon the Legislature, to provide for a man who has no family. It never was done in Indiana but once, and then it was through mistake, and the law lasted but a single year. The wording of this provision is doubtful, to say the least of it. And this is a question of all others, in regard to which, our meaning should be clear and unmistakable. I do not say the Legislature might not so construe the section, as to make provision for the heads of families only. But it ought to be put beyond a doubt.

I hope, therefore, that the section will be referred, with instructions and amendments as I have proposed.

Mr. NILES. I need not say, Mr. President, that it is with reluctance I rise to utter another syllable on this subject. It is not my disposition I trust, to quarrel at all with the action of this Convention. Whatever shall be the final result of their deliberations, I trust I shall be found ready to acquiesce cheerfully in it, at all events to attribute to every gentleman on this floor integrity of purpose. But I must say that it has occurred to me, there has been manifested in regard to this, and a somewhat kindred question, the most remarkable inconsistency. There is apparently, an inveterate feeling of opposition—an honest feeling I admit—on the part of a majority of the Convention, to the idea of placing beyond the reach of the sheriff, the home which shelters the unfortunate debtor, because, gentlemen think it is to tie up the property of the State, and embarrass commerce, and credit. On the same day when this measure is voted down, comes up a provision in relation to the rights of married women, protecting from execution and even from the control of the husband, half the property of the State. It is at once laid on the table—several gentlemen who like myself do not favor the measure, voting, as a matter of courtesy, against the motion. Within one hour from that time, the

same measure, in substance, is introduced again, and without a moment's delay, under a sudden impulse, and without debate, or the eyes and noses being called, it is forced through. It is made as far as the action of the Convention can make it, the law of the land. For I need not hesitate in the belief, from the disposition that is generally manifested, when action has been once taken, to adhere to it, that it will not be re-considered.

One reason, sir, why I am opposed to that measure as a Constitutional provision is that it may aid ultimately to defeat the homestead exemption—a measure which comes in conflict with no dictate of reason, no principle of benevolence and no great law of order. But with reference to the section relating to the rights of married women, I am by no means certain, but that in its spirit, and in its silent, unseen and ultimate influences, it may come in in conflict with that great law of our being, so often announced at our marriage festivals—"and they twain shall be one flesh"—"what God hath joined together let not man put asunder." That is a law upon which the happiness of our race most largely depends and which can never be violated without disastrous results. I am by no means satisfied from the experiments which have been made in the civil law countries, that the condition of women among us would be elevated by any similar provisions. I am by no means certain, but that such a measure would tend to build up and perpetuate large estates, or but that it would prove useful—if useful at all—mainly to the rich. I am not certain but that we can see something of such a result in our large cities, and in Great Britain, brought about indirectly by means of conveyances in trust. The protection of the wife's property from execution, for the husband's debts is one thing; the building up of separate interests and estates, is entirely another. I cannot, of course, in this incidental way, set myself right upon this question. But I must confess that it appeared to me like strange inconsistency for this Convention on the same day, in effect, to reject the principle of homestead exemption and adopt the section upon women's rights. I am aware that any appeals at this moment, will be unavailing, and perhaps I ought not to have risen to make even these remarks.

Mr. READ of Clark. As this debate has taken such a wide range and occupied so much of the attention of the Convention, I do not feel inclined to indulge in any lengthy remarks upon the subject. But, sir, I would say in the first place, that I have always been in favor of a liberal exemption from execution.

The journal of the Legislature, for the last twenty years, in both branches of the Legislature, will show that I have always been in favor of granting liberal exemptions.

My great objection to referring this matter, as I have stated on former occasions, is, that it

will endanger the adoption of the Constitution. Pass the Homestead Exemption law, the women's rights law, and the negro law, which the masses of the State object to, and where will be your Constitution? The Constitution will be rejected after the Convention that formed it has cost the State some eighty thousand dollars.

I am opposed, sir, to this subject being ingrafted in the Constitution, because the whole country is so decided on the subject. In the southern portion of the State the people are almost unanimously opposed to it, while in the northern portion of the state they are in favor of it. In view of this State of things, then, why not leave the question to the discretion of the Legislature?

During the last eight or ten years the subject has been up every year before the Legislature, and it has always, with scarcely an exception, been voted down. In the House last year, there was a pretty close vote upon it, I believe. Having these facts before us, sir, would it not be inexpedient to ingraft this article in the Constitution, thereby endangering its acceptance at the hands of the people?

I recollect the period, sir, when the exemption amounted only to sixteen dollars; but it has increased in amount from time to time, until it has now reached the amount of one hundred and twenty-five dollars. And if this progressive ratio is allowed to go on, can we say what it will be twenty years hence? Doubtless more than is just or necessary. We ought, sir, to leave the matter with the Legislature, and allow them to act as they may deem necessary under the circumstances.

A number of States have passed the Homestead Exemption law, and several have repealed it from considerations which they deemed weighty and sufficient.

I am opposed, sir, to referring this matter, and prefer that we take action at once upon it, and go on with our other business. On the ground that I have stated, I trust it will not be committed; not that I am opposed to protecting the honest labor of the poor, for I am with that class of our citizens heart and soul. I was raised from poverty, and I know how to appreciate their condition, and no man can say but that I have always been, as I always shall be, their friend.

I do not desire to detain the Convention; I am opposed to referring this question, and to placing the Homestead Exemption in the Constitution. If the people of the State require such a law, let them make their wishes known, and have them obeyed through the medium of the Legislature.

Mr. SHOUP. I presume this matter has been discussed as long as it is necessary. I therefore move the previous question.

The PRESIDENT. Will the Convention second the motion for the previous question?

The motion was seconded.

The PRESIDENT. Shall the main question be now put.

The motion was agreed to.

The PRESIDENT. The main question is, Shall the section pass?

Mr. KELSO. I rise to a point of order. I desire, in the first place, to know whether the main question is upon the reference with instructions?

The PRESIDENT. If the gentleman will refer to the rules, he will find that the previous question takes precedence of the motion to commit. A motion was made to commit the section with instructions. While that motion was pending, the previous question was called for, and it being seconded and the main question ordered to be put, the question now is, Shall the section pass?

Mr. CLARK of Tippecanoe inquired whether at this stage of proceeding the motion to commit did not carry the instructions with it?

The PRESIDENT. The Chair has decided the question. Any gentleman dissatisfied with the decision can take an appeal.

Mr. KELSO. I feel so well satisfied that a motion to lay on the table is now in order, that I move that the instructions be laid on the table for the present. I will risk the issue.

Mr. STEVENSON. I would inquire of the Chair whether it is in order to move a reconsideration of the previous question. I voted for the engrossment of this section; but if it would be any satisfaction to those in favor of the Homestead to leave the question open for the present, I will go with them to lay this motion to commit with instructions upon the table.

The Chair decided that such a motion was not now in order.

The PRESIDENT. Is the gentleman from Switzerland desirous of taking an appeal from the decision of the Chair?

Mr. KELSO. I am.

Mr. SMITH of Ripley said he thought that the motion to lay on the table was always in order, according to parliamentary law.

The PRESIDENT. The question is upon the appeal of the gentleman from Switzerland (Mr. Kelso). Before it is taken, however, he must send it up to the Secretary's desk in writing.

Mr. DOBSON (in his seat). Has the gentleman given security for costs? [Laughter.]

Mr. HALL. I have always understood, in parliamentary proceedings, that it is never in order to lay upon the table during the first and third readings of a bill.

Mr. Kelso here sent up his appeal in writing.

Mr. KELSO. In order that we may now decide the question so as to be governed on future

occasions by our present action, I ask for the yeas and nays on this question.

The yeas and nays being demanded were ordered.

THE PRESIDENT. As many as are of the opinion that the decision of the Chair shall stand as the opinion of the Convention will, when their names are called, answer "aye;" those of the contrary opinion will answer "no."

The Secretary then proceeded with the call, and reported the following result—yeas 111, nays 8:—

Those voting in the affirmative were,

Messrs. Alexander, Anthony, Badger, Balingall, Beach, Beard, Berry, Bicknell, Bourn, Bowers, Bracken, Bright, Brookbank, Bryant, Butler, Carr, Chandler, Chapman, Chenowith, Clark of Tippecanoe, Coats, Cole, Colfax, Cookerly, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, Farrow, Fisher, Foley, Foster, Frisbie, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Hall, Hamilton, Harbolt, Hardin, Helm, Hendricks, Hitt, Hogin, Hovey, Huff, Johnson, Jones, Kent, Kendall of Wabash, Kinley, Lockhart, Logan, Maguire, March, Mather, Mathis, McClelland, McFarland, McLean, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Mowrer, Nave, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Prather, Read of Clark, Read of Monroe, Ristine, Ritchey, Robinson, Schoonover, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Scott, Steele, Stevenson, Tague, Tannehill, Taylor, Thomas, Thornton, Trimble, Wallace, Watts, Wheeler, Wiley, Wolfe, Work, Wunderlich, Yocum, and Zenor—111.

Those voting in the negative were,

Messrs. Bascom, Blythe, Clark of Hamilton, Hawkins, Kelso, May, Milligan, and Walpole—8.

So the decision of the Chair was sustained.

The question then recurring upon the passage of the section, the yeas and nays were taken under the rule with the following result, yeas 108, nays 18:

Those voting in the affirmative were,

Messrs. Alexander, Anthony, Balingall, Barbour, Bascom, Beach, Beard, Berry, Bicknell, Biddle, Blythe, Borden, Bourne, Bowers, Bracken, Brookbank, Bryant, Chandler, Chapman, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Colfax, Cookerly, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, &c., Farrow, Foley, Foster, Frisbie, Garvin, Graham of Miami, Hamilton, Harbolt, Hardin, Hawkins, Helm, Hendricks, Hitt, Hogin, Huff, Johnson, Jones,

Kent, Kendall of Wabash, Kinley, Lockhart, Maguire, March, Mather, May, McClelland, McFarland, McLean, Miller of Fulton, Milligan, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Mowrer, Nave, Niles, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Prather, Read of Monroe, Ristine, Ritchey, Robinson, Schoonover, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Scott, Spann, Steele, Stevenson, Tague, Tannehill, Taylor, Thomas, Thornton, Trimble, Wallace, Walpole, Watts, Wheeler, Wiley, Wolfe, Work, Wunderlich, Yocum, and Mr. President—108.

Those voting in the negative were,

Messrs. Badger, Bright, Butler, Carr, Fisher, Gibson, Gootee, Gordon, Hall, Hovey, Kelso, Logan, Mathis, Miller of Gibson, Read of Clark, Smith of Ripley, Terry, and Zenor—18.

So the first section of article 4 was passed, and was referred, as usual, to the committee on revision and phraseology.

RIGHTS OF MARRIED WOMEN.

The Convention then proceeded to the consideration of the third section of article four, relating to the right of women now married, to hold property.

The question being, Shall this section now pass?

Mr. ROBINSON moved that the third section of article four be re-committed to the committee on rights and privileges, with instructions to amend by striking out the section and inserting the following:

SECTION.—All married women residing in this State at the death of her husband shall have the right to claim free, and discharged from his debts an amount of property not to exceed the sum of three hundred dollars, and one-half of the balance remaining after the payment of his debts.

Mr. ROBINSON said: When this question was undergoing a general discussion I was not present. The subject being of a very general character, and one affecting the interests of my constituents, as well as all other persons, I had intended to have given my views at the first opportunity afforded. But this being simply a motion of reference, the speakers are simply restricted to fifteen minutes, so that the limited time in which I will have to speak will not permit me to more than give the leading reasons which influenced me to prefer this amendment to that section which has been engrossed. And permit me to say I am as willing as any one on this floor to do ample justice to married women. I believe they are the most meritorious members of the partnership that is formed for life by the contract of marriage, and that much injustice is done to them in the majority of cases. I believe that the law of descent as it now stands does them gross injustice; indeed I believe it frequently reduces them almost to beggary and want, by taking from them nearly all the prop-

erty left. This is wrong; and the section as it now stands, in my opinion, also does not grant to married women the equality to what I think they are justly entitled. The section as it is now proposed secures all property acquired by descent, gift, or purchase with certain restrictions; but in perhaps a majority of the partnerships formed in our State by marriage, at this time, the female seldom brings into the general stock anything more than a portion of personal property, and perhaps that personal property after being in use for many years during the existence of the husband's life is all worn out or disposed of. Take one then out of almost any number of cases that present themselves as things now stand, and the law absolutely secures them nothing. As I remarked before, the personal property brought into the family has long since been exhausted, or will be when the partnership is dissolved by the death of the husband. Then, sir, as the section stands, it would secure but little, so far at least as personal property is concerned.

I am opposed to the passage of the section under consideration not because I believe the married women are not entitled to the benefits it confers, but because I apprehend it will tend to produce discord, and engender bitter feelings between man and wife, to disturb that relationship which should be held sacred and kept free from everything calculated to make it unpleasant. We should correct the law of descent, thereby providing for the wife after the husband's death. How often, sir, is it the case, as a gentleman remarked, when speaking with reference to the question under consideration, and in reference to the amendment before the Convention, that under the operation of our law of descent that the husband dies leaving property of which the wife has only the right to claim one hundred and fifty dollars; with the balance being distributed according to the law of descent among the children, when the wife is under the obligation imposed on her by the feelings of a mother to raise and educate, and sometimes the property under the law of descent goes to some distant relation. It seems to me, sir, that you should secure to the wife the amount of three hundred dollars free and discharged from her husband's debts. That will be barely sufficient to meet the wants of the wife and mother at his death. For I hold, sir, that debts contracted during the existence of the partnership for the benefit of both should be held sacred, and always paid where there are any means for so doing, before any favor more than the sum of three hundred dollars is bestowed on the wife as provided in the amendment. After the debts of her husband are paid I think that the wife is, by every rule of justice and right, justly entitled to one-half of the balance of her husband's property after a full payment of his debts and cost of administering.

I offer my amendment, sir, because I believe

it to be more appropriate, and because I think it will prevent discord in the private relations that exist between man and wife in many instances. If it should not meet with the approbation of the Convention, I can only say that I have done what I believed justice required; that I have endeavored to guard one of the dearest relations in life, and to secure at the proper time justice to married women in a way which is better calculated to secure peace and harmony in the marriage relation.

Mr. CLARK of Tippecanoe. I wish to say a few words on the proposition of the gentleman from Decatur. If I could persuade myself to vote that anything pertaining to this subject ought to be ingrafted in the Constitution, I would be willing to vote for a portion of the instructions moved by the gentleman. I have been impressed, sir, long ago, with the opinion, that the provision made by our law for the benefit of widows, is altogether insufficient. It is by far too limited in amount to accomplish the object designed by the law. And I undertake to say that this proposition to increase the amount of property granted to the widow at the decease of her husband, will benefit a far greater number of females than the proposition of the gentleman from Posey, with all its boasted humanity, and, sir, without inflicting any of the evils resulting from that measure. The assistance thus given to the widowed female, by the law, (if it can give any,) will come to her aid at the proper time. If the law can properly discharge the property of a family from the lien of debts; if it can turn aside to perform an act of kindness—I know of no period when it is so much needed, as that in which a family is bereaved of its head and support. Then the labor and skill of the father no longer assists them, and the mother and children are left to their own resources.

It is then, sir, that aid is most needed—that some provision is necessary to support the family, until they have time to look around for new means of employment and subsistence. This provision, sir, will apply beneficially to all who have any amount of property, and will especially benefit widows whose husbands were of moderate circumstances, or whose affairs were embarrassed. But the section itself, which the gentleman from Decatur proposes to amend by substituting his proposition, can apply only to the wealthier portion of our people, and always, in every society, they must be comparatively few. But, waiving the objections which I made to it at another stage, on a moral ground, and the corruption of manners which it will cause, I desire to consider it in another aspect.

Sir, we are told much of progress and advancement, of the necessity of amending our Constitution in accordance with this boasted progress and advancement. Now, sir, a writer on the subject of government, renowned for his sagacity, advises statesmen that the purpose of

amending a government is to reduce it again to its original principles, and not to depart further from them, unless the object be to adopt a government with different principles. I affirm, sir, that this advancement, which gentlemen talk so much about, with reference to this question, consists, not in a greater respect and tenderness or the rights of females—but arises from a greater appreciation of the consequence of wealth.

Sir, it is that wealth is an object of too much esteem among us, and we have an over-weening desire to secure it to our families and children. In republics more than in any other government, virtue and capacity must be the standard of public esteem. I will even say, sir, that a free government cannot exist upon any other basis. If we desire to perpetuate our institutions, we must seek to establish that state of morals, in which the man shall be accounted *rich*, who is wise and just.

Gentlemen have denounced the law of our fathers, which declared the unity and identity of husband and wife, which made the relation so sacred, that no human law could find any pretence for any separation of their interests, to be barbarous and inhuman. They boast of our superior intelligence and refinement. But I undertake to say, sir, that no people on earth are more indebted to the wisdom and virtue of their ancestors, than are the American people at this moment. I venture to say, sir, that we, in the high and heroic qualities which exalt and ennoble human creatures, do not surpass our ancestors. Sir, the heroic age has passed away, and we are reaping the fruits of the wisdom and unselfish virtues of our forefathers. I am willing to grant that, in some respects, we may be more refined, for some sorts of refinement are the offspring of leisure and wealth. But neither refinement nor wealth, is virtue.

Vice may be somewhat divested of its hideousness, if polished, but it is vice still; and thus veiled, is often more pernicious to society than vice in its native grossness. But I say, sir, that all this great movement in relation to this subject, is not because we have advanced in humanity or virtue, or because we have a deeper veneration for human rights, but because we have a greater respect for wealth—because wealth has an undue and improper degree of influence on our minds—we commit the character and persons of our daughters to the hazard of the husband's keeping, but will not venture that which we prize the most—her wealth. Sir, a great while ago, in an ancient republic, when it was proposed to one of its most illustrious citizens, that he should give his daughter to a man of wealth rather than to one, poor and virtuous, he said he chose a man for a son-in-law, rather than a fortune. This, sir, is the principle of a republic. Virtue must be pre-eminent in our esteem. Our laws should encourage this sentiment—not seek to eradicate it. The only pre-eminence which a republican people can properly recog-

nize, is the pre-eminence of wisdom and virtue. To this standard our reformatory ought to be directed. In that society where virtue and wisdom is most honored, and held in the greatest esteem, there will be the strongest inducements to men to labor for such distinctions. The noblest civilization, the most permanent prosperity of man, spring from and rest upon such a basis.

Sir, men standing on the basis of equality are entitled to superior esteem, only because of superior merit. And with privileges there must always be corresponding responsibilities. If vice were equally meritorious as virtue, what human motive would there be to induce men to virtue. If to flee from danger were no discredit, and bravely to encounter it no honor, man would cease to be brave. If ignorance, idleness, and improvidence brought the same rewards as wisdom, fore-thought, and industry, men would cease to be wise and industrious. We cannot change the laws of nature as to these things. Man must be responsible for his actions; there is no escape from the penalties imposed by nature, for misconduct, either individually or politically. Now, sir, let us consider the principle of some; of our pretended reformatory—our progression toward equality, which is the grand principle of a free government. We are seeking to place property beyond the reach of the penalties which attach to improvidence or extravagance. We are not willing to trust it to the custody of those virtues by which it was acquired, but seek to secure it against all contingencies of conduct. Because wealth gives home a degree of consequence, we are aiming to make those who have it, secure in their possession, independently of their good or bad conduct. We are trying to place on an equal footing, folly and wisdom, idleness and extravagance—to entail on those who have it, the aristocracy of property—to give them privileges, and exempt them from the responsibility of their actions. On this principle, that privilege and responsibility should be inseparable, I opposed what is called the Homestead Exemption.

For, sir, I believe that we can provide no better law than nature's law; that wisdom, capacity, and industry shall have a higher reward than folly, idleness, and extravagance.

Now, sir, let us look at the fine picture of our improvements on the laws of our ignorant and barbarous ancestors. My friend here, before me, from Laporte, would secure, as a sacred and inalienable possession, the moss-covered cottage—no, sir, not moss-covered—he describes it as an ancient, time-honored castle, crowned with woodbine—fragrant with roses—where was gathered up all the refinements of taste, and the elegancies of wealth. This sacred possession, hallowed by so many holy associations, shall not be put in hazard by any improvidence, any extravagance of the husband. The pay-

ment of a debt, contracted to maintain this splendor, shall not jeopardize this holy place!

Then next comes the gentleman from Posey, with his humanity to the wife. All the property which she may, by any means, acquire, is also to be secure against any debt which the husband may contrive to contract. What else can this secure and happy family need? Why, sir, they need servants, that they may have leisure to cultivate their tastes, and refine themselves from the barbarisms entailed on them by their ancestors,—and behold, sir, the humanity of some other gentlemen provides that the poor negro shall be sold to them, that nothing shall be wanting in this happy group. This, sir, is the grand improvement we have made in our conceptions of equality—this the refinement which we so extol—this the love of freedom and devotion to humanity which we manifest!

But, sir, I am too old-fashioned—too anti-progressive—that I am opposed to these things. I hold it to be a true principle of government, that all men are to be responsible for their privileges—responsible for their actions. There are to be no exemptions—no artificial distinctions—no classes shielded by law—no position of place or power—no perpetuity of property, irresponsibly secured or maintained by law—but all are to have an equal and fair right to exert their faculties, and are to be subject to the penalties properly arising from their misconduct—entitled, also, to the rewards of their labor.

Why, sir, what is the objection against corporations? It is that they are invested with privileges, and are not made responsible for their acts—that the individuals composing them have the unlimited privilege of contracting debts, but their property is secured to them, and relieved from the responsibility of payment. Thus privileged classes grow up, without corresponding responsibilities. Sir, we seek to restore our political equality by abolishing these exclusive privileges—by requiring full responsibility. But these humane contrivances which gentlemen are *progressing* in, what are they but domestic corporations? These domestic corporations, sir, are authorized to contract debts for which their property is not to be responsible. Their property is to be secure against all misconduct. Idleness, extravagance, waste, sir, are not to put in hazard this *sacred* possession. I ask, sir, how do these domestic corporations differ in principle from the ordinary corporations which certain gentlemen denounce so vehemently. I say, sir, that these measures tend to build up exclusive privileges, and to divest individuals of all responsibility for their actions. They are based on a false principle—an undue regard for wealth, and too anxious a desire to secure it to the possession of those who have it. It is an attempt to exempt men from the penalty of their mis-

conduct—to make wealth, not virtue, the standard of merit.

Mr. HOVEY said, I am friendly to the amendment proposed by the gentleman from Vanderburg, (Mr. Blythe,) but think the language used will have a much broader effect than the gentleman intended. I think the words "purchase, or" should be stricken out of his amendment.

The word "purchase," as used in his amendment, would give to the wife the full control and use of all that she may make by her personal labor during coverture. Kent says: "All the modes of acquiring title to land are reducible to title by descent and by purchase, or, according to the better distribution of Mr. Hargrave, into title by act or operation of law, and title by purchase, or by the act or agreement of the parties. Whether the agreement be founded upon a valuable consideration, or be the result of a free and voluntary gift, the property thereby acquired is still, in the eye of the law, a purchase."—4 Kent, 374.

If I am not mistaken, the technical definition of purchase, as above explained, applies as well to personal as real property, and if so, I think it is clear that the amendment would give to married women the right to the products of their personal labor. I therefore move to recommit the amendment, with instruction to strike out the words "purchase, or."

Mr. BLYTHE. The effect of this motion would be to substitute a new principle in the place of the one adopted by the Convention yesterday. Will the Secretary oblige me by reading the instructions offered by the gentleman from Decatur (Mr. Robinson)?

The instructions were read as requested.

Mr. BLYTHE proceeded to say: My objection to that proposition is this—that it is upon another and an entirely different subject. I agree in opinion with the mover of these instructions, that our present laws regulating the descent of property, so far as the interest of the widow is concerned, are iniquitous. I believe that they ought to be changed; I believe, also, that, at the proper time, in addition to the section which was adopted by the Convention on yesterday, we may bring forward a section which will require that matter to be better regulated by the Legislature for the future, which I think ought to be done. Every gentleman who will take the trouble to compare the section, as adopted on yesterday, with the proposition offered by the gentleman this morning, will at once perceive the difference. This proposition relates only to the property to be held by the widow at the death of the husband, and it leaves the evil we complain of just where we found it; and we might as well have done nothing at all. That is the objection which I have to the proposition made by the gentleman from Decatur.

The gentleman from Tippecanoe, (Mr. Clark),

it seems to me, misapprehends the design and effect of the section which I offered yesterday. As I at that time attempted to explain, my object is to avoid altogether the evil consequences which many gentlemen suppose would inevitably follow from the peculiar phraseology of the section, as reported by the committee on rights and privileges. It is known to the chairman of that committee that I was opposed to that section, because I believed that it would lead to consequences not contemplated by the committee. And my object was, so to frame the section, as to accomplish what I supposed to be the intention of the committee, without incurring the hazard of injuriously affecting the marriage relation.

With regard to the amendment offered by the gentleman from Posey, (Mr. Hovey,) I will say that I am willing that any amendment shall be made to the section which will more effectually relieve us from the difficulty which he apprehends. And if I thought that the word "purchase," as used in the original section, would bring us within any danger, I would move myself to strike it out. But let us look at it for a moment, and see whether that is likely to be the case. The section, as originally reported, reads in this wise:

"Women hereafter married in this State shall have the right to acquire and possess property to their sole use and disposal," &c.

Now, gentlemen who listened to the debate on this subject, will recollect that it was on the peculiar phraseology of these two lines, that the argument of those who opposed it was constructed. Now, on the other hand, what do I say in the section which I offered yesterday? I say that they shall have secured to them, under equitable conditions by law, their real and personal property, whether acquired by purchase or gift—other than from the husband in fraud of his creditors—devise or descent. Now it is to the word "purchase" that objection is made. If there is any force or validity in the objection, I am willing to strike the word out. But let us reflect on this for a moment.

How may a married woman now acquire property? Not by purchase, in the common every day acceptance of that word; for she cannot be a party to a contract. But there is a technical signification of the word; and in this sense it includes every mode of acquiring property, except by descent. When property is given, or bequeathed by will, the person to whom it passes is said to take it by purchase; he is a purchaser. In this sense of the word, a married woman may now become a purchaser. Her legal disability to acquire property by purchase, in any other modes than those by which she can now acquire it under the law, it is not proposed by this section to remove. We wish her legal position in this respect to continue just what it is.

Such being the mode in which a married woman may now acquire property, does the use of the word purchase, in this section, confer upon her the right to acquire it in any other way? If the word had no more enlarged signification, than that which attaches to it in every day use, then, perhaps, such a result might follow. But the manifest intention of this section being only to secure to married women their property, so that it shall not be subject to execution for the husband's debts, and so that the husband shall not be permitted, without the consent of the wife, absolutely to dispose of it, but have only the control and use of it, in maintaining and educating the family, it seems to me impossible that it should be construed so as to mean, that a married woman may make a contract, where by the law she is now incapacitated to act at all. So long as the law relating to the wife's capacity to contract, remains as it now is, her right, under this section to acquire property by purchase, will be construed with reference to it.

It is not our purpose to bring about a separation of the interests of husband and wife, to destroy the feeling of dependance which impels her to look up to him for protection and guidance, or to weaken in any, even the slightest degree, that intimate and confiding affection which is the chief virtue and excellence of the union.

The reason why there is greater security in this section than in the one reported by the committee, is, that I have used words about the meaning of which, when construed with reference to the existing statute or common law, there can be no doubt or uncertainty. But if the gentleman from Posey (Mr. Hovey) will show me that the phraseology of this section gives to the wife the power to make a contract where she now has not that power, I will agree to the instruction which he has proposed.

I cannot suppose that any gentleman who will examine the whole section as it stands in all its connections and legitimate bearings, can come to the same conclusion with the gentleman from Tippecanoe, that there is any danger at all that the relations between husband and wife will be changed. It leaves them, in my estimation, just as they now are. At the conclusion of the section are the words "equitable conditions by law," and the details of the whole subject are left with the Legislature.

Sir, the only reason why I would have anything at all in a Constitution on this subject, is, that I regard the right of the wife to have her property secured to her by law, as an *abstract right*; and I am willing to recognize here all abstract rights. But I am not willing on this or on any other question, to trespass upon what I regard to be the proper province of the Legislature.

Mr. NAVE said—

Mr. PRESIDENT: This subject has already consumed much of the time of the Convention,

and in the opinion of many gentlemen, more time than is necessary to a full and complete understanding of it. There are some gentlemen present, I am sorry to say, who, owing perhaps to a disordered imagination, have gone so far as to assert that they have at all times, without examination or investigation, been ready to vote upon this as well as upon all other subjects, important or unimportant. In fact, from what we have heard uttered upon this floor, it appears that certain gentlemen arrive at conclusions on all questions, with much ease to themselves, without taking any time for thought or investigation. This being the case, I trust that such gentlemen upon whom the God of nature has bestowed these high endowments of intellect, will, through politeness, if not from a sense of duty which they owe to their country, if not to their less favored fellow members, accord their silence even if they decline to give their attention while those less gifted than themselves may attempt to give their views on such subjects as may occasionally come before this body for investigation.

As the calm and deliberate investigation of all questions affecting human rights has ever been deemed necessary to a thorough understanding of their effects when in practical operation, I think it would ill become us to set at naught a rule enforced both by precept and example on the part of the wise and good of every age and nation, and undertake to decide at once, in haste, and without reflection, upon questions which, when carried out in detail, may not only *injure*, but absolutely *destroy* our best interests, our dearest enjoyments, and our most sacred rights. History in every age has fully demonstrated to us the danger of hasty action in all things appertaining to human legislation. "Think, deliberate, reflect before you act," is a maxim by no means to be despised; and we find that it has been incorporated into and is constantly illustrated by the practice of some of our best institutions. Hence it is that our judges—often men of the greatest minds and the keenest perception—have sat in our courts for days listening with patience to the arguments of counsel, so that they might be the better enabled to decide aright those questions which have been submitted to them for their decision. And yet, Mr. President, in this enlightened age, and on the floor of this Convention, it has been gravely said that investigation is unnecessary; and as a proof of the assertion a rule has been adopted limiting the time in which each member shall express his sentiments—as though the capacities of each were equal to those of his fellows, and those only of the most contracted order. But, sir, the rule is passed, and it is useless to indulge in any vain regrets; and I shall therefore proceed, in the short half hour allotted to me, to investigate the proposition now before us, which is to place it in the power of married women to

acquire and possess property in common with and independently of their husbands, and to sell and dispose of the same at pleasure without their consent. So it was proposed by the gentleman from Posey (Mr. Owen).

Now, sir, in order to obtain a proper and thorough understanding of this subject, I hold that we should be acquainted with the common law, which it is proposed shall be changed; and also with the civil law, which it is proposed to substitute in lieu thereof; at least with so much of each as relates to the powers and rights of married women. I shall therefore first speak of their powers and rights under the common law.

Under that law the husband is responsible for the debts of the wife contracted before coverture; but if those debts are not recovered during coverture he is discharged from all liability to pay the same. And here the gentleman from Brown and Monroe complains of the hardness of the case brought before Chief Justice Talbot, to charge the husband, after the wife's death, with a debt of her's *dum sola* to the extent of what the husband received with her. The court in that case held that, "If relief ought to be given against the husband because he received sufficient property with the wife, then by the same reason, if the wife had brought no fortune to the husband, and judgment was recovered against him during coverture, relief ought to be afforded to the husband against the judgment after the death of the wife;" in which opinion I fully concur, as it appears to me to be founded in right. The husband is bound to provide his wife with necessaries suitable to her situation and his condition in life, and if she contracts debts during the coverture, the husband is bound by law to pay them.

And the husband is also liable for the torts or frauds of the wife, committed during the coverture. If committed in his company, or by his order, he alone is liable; but if not in his company, or by his order, then they are jointly liable. The wife has power under the law to sell land. This disability of the wife to contract so as to bind herself, arises not from want of discretion, but because of the marriage contract into which she has entered, by which she is placed under the power and control of the husband, and thereby has given up to him the absolute control and management of all her personal property, when reduced to the possession of the husband.

Married women in England, and in those States in this country where fines did heretofore exist, might pass their freehold estates by a fine; and that and a common recovery are the only ways in which they could convey such estates at the common law; and married women may by fine and a declaration of the uses thereof, declare the uses for the benefit of their husbands; but by the statute of William the Fourth, married women are now enabled, with

the concurrence of their husbands, to dispose, by deed or relinquishment, any estate which they may have in lands, if the wife be examined separate and apart from her husband, which substitute of a deed for a conveyance, by fine, now prevails throughout these United States as the cheapest and best mode of conveyance, and is the law of this State; but under our statute law the husband cannot convey the dower right of the wife in real estate by deed.

Next, as to the wife's capacity in equity. The wife, at common law, was not allowed to possess personal property independent of her husband, as has already been shown, because of the marriage by which she and her property are placed under the control of the husband; but in equity she is allowed, through the medium of a trustee, to enjoy property as freely as a *feme sole*, and it is frequently the case that property is conveyed or bequeathed to a trustee in trust, to secure the interest arising therefrom to the wife, for her separate use, free from the debts, contract, or interference of the husband, and made payable on her separate order or receipt, and after the death of the wife to remain in trust for her issue, thereby securing to the wife and her issue, after her death, ample provision. Could any gentleman desire more than is contained in this wise and benevolent feature of equity? And in all cases at common law, where the husband stipulates before marriage either that his wife shall enjoy her own property, or that she shall be entitled to a certain benefit out of his estate, he will be bound in equity to perform his agreement, even though it was entered into with the wife herself, and becomes extinguished at law by his subsequent marriage. And gifts from the husband to the wife may be supported in equity as her separate property, if they are not prejudicial to the creditors of the husband, without the intervention of trustees. And as to the powers of the wife under settlements, she has the power to institute suit in equity against her husband to recover any property given her for her separate use; and if, by marriage settlement, the real and personal estate of the wife be secured to her separate use, the husband is accountable for that part of her estate which comes into his possession, and a *feme covert*, in reference to her separate property, is to be viewed in the light of a *feme sole sub modo* only, or to the extent of the power conferred upon her by the marriage settlement. Further we find that in the case of *Livingston vs. Livingston*, decided in the State of New York, it was held that the wife could contract with her husband even by parol after marriage for a transfer of property from him to her, or to trustees for her, provided it was for a valuable consideration, and that the same might be limited to her separate use.

Again, as to the powers of the wife over her separate property at common law. She may sell or mortgage the same for her husband's

debts, and also create a valid power in the mortgagee to sell in default of payment. She can convey upon condition, and she can prescribe the terms of the conveyance.

Lord Eldon, in the case of *St. John vs. St. John*, in reasoning upon marriage settlements intimated that a settlement, by way of separate maintenance on a voluntary separation of husband and wife, was against the policy of the law, and therefore void, and he made no distinction between settlements resting on articles, and a final complete settlement by deed, or between the cases where a trustee indemnified the husband against the wife's debts, and where there was no such indemnity. The ground of Lord Eldon's opinion that such settlements creating a separate maintenance by voluntary agreement between husband and wife, were, in their consequences, destructive to the indissoluble nature and the sanctity of the marriage contract. And if a voluntary settlement for the separate maintenance of the wife was so considered by Lord Eldon, what may we not say of the proposition of the gentleman from Posey, (Mr. Owen,) which proposes by the organic law of the State to confer upon the wife both the power to acquire and hold property separate and distinct from the husband, not only for her support, but for purposes of speculation. I consider this proposition as one involving the gravest and most momentous consequences to the public interest—perhaps more so than any question that can come before this Convention. It virtually strikes at the marriage state, and proposes indirectly to make void the obligations of the marriage contract. In the codes of almost all civilized nations the law concerning husband and wife has always made a very prominent article. It occupies a large title and forms a prominent feature in the English equity jurisprudence. The trusts growing out of marriage settlements have become so extensive that an eminent lawyer of that country has said that half the property in England was vested in nominal owners. This state of things in England is easy to be accounted for. In that country titles of nobility, such as Dukes, Earls, Lords, &c., are conferred, and which can only be conferred upon large property holders; but there being no such titles in this country, nor any property qualifications required in this State, offices are conferred upon men irrespective of title or property, and for that reason the dangers and inconveniences growing out of the common law concerning husband and wife in England never can exist in this State to the extent supposed by the gentleman from Posey.

Sir, let me contrast for a moment the civil law with the common law in respect to the rights of property belonging to the matrimonial parties; and in doing so I think the common law must appear to us at least to be quite simple, and easy to be digested, compared with the complicated regulations of the community or

partnership system between husband and wife which now prevails in many parts of Europe, as in France, Spain, and Holland, and also in the State of Louisiana. It is said that Prathier has examined in thirty-one volumes the whole subject of the municipal law of France, which has its foundation principally upon the civil or Roman law; and out of that number of volumes he devotes not less than six to the law of the matrimonial state. In the State of Louisiana, since the amended civil code in 1824, there are no less than sixty-five volumes of the reported decisions of the Supreme Court of that State. Now compare the number of volumes of Louisiana on this subject with the number of volumes of the decisions of the Supreme Court of this State, and then calmly ask yourself the causes which have produced such a difference. It cannot be that the population of Louisiana is larger than our own, for the population of our State is greater than that of Louisiana; nor can it arise out of the large commerce of the city of New Orleans; and therefore the cause mainly originates in the complication of the partnership system between man and wife now prevailing in that State.

But permit me again to return to the details of the Roman or civil law. Under this law the wife can bind herself by her contracts without charging her husband, and can sue and be sued without him. And they can sue each other; for, with respect to property, they are considered as distinct persons, and the contracts of the one are not binding upon the other. Truly, then, in the language of the gentleman from Posey, this proposition is one which, if adopted, must produce a radical change in the statute laws of Indiana hereafter to be passed—a change which will, in the future, effectually deprive the husband of the power of controlling and regulating the property of the wife, and must also destroy the indissoluble connection in which the wife is placed by marriage at the common law, being under the power and protection of her husband, and he in the possession, management, and control of her property.

In the State of Louisiana, according to their new civil code, as amended and promulgated in the year 1824, (Art. 2312, 2360, 2370,) the partnership or community of acquits or gains arising during coverture, exists by law in every marriage contract in the State, where there is no stipulation to the contrary, and is said to be founded in the presumption that the wife, by her industry and care, contributes equally with her husband to the acquisition of property; and it is held in Martin's Louisiana Reports, vol. 17, that all the property left at the death of either party is presumed to constitute the community of acquits and gains; and this presumption holds good until the contrary is made to appear, but the parties may modify or limit the partnership or agree that it shall not exist.

In art. 2305 it is said, that in case of married

persons coming into Louisiana from another State, or from foreign countries, their subsequently acquired property is subject to the community of acquits; and in the case of *Soul vs. his Creditors*, (Martin's Reps. vol 17, p. 569,) Judge Porter held, "That though a marriage was contracted in a State governed by the common law, yet if the parties removed into Louisiana and there acquired property, such property, on the dissolution of the marriage is that State by the death of the wife, would be regulated by the law of Louisiana; consequently a community of acquits and gains did exist between the married parties from the time of their removal into the State, and the property they acquired after their removal became common, and was to be equally divided between them on the principle of partnership."

Now, taking this decision of Judge Porter as the law of the State of Louisiana, let me put a case. Suppose that the gentleman from Posey (Mr. Owen) were to take down the river any merchantable produce, and, landing any where on the shores of the Mississippi river within the limits of the State of Louisiana, were to sell such produce to a citizen of Louisiana who had a wife, for the sum of—say five thousand dollars—on a credit of six months, and that the husband and wife, at the time of such sale, were the owners of property to that amount, and that after the sale, yet prior to the time of the amount becoming due, the wife should die. What would be his position in such case? Does not the gentleman see that he would lose one-half of his demand? Most certainly. Knowing of the existence of such a law, and from conversations I have had with many legal gentlemen, I learn that many frauds have been practiced upon innocent and unsuspecting persons, who, from the nature of their business transactions, have been compelled to ship their surplus produce to that State and dispose of them upon a credit—frauds that could not have been perpetrated had it not been for the statute laws in force in Louisiana, tolerating the odious doctrine of community or partnership in property between the husband and the wife. The statements of delegates on this floor, therefore, —I will not say made at the instance of the gentleman from Posey, for I could not suspect him of seeking to accomplish any object in such a roundabout way—I say these statements which have been made by gentlemen here, and which might seem to amount to a contradiction of my remarks made heretofore on this subject, prove nothing whatever. In fact such testimony, owing to its negative character, never does prove anything, according to the law of evidence, nor is it ever held admissible in courts of justice. And notwithstanding that the gentleman from Posey has read Blackstone and other commentators on the fundamental law of the land, he has not yet finished his legal edu-

tation, for if he had he would not have introduced testimony of a negative character to contradict that which is affirmative. I would suggest to the gentleman—and I make the suggestion in all courtesy and kindness—the propriety and usefulness of extending his legal researches a little further, and to read Starkie on the Law of Evidence, so that in his future efforts to enlighten the world he may not fall into a like error on a principle of law so well settled in the books.

But, Mr. President, I must apologize for this digression, and return to the subject before the Convention. I believe I was last speaking on the operation of this "separate property" system as it works in Louisiana. It is held in the cases of Cooney's heirs vs. Clark, and Broussard vs. Berword, "That the separate property of the wife is divided into dotal—being that which she brings into the household to assist in the marriage establishment—and extra dotal, or paraphernal property—being that which forms no part of the dowry. And the husband is the head and master, and the proceeds of the dowry belongs to the husband during the marriage, and he has the administration of the partnership or community of profits of the matrimonial property, and he may dispose of the revenues which they produce, and alienate them without the consent of the wife; but he cannot convey the common estate or the acquits and gains to the injury of the wife during coverture; and the wife may, at the death of her husband, by action at law set aside the alienation. And it is not the law in force at the time that the community is dissolved, but that in force when it was formed, which regulates the rights of husband and wife to the property acquired during coverture. And, also, if the husband and wife stipulate that there shall be no partnership between them, the wife preserves the entire administration of her property, movable and immovable, and may sell the same without the consent of the husband."

Having in a summary manner given a synopsis of both the common and the civil law in respect to that question, it remains for me now to draw a distinction between them in reference to the effects of each upon the happiness and prosperity of mankind.

I think it is quite evident from what I have said of the principle of the common law as a system to govern and control husband and wife in all their relations, that it considers them one in person, one in interest, one in prosperity, one in adversity. And to this unity of the marriage tie may, with propriety, be attributed the virtue and the happiness of that portion of the American people who are governed by the common law. This law seeks not the acquisition of wealth, but that happiness and peace which alone are to be found in a well regulated family circle, where the wife loves her husband, her home, her offspring, and the friends that are ac-

customed occasionally to attribute an additional cheerfulness to the domestic hearth, which would be stripped of all these endearments were her efforts directed to the amassing of wealth, and the management, regulation, and control of property, unbecoming her sex. It has been well said:

"Thy husband is one that cares for thee,
And for thy maintenance commits his body
To painful labors, both by sea and land,
To watch the night in storms, the day in cold,
When thou liest warm at home, secure and safe,
And craves no other tribute at thy hands
But love, fair looks, and true obedience—
Too little payment for so great a debt."

Sir, the principles and motives of the common law are all adapted to the simple form of our government, and greatly tend to make us a nation, prosperous and happy. Wherefore should we seek to change that law, and substitute in its place the Roman or civil law which is directly opposed to it in its spirit and provisions? Wherefore should we now seek to change the existing relations of husband and wife and destroy the entire force and effect of the marriage contract? Wherefore should we substitute for our present happy homes the scene of fretful strife and unhappy discord? Tell me why we should adopt this constitutional provision reported by the Chairman of the committee on "rights and privileges," (Mr. Owen,) whereby it is proposed as the organic law of the State of Indiana that—

"Women hereafter married in this State shall have the right to acquire and possess property to their sole use and disposal, and laws shall be passed securing to them under equitable conditions all property, real and personal, whether owned by them before marriage, or acquired afterwards by purchase, gift, devise, descent, or in any other way, and also providing for the registration of the wife's separate property."

I ask again, why change the common law, and adopt the civil law with all its evils, and all its degrading and demoralizing tendencies? The gentleman from Posey answers in his speech, and says, that he desires the change in order that he may protect the wife from the profligate and intemperate husband, and to secure to widows a portion of the husband's property. The reasons assigned by him for the proposed change do not legitimately grow out of the proposition which he, as Chairman of that committee, has reported. That proposition proposes to vest in married women the right of possessing and acquiring property to their sole use, and therefore we have included in it, not only the wives of bad and ungrateful husbands, but also the wives of all others not falling within that class. He would, because of a few instances of the profligacy of bad men, change the beautiful fabric of the common law and the sanctity of the marriage state, together with its enjoyments

and happiness, and create a contract, a partnership, an interest in property, separate and distinct, yielding nothing to the harmony of the domestic union but bickerings, feuds, separations and divorces of wives from husbands, and husbands from wives, thereby disturbing the very foundations on which society stands. The gentleman from Posey has, thus far, failed to meet the question before the Convention, and urged individual cases of wives and widows not now provided for by existing laws—the remedies for which cases might all be provided for by the Legislature, they having all the necessary power to do so. He has studiously avoided the main question involved in the proposition under discussion, and endeavored to induce members to come to the support of his measure by representing a few isolated cases of men not making the necessary provisions for their wives, and for the additional reason that widows, as he supposes, are not, by existing laws, well provided for. And then, sir, to cap the climax, he has said, that married women in Indiana have not as many rights as the slaves of the South! Sir, can such a state of things be possible that married women in this State are in a more degraded condition than the slaves of the South, who toil from year to year during a miserable existence, for their corn and herring, and their miserable rags of clothing? I ask again, Mr. President, is it possible that people living under the influence of Christianity, and who claim to be actuated, governed, and controlled in all their actions by honesty, justice, and humanity, are guilty of such cruelty to their wives. No, sir, such an assertion I cannot denominate otherwise than as a vile calumny upon the freemen of Indiana, and as a gross insult to the good sense of every married lady in the State.

Mr. President, what rights have married women in Indiana, secured to them by our laws? They hold and control real estate, and the husband, without the consent of the wife, can neither sell nor convey the same, nor can it be sold on execution for the payment of the husband's debts; nor can the personal property of the wife be taken for the debts of the husband, nor can it be disposed of by him until reduced to possession; and the wife may have property in the hands of a trustee—both personal and real—for her sole use and benefit. And, sir, beside all this, she is entitled to be protected, maintained, loved, and cherished by the husband. And for all acts of violence committed upon her person, except by her husband, she, together with her husband, have their remedy at law, to recover by suit, the damages sustained; she has, further, the right to prosecute by indictment in the name of the State, even her husband, for all acts of violence committed upon her person by him. Nay, more, sir; for all torts and injuries by defamation of her character or otherwise, she, together with the husband, may sue and recover damages therefor. Besides all

these rights there are many others which are secured to the married women of the State of Indiana, both by the common and statute laws in force in our State, which it would occupy too much of the time of the Convention even to enumerate now. Sir, let me ask, are any of these right and privileges possessed by the married women of Indiana enjoyed by the southern slave? No, sir, none of them.

Mr. President, in conclusion, I would say to the Convention, that the happiness, prosperity, and good order of society in Indiana, depends upon their final action upon the proposition of the gentleman from Posey (Mr. Owen). Sir, if that proposition be adopted into our organic law, and if that law should ultimately be ratified by the people, I hold that it will uproot all our domestic relations, rend asunder the marriage tie, and bring us into the deplorable condition in which the inhabitants of Spain, France, Mexico, and the States of South America now are—a condition, in my judgment, growing out of the effects brought upon them by the operations of the civil law.

Mr. President, I do not wish to be understood by anything I have uttered in this debate as impugning the motives of any gentleman who has been found in the advocacy of the proposition offered by the gentleman from Posey (Mr. Owen); but before I close my remarks on this very important subject I must be permitted to notice and expose an error into which the gentleman from Posey has fallen, which I shall endeavor to do in all kindness. He says that the amendment offered by myself to the proposition under discussion, proposes to place the property of the wife beyond the reach of the creditors of the husband, and that, therefore, it contains the very features of the law in force now in Louisiana, of which I have complained so bitterly. In this, the gentleman from Posey is greatly mistaken. My proposition is nothing but an exemption. It does not propose to prevent the husband from selling and disposing of the property of the wife, nor from controlling, managing, and regulating the same, nor does it offer to disannul the marriage contract, by placing husband and wife in business, as dealers in trade, either as partners or in opposition to each other, as does the law in Louisiana—the civil law, the bantling of those in the Convention, who advocate the proposition reported by the chairman of the committee on the rights and privileges of the inhabitants of the State.

The gentleman from Posey tells a thrilling story of a heartless husband immigrating to the town in which he resides, in company with his wife; of the wife having several boxes of goods, and of the husband fraudulently obtaining possession of the goods, disposing of them, and leaving the wife without the means of support. This circumstance could not have been mentioned by the gentleman for any other purpose than that of influencing votes in this Conven-

tion, as it must be apparent to every reflecting mind, that it has nothing to do with the question now before us. Suppose that the civil law had been in force at the time of the transaction referred to by the gentleman, and the wife had resorted to her action of replevin, and recovered the goods from the innocent purchaser; suppose further that the husband had run off to parts unknown with the value of the goods in his pocket, the wife in possession of the goods and the purchaser swindled out of his money. Would there be any justice in such a transaction? None. And, besides, under the operations of the civil law, husband and wife could enter into a combination, and the husband sell the property of the wife to an innocent purchaser, receive the money, leave the State, and the wife sue the purchaser, recover the property, and follow the husband; and they might follow up such a system of fraud *ad infinitum*; and the law, advocated by the gentleman from Posey, would be well calculated to encourage such frauds upon the community.

One word now in answer to the arguments of another gentleman, when he gives us an instance of a drunken and worthless husband breaking open the trunk of his wife and taking out a small pittance of money earned by her. True, the conduct of that husband was reckless and unbecoming; but let me ask that gentleman, whether he might not have done the same act if the civil law had been in operation? [Applause]. Most certainly; and, being bankrupt, the wife by suit could not in any way have been profited. Such instances as these referred to by gentlemen, with so much pathos and feeling in advocacy of the proposition of the gentleman from Posey, prove nothing more than this, that there are some men who have wives, who are not worthy of them. ["Hear, hear."] But most certainly such arguments do not prove any pressing necessity for the adoption of the civil law in this State, thereby creating new rights, and with them giving new impulses to litigation, by no means creditable to a free, happy, and prosperous people.

Mr. President, I must say, that when the amendment offered by the gentleman from Vanderburg, (Mr. Blythe,) was first offered here, I was inclined to give it my support; but after carefully examining it, I must say, that I regard it as being neither more nor less than the original proposition of the gentleman from Posey, (Mr. Owen,) clothed in different language. It appears to contain the same objectionable features as that contained in the section reported by the committee on rights and privileges, namely, that the wife shall have both the right of holding and acquiring property independently of, and separately and distinctly from, the husband, and of controlling, managing, and disposing of the same at pleasure, thereby virtually disannulling and making void the obligations of the marriage contract, the effect of which must

inevitably tend to build up a system of mere socialism in the State of Indiana, out of which infidelity—as all past experience has shown—will be the necessary result, entailing upon us as a people the same evils which have been entailed upon France under the operation of the Roman or civil law—the law now in force in that country regulating the rights of married women, and the same in principle as that now before this body. I will add no more than merely to ask of the gentleman from Posey, as well as those who with myself have opposed it, to pause and consider well the effect of the measure upon the prosperity and happiness of a free and happy people, before they cast their votes.

Mr. BADGER. As I have been accused, Mr. President, of preaching the gospel on this floor, I will endeavor further to merit the accusation by preaching a little more. Bold as the assertion may appear in the eyes of this Convention, I maintain that this section and all its amendments are wrong—that the whole matter is radically wrong; and that it is a matter with which this Convention has nothing to do—a matter over which it should have no control whatever.

Sir, I am the last man in the world that would undertake to advocate the doctrine that women should have no rights; but at the same time the question arises "have they no rights already?" Does the law give them no right? When we look upon the principles recognized by the law, as well as by the Bible, upon which the law is or ought to be predicated, I ask if ladies have no right—I ask if they have not all the rights which the Bible designed them to have in this Christian land of ours? And if they have all the rights which the Bible designed they should have, where is the necessity of occupying the time of the Convention in discussing matters which are entirely foreign to the object of our meeting in this Hall? Sir, I propose for a very few moments to deal in facts—and facts it has been well said are "stubborn things." I stated a few days ago that I regarded this proposed change as contrary to the genius and spirit of the Holy Scriptures. And now I shall endeavor, in as few words as possible, to prove that position. And now "to the law and to the testimony." In the third chapter of Genesis at the sixteenth verse, we find that God said unto Eve, when pronouncing the curse upon her, for her transgression, "Thy desire shall be unto thy husband and he shall rule over thee."

But this proposition before the Convention, would, as I conceive, tend to reverse that declaration of the Most High, and make the woman the ruler over the man.

Well, then, let us come to examine into the law of descent of property. Under the ancient economy we find the following to be the law, and gentlemen would perhaps do well to note down my texts, as I may not have time to do

more than furnish a mere reference. In the twenty-seventh chapter of the book of Numbers, we find the law of inheritance laid down. From that chapter it appears that the daughters of Zelaphehad came to Moses, and to Elieazar the priest, and complained saying: that their father had died in the wilderness, leaving no sons, and they desired that the inheritance of their father should be given to them. And Moses brought the case before the Lord, and the Lord decided that their petition was right, and he laid down the law of inheritance thus:

"If a man die and have no son, then ye shall cause his inheritance to pass unto his daughter.

"And if he have no daughter, then ye shall give his inheritance unto his brethren.

"And if he have no brethren, then ye shall give his inheritance unto his father's brethren."

Turn again to the thirtieth chapter of the same book, and you will find that the husband had a right to nullify any vow made by his wife or his daughter. The following is the language which we there find:

"If a woman also take a vow unto the Lord and bind herself by a bond, being in her father's house in her youth;

"And her father hear her bond and her vow, wherewith she hath bound her soul; and her father shall hold his peace at her, then all her vows shall stand, and every bond wherewith she hath bound her soul shall stand."

"But if her father disallow her in the day that he heareth, not any of her vows or her bonds, wherewith she hath bound her soul shall stand; and the Lord shall forgive her because her father disallowed her.

"And if she had at all a husband when she vowed, or uttered aught out of her lips wherewith she bound her soul,

"And her husband heard it and held his peace at her in the day that he heard it, then her vows shall stand, and her bonds wherewith she bound her soul shall stand.

"But if her husband disallowed her on the day that he heard it, then he shall make her vow which she vowed, and that which she uttered with her lips wherewith she bound her soul, of none effect and the Lord shall forgive her."

Turn again to the 36th chapter of the same book, and there you will find the law given in detail by which the daughters were to have their portion of the land given to them which belonged to them. We find further, that they were directed to marry the sons of those who belonged to the same tribe as their fathers, and simply for this reason, that the realty passed from the hands of the daughter to the hands of her husband.

Now, sir, I have heard it said that we had some members on this floor that had not more faith in this volume than the law allowed

them, and consequently it may be denied that these texts have any bearing upon the subject under consideration, on the ground that they relate to a state of things existing under the Jewish economy, while we are living under the Christian dispensation. This objection, however, is of no force, for we shall find that in this respect the one dispensation sustains the other, and that under the Christian economy, the relations of husband and wife are substantially the same. Let us see now what we can find in the New Testament upon this subject.

In the first epistle of Paul to the Corinthians in the 11th Chapter, 3d verse we have the following:

"But I would have you know that the head of every man is Christ, and the head of the woman is the man, and the head of Christ is God."

Now, in the same proportion, in the same ratio, in the same sense as that in which Christ is the head of every man, just in that sense is the man the head of the woman. Now, in what sense is Christ the head over every man? The Bible tells us plainly that he is "head over all things." Very well; then so is the man the head over the woman in "all things." "Oh, no!" says the gentleman from Posey (Mr. Owen); "not so. I cannot admit that. I do not believe that. On the contrary, I think it is quite right and proper that laws should be passed securing to married women all the property which they may own before their marriage, and all that they can acquire after their marriage, whether by purchase, or gift, or devise, or descent, or in any other way. Let them have it all; it all belongs to them. The husband ought to have nothing to do with it."

Mr. President, I cannot but regard this proposition as tending in the highest degree, to create discord and disunion between the heads of families. It is, in my estimation, a positive violation of a divine precept which no man can sustain without doing injustice to the divine record, and trampling sacrilegiously under foot this divinely authorized institution, *Marriage*, with its relative obligations.

But I will read another text. It is in the 14th chapter of the same book and in the 34th verse.

"Let your women keep silence in the churches, for it is not permitted unto them to speak."

"Ah," says the gentleman from Posey, "this has nothing whatever to do with the subject about which we are speaking. We are discussing the rights of women to hold property, and not whether they shall speak in the Church!" But I answer his remark by saying that if under the Christian institution there is any liberty bestowed at all, it is bestowed in all its fullness in the church. And if women are not allowed to speak there, will gentlemen say that their voice shall be raised in uproarious clamor around the sanctuary of the hearth where the husband is the sole proprietor? I leave those gentlemen

who favor the proposition of the gentlemen from Posey to answer. [Applause].

Now turn to the epistle to the Ephesians, chapter 5, verses 22, 23, 24 and 25. [Loud cries of "read, read, read"].

The verses were read as follows:

"Wives submit yourselves unto your own husbands as unto the Lord.

"For the husband is the head of the wife even as Christ is the head of the Church, and he is the Saviour of the body.

"Therefore as the Church is subject unto Christ, so let the wives be to their own husbands in everything.

"Husbands love your wives even as Christ also loved the Church and gave himself for it.

[Immense applause, followed the reading of these verses which was continued for a considerable time.]

Mr. B. proceeded: Now what does Paul say here? "Wives submit yourselves unto your own husbands." "Why," says the gentleman from Posey, "not very far. Give them equal rights and privileges—everything they had before marriage and all that they can acquire after."

"Wives submit yourselves unto your husbands." How far? Paul says the husband is the head of the wife even as Christ is the head of the Church, and that wives are to subject themselves unto their husbands. In what mode are they to do this? The gentleman from Posey says, "Not so far as your property is concerned." But what says the text? It says that they are to be subject to their own husbands in *everything*. Well, sir, this matter of property is a PART OF EVERYTHING [long continued applause].

But now, while I am disposed to contend for the rights of the husband—those rights which are guarantied by the laws of Heaven, and the laws of nature and of nature's God—I have no disposition to rob the better part of human nature of any of their privileges; and in this connection I will recite what the divine injunction is to the husbands. Here it is: "Husbands love your wives." How much? "Even as Christ has loved the Church." And how much did he love the Church? Just so much as to *give himself* for the Church; and just so much must the husband love the wife. [Great applause.] If a man loves his wife just as much as this Book commands him to do—I say it fearlessly, and without any dread of successful contradiction—that he will discharge all his duties so punctually—so promptly—that the wife will never have any cause to complain that she has not a right to acquire property, and to appropriate it to her own use, and have it at her sole disposal.

But, sir, I have one or two more texts yet, to which I wish to direct the attention of the Convention. The next is in the 3d chapter of Colossians and the 18th verse:

"Women submit yourselves unto your husbands as is fit in the Lord."

Now it is said, that, "in the mouth of two or three witnesses shall every word be established." Well, sir, I have yet another witness. [Great applause.] Turn to 1 Tim., chap. 2d, v. 11 and 12:

"Let the women learn in silence with all subjection.

"For I suffer not a woman to teach nor to USURP AUTHORITY OVER THE MAN, [loud applause,] but to be in silence.

"For Adam was first formed, then Eve;

"And Adam was not deceived; but the woman being deceived was in the transgression,"

Now, sir, I think I have introduced "witnesses" enough on that part of the subject, and with the permission of the Convention, I will turn to another feature of the case, which has an equally strong bearing upon the question under discussion. [Cries of "hear him! hear him!" and "consent! consent!"]

Turn now to the 5th chapter of the first epistle of Paul to Timothy and the 14th verse. What have we here? Why, sir, we have a special injunction upon the women. What is it? Here it is: "I will, therefore, that the younger women marry." What else? Why, that they "bear children." ["Consent! consent!"] What else? Why, that they "guide the house," [renewed applause,] "and give none occasion to the adversary to speak reproachfully." [Cries of "hear him! hear him! hear him!" accompanied by clapping of hands and thumping on the benches.] What does the gentleman from Posey say? Does he say, "Guide the house?" No, sir; no. His injunction to women is: "Guide the farm, mind the cattle, take care of the team, drive the hogs to the market, drive the sheep to the slaughter pen, keep the purse, dispose of the property—in short, rule your husband, and let him take care of the children, wash the dishes, and darn the stockings." [The burst of applause which followed this is indescribable.] But Paul says the woman is to "guide the house." The gentleman from Posey and Paul for it, then; and we will see who comes out best. [Laughter and cheering.]

But, Mr. President, I perceive that I have only four minutes left. I understand that we are limited to fifteen minutes, and I see that eleven of them are gone, and I have two texts more to which I wish to refer. [Loud cries of "go on! go on! go on!"]

Mr. COLFAX. I move to suspend the rule.

Mr. BADGER. If gentlemen would not applaud so much, or rather, I should say, if they would not make so much noise, I could finish in four minutes; for I do not wish to be a violator of rules.

The PRESIDENT. Will the Convention suspend the rule?

[Loud cries of "Go on! go on! go on!" and "No need to suspend the rule yet; time's not up!"]

Mr. BADGER. Well, I will read two more verses. [Cries "Hear him! hear him!" and "Read! read!"]

Titus, 2d chapter, 3d and 4th verses:

"The aged women likewise, that they be in behavior as becometh holiness, not false accusers, not given to wine, teachers of good things.

"That they may teach the young women to be sober, to be discreet, chaste, keepers at home, good, obedient to their own husbands, that the word of God be not blasphemed."

Now that is the language of the law of the Lord on this subject; and I now make an appeal to every gentleman on this floor to be cautious in casting his vote for the purpose of granting separate privileges to wives in relation to property—privileges which, if I view the matter aright, and in accordance with the divine law, will tend to disorganize society, disrupt domestic quiet, profane the sanctity of the domestic altar, and stifle the best and purest feelings of the human heart. [Applause.]

Mr. President, I have another text which I must read—another of those witnesses which speak with so much truth and authority. [Cries of "Read! read! read!"]

"For after this manner, in the old time, the holy women, also, who trusted in God, adorned themselves, being in subjection to their own husbands."

How far were they in subjection?

"Even as Sarah obeyed Abraham, calling him Lord,"

Which means a "ruler." If, then, a man is a "Lord or ruler" over his wife;—if, in his household, he is "head over all things," in the same ratio as Christ is "head over all things to his Church," and that we have on the authority of Holy Writ, I ask, in the name of reason—in the name of truth—in the name of common sense—in the name of morality—in the name of religion—in the name of all that is dear on earth and holy in Heaven—how is it, and why is it, that gentlemen rise up in the middle of the nineteenth century, before an enlightened and Christian community, and plead for a doctrine which will subvert the best interests of the community—stifle all the finer feelings of the human heart that enter into the family dwelling, and surround the domestic hearth—blast the brightest, fairest, happiest hopes of the human family, and go in direct contravention of that law which bears the everlasting impress of the Almighty's hand. Sir, I am not here to attribute improper motives to any gentleman on this floor; but I must say this much, that I cannot but regard such a scheme not only as wild and visionary beyond expression,

but even as wicked, if not in its intentions, at least in its results. [Applause.]

The PRESIDENT. I must now remind the gentleman from Putnam that his time has expired.

A MEMBER, whose name the Reporter could not learn, moved to suspend the fifteen minutes rule.

The motion was carried by unanimous consent, and amid loud cries of "Go on! go on! go on!"

Mr. BADGER. I will not occupy more than five minutes more of the time of the Convention; and I hope the Convention will accord to the gentleman from Posey (Mr. Owen) the same liberality, when he undertakes to reply. ["Hear! hear!"]

I have a quotation here from a speech delivered the other day by the gentleman from Monroe, (Mr. Read,) and also a quotation from a hand-bill which he read a few days since, and which I understand has circulated in that county pretty widely. In that circular he said it was important that no rash experiments should be ingrafted upon the Constitution, and yet I understand him to be an advocate for this radical change which I have, I think, shown to be contrary to the divine law. I will read a brief extract from the speech.

"Mr. Read of Monroe said, that the laws in force in relation to women were a disgrace to the Christian and enlightened age in which we lived. Not that the practices under these laws were so, but they so appeared as laid down in our statutes and the common law. This age, in its enlightened progress, had rose superior to the laws under which we lived in the action under them. Gentlemen had entirely mistaken the causes of our happy homes. It was Christianity, pure and untrammelled Christianity, more than anything else, to which we were indebted for the happy homes of Indiana."

Now, if one step, one remove from the doctrines of the Christian religion will produce all these lamentable consequences which are thus so pathetically deplored, what consequences may we not expect, and how does the gentleman, after these sentences in his speech, and that in his circular, dare to take another step—another remove from Christianity? I leave that for him to settle with his own conscience.

But the gentleman from Orange (Mr. Sherrod) paid me a compliment the other day, on which I must ask permission to say one word. I had said that I was willing to meet any delegate on this question at any time, and that I believed that the proposition contained in this section was altogether contrary to, and at variance with, the genius and spirit of the Christian religion. I had no sooner made that declaration than he rose from his seat, and with all the pomp and dignity which, I am sorry to say, sometimes distinguishes the profession to which he belongs, he remarked, "We have spent sev-

eral days in learning the *l-a-w* on this question, and now I suppose the gentleman from Putnam has given us the *g-o-s-p-e-l*." [Roars of laughter.]

Now let me say here—and I am sorry to feel that it is necessary that it should be said—if we had more ballast and less sails, more fact and less fiction, than we have been favored with on some occasions, gentlemen would not only do more good in aiding this Convention to form a good Constitution, but they might, by possibility, immortalize their names.

Sir, if bombast were eloquence, if fustian were learning, if erratic sallies into regions of untraveled nonsense were indicative of original genius or of deep research, the gentleman from Orange would be great. But as these things are not so, I look at the day as being extremely remote when the topmost pinnacle of his fame will tarnish the heavens, or touch even the unsullied clouds. [Roars of laughter.]

Mr. President, I intended to advert to the remarks of some two or three other gentlemen, but my time has expired; and I will close these remarks by reading what are my sentiments, embodied in a beautiful poetic extract taken from a Southern paper, and recommended to be read in the next ladies' convention that may be held in the North.

WOMAN'S RIGHTS.

BY MRS. N. P. LASSELLE.

It is her right to watch beside
The bed of sickness and of pain,
And when the heart almost despairs,
To whisper hopes of health again.

Her right, to make the hearth-stone glad,
With gentle words and cheerful smile;
And when man is with care oppress'd,
His wearied spirit to beguile.

It is her right to train her sons
So they may Senate chambers grace—
Thus, is she with more honor crown'd,
Than if herself had filled the place.

It is her right to be admir'd
By ev'ry generous, manly heart,
When, with true dignity and grace,
She acteth well a woman's part.

She hath a dearer right than this;
To be in one true heart enshrined—
Who, though the world may all forsake,
Will cherish still, and still be kind.

And there is yet a higher right,
Which, also, is to woman given:
'T is hers, to teach the infant mind
Those truths divine, which came from heaven:

What would she more, than to perform,
On earth, life's holiest, sweetest tasks?
When you a perfect woman find,
No other rights than these she asks.

[Mr. B. sat down amid loud applause and cries of "question, question."]

Mr. SHERROD. I have not risen, Mr.

President, to make a speech in reply to the gentleman from Putnam; for, sir, if there is one thing more painful for me to do than another, it is to kick against the *wind*; but inasmuch as the gentleman has alluded to me in a very discourteous manner, I think it necessary to make a single remark, by way of returning my compliments to that very sensitive gentleman. I was not aware, Mr. President, that I was so eloquent as the gentleman has represented me to be. I alluded to the gentleman in the outset of my remarks some days since, as I thought, in a gentlemanly manner; I did not intend the remark I made as a "cut" by any means. I think, as well as I recollect, I remarked that I had been an attentive listener to the discussion of the legal bearings of this question, and I thought the gentleman from Putnam had now given us its gospel bearings. He had said that he was prepared to convince the Convention that the proposition was contrary to the spirit and the genius of the Christian religion. And knowing that the gentleman professes to be a minister of the gospel, and knowing, too, that these gentlemen are generally very pompous men, and proud of their profession, I supposed that he would take the remark I made as a compliment, of course. Now, Mr. President, we have had his eloquent, or rather windy speech here, and I must say that I expected, from the bold declaration that he made some days since, that he really was going to convince the Convention that we were in error in entertaining this proposition. What has he done? He has convinced us of one thing at least, and that is, that he is sailing under false colors; that he professes to know all about that of which he knows nothing at all. He reminds me, sir, of a gentleman who had become hypochondriacal, and who took it into his head that he could fly. He went to work and made himself a pair of sheep-skin wings; he went into a field and climbed up a rugged tree, and off he went, sure enough. Well, what was the result? He came down, of course, and broke a leg and knocked in some four or five ribs. Sometime afterwards, when some of his neighbors met him, who had heard of his misfortune, asked him how it was to fly, he replied, "Flying goes well enough, but it is a little the roughest lighting prehaps." [Laughter.]

Now, Mr. President, I do not pretend to say what misfortune the gentleman may have encountered in the ethereal flight he has just taken in search of woman's rights; but there is one thing that must be evident to all, and that is, that he is laboring under the same mental alienation that the gentleman was who imagined he could fly.

The gentleman's speech was loud and bombastic enough; but who, I ask, is there in this Convention that he has convinced? Instead of convincing the Convention that they are in error in entertaining this proposition, he has

done nothing more than excite their derision and laughter.

[Loud cries of "Question! question! question!" and "Owen! Owen!"]

Mr. OWEN said, that, as it only wanted ten minutes of dinner time, and as he would rather proceed with his remarks when he would, not be likely to be interrupted by a motion to adjourn, he would move that the Convention do now adjourn.

Pending the question on the amendment of Mr. BLYTHE,

The Convention then adjourned.

AFTERNOON SESSION.

The Convention resumed the consideration of the section in relation to the rights of married women.

Mr. READ of Monroe. Will the gentleman from Posey do me the favor to yield the floor for not more than five minutes?

Mr. OWEN. Most certainly, I will, with great pleasure, yield the floor to the gentleman from Monroe.

Mr. READ. The gentleman from Putnam, in his sermon of this morning, (not a very orthodox one, according to my notions of orthodoxy,) did me the honor to notice a sentiment which I had uttered on a previous occasion, that in Constitution making or mending, there should be no rash experimenting. That is a sentiment, I will say to the gentleman, to which I still adhere. New and strange principles I reject, as forming a part of the organic law. But well tried principles of right which the whole country has reached in the progress of experience and of more enlarged sentiments of justice and humanity, it may be very proper to incorporate into a political constitution, declaring the rights of the people. Just such, most emphatically I hold, is the declaration in regard to the property rights of females, contained in the section before us, which by so large a majority we have voted to engrossment. That more just and humane—yes, sir, more Christian sentiments even, are beginning to prevail on this subject, is to be seen in the Statutes of the different States—in the writings of jurists—in State Constitutions, and in judicial decisions.

In proof of the liberal tendency of our American legislation on this subject I had occasion to refer, a day or two since, to a paragraph in Mansfield's work on the legal rights of women.

I have in my hand an extract from Walker's Introduction to American Law, which will show how he regards the law in the condition in which it now exists in Indiana. After a comparison of the property rights of husband and wife, he says: "from first to last, the man has the advantage." Again he says: "our law is vastly more liberal toward woman than the English;" (a sad decline in our country from the Christian rule on this subject, as interpreted by some gentlemen;) yet even here, she has too much

reason to regret, that her lot has not fallen under the civil law. I can see, he continues, neither policy, justice, nor humanity, (he might well have added, according to my conceptions of that sublime system, nor Christianity,) in many of the legal doctrines with respect to married women. But there is one evil which pre-eminently calls for correction. I refer to the entire helplessness of a married woman, when her husband becomes a prodigal or spend-thrift. If he take care to give no cause of divorce, she has no means of providing against the utter ruin which she sees approaching. He may squander a personal estate worth a million of dollars, and leave a wife and children; and the wife cannot in this State, (he is speaking of the State of Ohio, where the law has since been corrected,) invoke the aid of a court to prevent it. (How Christian the law.) Some of the other States have provided for such a case; others have secured to her use her own separate property, whether personal or real; and there is evidently a strong tendency in public opinion toward securing to her some of the more important legal rights."

Mr. President, in this debate we have heard much of the requisitions of Christianity. Christianity, indeed! What abuse, what tyranny, what usurpation of right, what monstrous principle, has ever existed under the whole canopy of the Heaven, for the support of which the name of Christianity has not been invoked. [Applause.] Even in our own country, how was it in the war of the Revolution? However patriotic were a portion and the larger portion of the clergy, there were those, who, from the text "honor the king," endeavored to call in religion to the support of tyranny. All over Europe, the sacred name of Christianity is, at this time, invoked to stay the progress of human freedom, and to arrest the liberalizing tendencies of the age. In times past, no bloody code has been enacted, nor bloody deed done, nor human rights trodden down, but all has been done in the name of Christianity. Sir, for myself I do not so read and so learn the precepts and doctrines of Jesus.

The gentleman from Tippecanoe (Mr. Clark) has referred to the heroic ages. Well, sir, what were the heroic ages, and what was the state of society then? They were ages when physical force triumphed, when war was the chief business of men, when the weak had no rights, when women were the merest beasts of burden. Would the gentleman carry us back to those ages?

Mr. CLARK. Will the gentleman allow me to interrupt him for explanation?

Mr. READ. Most certainly.

Mr. CLARK of Tippecanoe. The gentleman is laboring under a great mistake when he supposes I referred to what are commonly called the "heroic ages." I referred to the "heroic age" of our own country—the times of our

courageous ancestors, and not to the "heroic ages" of other countries.

Mr. READ. I misunderstood the gentleman's remarks, and am most happy to be corrected.

If, sir, there is any heroism, in the might of our manly power, in refusing to women their just rights of property—the right to hold their own—then give me the Christian ages, and the Christian influences under which woman had already gained so much, and is destined in the evident tendency of things to attain those rights of which the heroism and feudalism of other ages reaching in their influence down to our own times, has so long deprived her.

I here avow, in the presence of this Convention, and of the world, that my hope of all reform, legal, constitutional, social, and domestic, is founded in Christianity. Here, sir, I rest my hopes of human progress; and to no other system do I look for that purity and elevation, which I believe society, under the fullness of Christian influence, is destined to attain.

But, Mr. President, I rose merely for the purpose of saying to the gentleman from Putnam that I adhere, in every particular, to the principle which I have heretofore laid down as a cardinal one, in re-forming a Constitution, that we ought not to adopt doubtful or experimental views. And I hold in regard to the section which we ordered last evening to be engrossed, that it contains no such principle, but embodies the feelings and sentiments of the whole country, and expresses that sense of right and justice which exists in the public mind.

Mr. OWEN. As Chairman of the Committee on Rights and Privileges, whence most of the sections heretofore acted upon by the Convention have been reported, and also, occasionally, as the object of personal attack, I have been compelled to speak, of late, more frequently than I desired or intended. I hope, however, that, under present circumstances, the same courtesy will be extended to me as was extended, this morning, to the gentleman from Putnam; and I assure the Convention that its indulgence shall not be abused.

Sir, if I were a timid man. I might have been alarmed at the two batteries—one on my left (Mr. Nave) and one immediately on my right (Mr. Badger) which exploded here this morning. I noticed, that, in the discharge of these two batteries, there were some things that differed and others that were in common. It cannot have escaped your observation that both pieces had been loaded for some time, and with much care. In this they resembled each other. But while the one on my right was discharged at the object for which it was specially loaded, my friend on my left (Mr. Nave) evidently prepared to slay one man, and finally took aim at another. When the ball was rammed home, it was unquestionably intended for me. But it was discharged at my luckless friend from

Vanderburgh. I hope he survived the shot. [Laughter.]

Sir, I have, now and then, carried a rifle; and I have remarked that it is usually a dangerous thing to change one's aim at the moment of firing. One is very apt to miss the mark. So, beyond question, has it been in the present case. The gentleman had prepared certain objections to the original sections; and there was some plausibility in these, thus directed. But calling to mind that the sections in question are no longer before us, he turns the battery prepared for them against the amendment of the gentleman from Vanderburgh, without reflecting whether the loading would suit; and, as a very natural consequence, he totally misses his mark. Under that amendment, he says: "The courts will decide that married women have a right to go into market as independent traders." Have the courts decided, that, under the present law—the law of the session of 1846–7—they are independent traders! The gentleman knows that they have not. Yet that law, as to real estate, is more strongly worded than the section offered by the gentleman from Vanderburgh. The words are, "or which she may *fairly acquire* during her coverture." This is as full as the expression, "acquire by purchase, gift, devise, or descent." And there are added, in that law, the words "to be her separate property." It is not, as in our section, that the property shall be secured to her; it is that she shall enjoy it to her separate use. Certainly, whatever objection can be raised, on that score, to the section before us, can be raised also, and with much greater force, against the law under which we have been living for the last four years; and living contentedly, too, without for a moment imagining, what gentlemen have so suddenly and recently discovered, that, in principle, it offends not only against domestic harmony, but also against morality and religion.

I turn now to my friend on the right, from Putnam (Mr. Badger). Unlike the gentleman on my left, he did not change his aim. He carried out his original intentions, and discharged his piece at the object, for which, at the first, it was loaded.

Yet I have a charge to bring against him here. I arraign him as having violated—not indeed a text of Scripture—but an old Latin adage, generally assented to by the world, and venerable for its antiquity. He has doubtless heard of it: "*De mortuis nihil nisi bonum.*" Or, rendered in the vernacular, "Thou shalt not speak ill of the dead!"

Is he not guilty? Here was this unfortunate section, reported from the Committee on Rights and Privileges, slain yesterday, by a vote of 65 to 64; the gentleman himself aiding and abetting the act. It is numbered with the dead. It was sent to the repository of things lost. It descended to the tomb of the Capu-

lets. Yet nothing will satisfy the gentleman but to exhume the dead, that he may have a chance, here in public and before us all, to mangle a lifeless body. [Laughter and applause.] The battery so carefully loaded, so long withheld, was discharged at last, against an inanimate, unoffending corpse. The brains were out, the body was stiff and cold. I appeal to the gentleman's sense of humanity, to his manhood, and I ask him whether he thinks it was brave or generous to pursue his victim even beyond the grave, and pummel it right and left, as if it still retained the vigor and energy of life and youth?

Nay, sir, I doubt much whether the gentleman's conduct was constitutional. [Laughter.] "Cruel and unusual punishments shall not be inflicted." [Renewed laughter.] And unusual it surely is, for any one to visit the churchyard, and vent, upon its slumbering inmates, his quenchless wrath. Vultures and hyenas, only, profane the tomb. Men attack the living, not the dead. Or if, in history, there be a parallel to the vengeance of the gentleman from Putnam, it is to be found in the story of Achilles, who, not satisfied with slaying Hector, dragged thrice around the walls of Troy, the senseless corpse.

But the gentleman from Putnam belongs to a profession, the members of which I have been trained, even from my youth up, personally to respect, and he shall have a serious answer to his theological argument.

His undertaking is, to prove, that this section—the dead one—is "contrary to the spirit of the Christian Scriptures." And how does he set about proving this? First, he quoted from the Old Testament, and tells us of the daughters of Zelophihad, who applied for their father's inheritance. He did not read the passage; suffer me to do so for him:

"Moses brought their cause before the Lord.

"And the Lord spake unto Moses, saying,

"The daughters of Zelophihad speak right; thou shalt surely give them an inheritance among their father's brethren."

And then follows a general law of inheritance, as follows:

"Thou shalt speak unto the children of Israel, saying,

"If a man die, and have no son, then ye shall cause his inheritance to pass to his daughter.

"And if he have no daughter, then ye shall give his inheritance to his brethren," &c.

Does the gentleman cite us to this, as to something we are to imitate! Our own law of inheritance, as the gentleman from Decatur and other gentlemen have well said, is iniquitous enough; but that of Moses is ten times worse. "If he have no son," the daughters shall inherit; not otherwise. Nothing for them if a son survive. Are we to imitate this law, and

give to the sons all and to the daughters nothing? Is that the gentleman's proposal? If not, why cite us to a text like this?

Again: if there be neither sons or daughters, the inheritance goes to the husband's brothers or sisters. No provision for the widow. No mention of her, any more than if she did not exist. Are we to copy this also?

Why cite to us Moses's laws? They are interesting to us as history; but are we bound by them? I think few of the gentlemen's colleagues in the ministry will take that ground. Whither would such a doctrine lead? If not to primogeniture, to something very like it. I read from Deuteronomy, chap. 21, verse 15:

"If a man have two wives, one beloved and another hated, and if they have both borne him children; and if the first-born be hers that was hated:

"Then it shall be, when he maketh his sons to inherit that which he hath, that he may not make the son of the beloved, first-born before the son of the hated, which is indeed the first-born:

"But he shall acknowledge the son of the hated for the first-born, by giving him a double portion of all that he hath."

He shall acknowledge the first-born. How! By "giving him a double portion of all that he hath." Are we to cast away our noble law that gives to each child an equal portion and adopt the Jewish rule; to give to the first-born twice as much as to any of his brothers or sisters. Yet if we are to follow Moses as a legislator in the spirit of one law, why not in another?

Here is another law from the Pentateuch, Numbers, chap. 15, verse 32:

"The children of Israel found a man that gathered sticks upon the Sabbath day.

"And they that found him gathering sticks brought him unto Moses and Aaron, and unto all the congregation.

"And the Lord said unto Moses, the man shall surely be put to death: all the congregation shall stone him with stones without the camp.

"And all the congregation brought him without the camp, and stoned him with stones, and he died."

Is that a law we are prepared to adopt in this western country? If a man, on the Sabbath, step out from his cabin into the adjoining forest to gather sticks to boil the pot that is to contain his dinner, are his neighbors to gather together and stone him to death? Truly might it be said, in such a case, as on a more memorable occasion: "He that is without blame among you, let him cast the first stone." It has been a question of interest whether, even for the revolting crime of deliberate murder, the death-penalty should not be abolished. What shall we say of a law that imposes such a penalty.

for an offense, if offense it be, so trifling as this?

One other example may suffice in proof, that the laws of the Jews, however they may have been adapted to the age and the nation in which they prevailed, suit not our nation and our age, and ought therefore to be no rule to us. I read from Deuteronomy, chap. 22, verse 10:

"Thou shalt not plow with an ox and an ass together.

"Thou shalt not wear a garment of divers sorts, as of woolen and linen together.

"Thou shalt make thee fringes upon the four quarters of thy vesture, wherewith thou coverest thyself."

Are we to obey such laws as these? Is the gentleman from Putnam prepared to put on the leather hunting shirt of the western pioneer, bedecked with fringes, and enter the Convention in such a costume?

Mr. BADGER (in his seat). I have worn a hunting shirt, before now.

Mr. OWEN. Very possibly; but if the gentleman has now ceased to wear one, is he thereby violating the law of God?

Mr. BADGER. Leather jackets are not the subject under discussion.

Mr. OWEN. But the principle involved in the command to wear them is.

Enough of this, however. If these texts seem to the gentleman irrelevant, he shall have one bearing on his own course on this floor.

There is but a single delegate in this Convention, the gentleman from Steuben, (Mr. May,) who cast his vote in favor of negro suffrage. Every other delegate voted to make distinction between white and colored men; the gentleman from Putnam among the number.

Mr. BADGER. I beg the gentleman's pardon, but I was not here when that vote was taken.

Mr. OWEN. Ah! then I shall have to guess how the gentleman would have voted; or, rather, if the gentleman will but say, that, if here, he would have voted to give the negro the same right of suffrage as ourselves, he shall have the benefit of that declaration. [A pause, and laughter.]

The gentleman is silent. Well, here is the text:

"Ye shall have one manner of law, as well for the stranger, as for one of your own country."

Is there to be one manner of law for the African race and ours? Or when we make one manner of law for ourselves and another for the negro, asserting our right to suffrage and denying it to him, do we not act in violation of that text? [Applause.] Is not the vote the gentleman will yet give against negro suffrage, in

violation, if his own argument be good for anything, of "the spirit of the Christian Scriptures?" [Applause.]

It is quite clear, then, that the Old Testament, when it records Jewish law, cannot be our guide; and that Moses' law of descents, which prefers sons to daughters, has no bearing whatever on the question before us, and does not, in the slightest degree, prove the gentleman's position, that husbands should have all the property and wives none.

But there were also quoted by the gentleman texts from the New Testament—texts enjoining, in the wife, obedience to the husband. And these also are adduced in support of the common law doctrine which deprives the wife of all rights to property.

Here are texts in language quite as forcible, enjoining obedience by servants to their masters:

"Servants be obedient to them that are your masters, according to the flesh, with fear and trembling, in singleness of heart, as unto Christ." Ephesians, chap. 6, verse 5.

You cannot well find words more forcible than these—"as unto Christ." They are as strong as those of any text enjoining obedience in the wife. If, then, the command in the wife to obey justifies and requires that she should own and control no property, then by parity of reasoning, must obedience in the servant lead to the same conclusion. Is the gentleman from Putnam prepared to say, that, because the hired servant girl who may aid his wife in her domestic duties, is enjoined, in this text, to be obedient to her master as unto Christ, she is not, therefore, to become the owner and disposer of property, real or personal? [Applause.]

But there are more such texts:

"Servants, obey in all things, your masters according to the flesh; not with eye-service as men-pleasers, but in singleness of heart, fearing God." Colossians, chap. 3, verse 22.

And again:

"Exhort servants to be obedient to their own masters, and to please them well in all things; not answering again." Titus, chap. 2, verse 9.

Strong text, that, sir! They are not even to answer again, if reproved.

And here is yet another:

"Servants, be subject to your masters with all fear; not only to the good and gentle, but also to the froward."

You can find no stronger texts than those requiring in the wife submission to her husband. And if, because of the texts quoted by the gentleman, it is to be held contrary to the divine rule, that married women shall become independent owners of property, just as certainly must we conclude that the spirit of the Christian Scriptures is violated, if servants own property in any case whatever.

Nor are the texts which enjoin submission, confined to servants alone. There is that celebrated one in Romans, so often quoted by legitimists, against republican revolutionists:

"Let every soul be subject to the higher powers;" and that other, commanding us to submit ourselves "to the King, as Supreme." Is the inference from such texts to be, that subjects are not to become independent owners of property? There was, indeed, a time when some such doctrine prevailed; when the legal theory was, that the king was the owner of all the land within the kingdom, and his vassals held under him but as retainers of the Crown, in virtue, and on condition of military service. Does the gentleman from Putnam propose to revive that exploded, feudal doctrine?

Again, sir: are not children commanded to obey their parents? What is the first commandment with promise?

"Honor thy father and mother, that thy days may be long in the land which the Lord thy God giveth thee."

And is this restricted to the age of majority? There is no such restriction. An unmarried woman of twenty-one years, residing in her father's house, is commanded to obey her parents. But is she, therefore, to be divested of that property, which the common law itself has not ventured to deny to her?

I turn from these texts, and quote against the gentleman's argument another, not of Paul, but of Jesus; a text from that beautiful Sermon on the Mount, which heathen and Christian alike admire, as a sublime lesson in morality:

"Blessed are the meek"—and what is added?—"for they shall inherit the earth."

What is the legitimate deduction from the spirit of that text? Is it not that hereafter property shall not be the heritage of power, the reward of force alone? May we not fairly infer that it condemns the engrossing of the world's goods by men, and favors the owning of property by that sex also, of which meekness is the peculiar grace?

If the gentleman should argue, in reply, that the province of Scripture is to teach morality, not to dictate to us the details of law, I fully concur in the opinion. But, in that case, what becomes of his argument, that the civil law rule in regard to married women's rights to property is a violation of the spirit of the Scriptures?

I can find Scripture, which, if it is to be literally construed, condemns some of his votes here, beyond defense. I can find such a text, not drawn from the Old Testament and its Jewish history and Jewish laws, but from the New Testament; a text written by the same Paul to whom he is chiefly indebted for the texts used against me.

I remind the gentleman from Putnam, that, a few days since, when there was a question whether we should absolutely prohibit, by Constitutional enactment, all public debt, or whether

we should leave the door open, by submitting the matter to a popular vote, he did not vote for the absolute prohibition. He voted to leave the matter open; and so to permit, under certain conditions, an increase of debt. But if texts of Scripture are to be received, in their literal sense, as prescribing law to us, that vote of the gentleman's was unscriptural. It was contrary, not to the spirit only, but to the very words of the Christian Scriptures. For therein it is said: "Owe no man anything, but to love one another." [Laughter and applause].

Sir, I am not satisfied here to take the defensive only. I am not satisfied merely to refute the gentleman's allegation, that the change now proposed for the benefit of married women is contrary to the spirit of the Christian system. I assert that, in the general spirit and tendency of its doctrines, Christianity not only permits, —it approves and commands it.

The Author of the Christian religion always treated woman with kindness, with respect, and, even in those cases which the world's morality most bitterly condemns, with indulgence. He always treated woman as the equal of man. When Martha required that her sister should be bidden to attend to household duties, (the sole matters with which some men think women ought to concern themselves,) instead of listening, with men, to the teachings of Christian philosophy, what was his reply? "Mary hath chosen that good part which shall never be taken from her."

The whole tenor of Christian morality, the very essence of the change it made on previous systems, is the substitution of the law of kindness for the law of the stronger. It is founded on charity and on love. Love is the fulfilling of the law. Is it not meet and fitting that, under such a system, that sex of which the milder virtues are the peculiar graces, of which love, in its purest and widest acceptation, is the characteristic attribute—is it not, I say, in accordance with the very spirit of the Christian system that woman should come to be regarded as the equal of man?

In nations more barbarous, this could not be. In feudal times, when property was held in virtue of warlike service, when right and might were nearly synonymous terms, the stronger animal felt, and very naturally asserted his superiority. Among our own Aborigines, where reputation is measured by the number of scalps that hang at the red warrior's girdle, woman is naturally regarded as an inferior, a menial drudge, fit only to wait upon her savage lord. In Mahometan countries, where faith was disseminated by the sword, it was natural that she who could not wield the sword, should be denied the reward of the faithful, and excluded, as a creature without a soul, from the Moslem paradise. It is the boast, the just boast of Christianity, that its tendency has been to change all this; that it has aided in giving to woman a rank

she never held before, throughout the whole history of the world; a rank which could not belong to her, in ages and in countries, where physical strength and brutal courage were regarded as the highest of human attributes; but which is hers, of right and of nature, in every land, where mind predominates over matter; where the social virtues rank higher than stout deeds on the battle field.

No man who walks through the world with his eyes open and his heart awake, but must distinguish the radical change which this mild and Christian spirit is working throughout the civilized world. It shows itself in the gradual reform of law. It is evinced in the tone of our literature. The very fugitive poetry of the day, no unfaithful reflex of popular sentiment, is imbued with it. I have a little scrap book here, in which it is my habit to place such of these lighter matters, floating on the current of the hour, and often indicating thus the direction of the great stream which is bearing us all along, as may chance to attract my attention, and seem to me worthy of more permanent record than the passing pages of a periodical. I read from a definition—a very modern one—of the often prostituted terms, hero and heroism. I know not the author's name; but, be he who he may, the lines do equal credit to his head and his heart. The first verse sets before us the heroism of the world's vocabulary; yes, even of *our* world, in these United States:

"With his trusty sword and shield,
Rides the warrior to the field.
For his bleeding country's wrongs,
Valiantly he goes;
Daring danger, braving death,
'Midst her tyrant foes.
If he fall, some pilgrim sad,
To his lonely grave
Will in reverence come, and bend,
Worshiping the brave.
If victorious, he will win
Laurel wreaths of fame;
While applauding multitudes
Shout the hero's name.
So, with trusty sword and shield,
Rides the warrior to the field.

The concluding verses shadow forth, in a scene too true to nature, a heroism of another character:

By a dying brother's bed
Sits a maid, and sews for bread.
When the lark's first silver note
Comes upon the air,
And when tolls the evening bell,
Ever sits she there,
Watching him, and speaking hope,
Though her soul is sad;
Dropping tears upon her task,
Yet appearing glad:
Grudging every moment's rest,
Every sleepy hour,
Yet will wander miles away,
For a way-side flower!
Few knew this, yet by his bed
Sits the maid and sews for bread.
God, who seest not in parts,
Strengthen these heroic hearts;

Those who with a strong endeavor,
Win the noblest fight,
Conquering self, and yet, all lowly,
Bend them in Thy sight.
Those who by the sacred hearth-stone,
When great trials come,
Girt with peace, and gentle voices,
Make it truly home.
Those encased in Love's strong armor,
Doing valiant deeds;
For all such *true* heroism
Our poor praying pleads.
Strengthen those heroic hearts,
God, who seest not in parts!

There is much in the spirit of the Christian system, though it was promulgated nearly two thousand years ago, that is greatly in advance of the practical working day opinions of the present age. Such is the sentiment, eminently Christian, embodied in the above beautiful stanzas. We admire it in poetry—we reject it in practice. Such, also, is our estimate of the position of woman in society. In theory we admit that under a system which substitutes kindness, and forgiveness, and mild persuasion for harshness, and revenge, and animal force, woman becomes man's equal; in law we utterly deny it. Our law in this, as in many other things, lags far behind the essential spirit of Christianity.

I do not argue that any where in the Christian Scriptures there is clearly expressed a preference of the civil law rule as to the property of married women over that of the common law. I but say, that if we carefully look to the general tenor and tendency of the sentiments put forth by the Author of Christianity, we shall find these far more accordant with the former than with the latter. And we shall scarcely resist the conclusion, that the feudal rule which declared the wife incapable of holding property, is a barbarous heathen relic; one of those old unjust things destined soon to pass away, and to be replaced by the just and the new.

A few words in conclusion, Mr. President, in reply to the taunt indulged in by the gentleman from Putnam, as to my religious creed.

MR. BADGER. I intended no personal allusion to the gentleman's religious opinions in anything I said.

MR. OWEN. Yet it is very certain that the Convention so understood the Delegate from Putnam (Mr. Badger) when he intimated that "some gentlemen had not more faith than was necessary in sacred things," accompanied, as that intimation was, by a significant gesture and glance at myself.

For the best and briefest reply which suggests itself to this irrelevant charge, I turn once more to my little scrap book, and ask to be allowed to read from it a few lines, by Leigh Hunt, entitled

ABOUT BEN ADHEM AND THE ANGEL.

"Abou Ben Adhem (may his tribe increase)
Awoke one night from a deep dream of peace,
And saw within the moonlight in his room,

Making it rich, and like a lily in bloom,
 An angel, writing in a book of gold;
 Exceeding peace had made Ben Adhem bold,
 And to the Presence in the room he said:
 'What writest thou?' The vision raised its head,
 And, with a look made of all sweet accord,
 Answered: 'The names of those who love the Lord.'
 'And is mine one?' said Abou. 'Nay, not so,'
 Replied the angel. Abou spoke more low,
 But cheerily still, and said: 'I pray thee, then,
 Write me as one who loves his fellow-men.'
 The angel wrote and vanished. The next night
 He came again with a great wakening light,
 And showed the names whom love of God had
 blessed,
 And lo! Ben Adhem's name led all the rest."

When there is a question in regard to my religious opinions, be my reply this, that I adopt and endorse the sentiment of Leigh Hunt's beautiful parable.

Mr. BADGER. May I be permitted to say one or two words in reply? [Loud cries of "spoke, spoke, spoke," and "hear him," "hear him."]

The PRESIDENT. The gentleman has spoken, and he is not entitled to speak again unless by the consent of the Convention.

Mr. BADGER. I would just observe to the Convention that when I spoke in the morning I only occupied twenty minutes, and the gentleman from Posey (Mr. Owen) has occupied thirty-five minutes, without being interrupted.

The PRESIDENT. Is it the pleasure of the Convention to hear the gentleman?

Cries of "hear him," and "consent, consent," from all parts of the Hall.

Mr. BADGER proceeded to say: I took a note on the gentleman from Monroe, and I have nothing further to remark in regard to him. If he has satisfied himself and the Convention with his exposition of the matter, I, of course, am satisfied.

In regard to the gentleman from Posey, perhaps I may be permitted to remark that he would have made a pretty fair preacher—of a certain kind [laughter]. He divides the words well. But while I make that remark, I must be allowed to make another, and that is, that he misapplies it much better. [Cheers and laughter.]

I am well apprised, sir, that so far as experience and learning are concerned, I have to contend against fearful odds; but my reliance is in the justice of my cause. It must be manifest to all that the honorable gentleman from Posey has totally avoided the prime question at issue. He has given us a learned dissertation on stoning those to death who picked up sticks on the Sabbath. But, sir, I confess I cannot see that it has any relevancy to the relations of husband and wife.

And notwithstanding his denial of the applicability of these texts to the point at issue, I ask what has he done better? Why, sir, he has made a noble defense, if sophistry be argument,

and in making it has not touched the point at issue. He has misconstrued almost every text he has quoted.

I had thought, sir, that as the *onus probandi* rested on me he would come up to the work fairly. But, sir, where do we find him? We find him undertaking to prove that I gave a vote contrary to Scripture last week, in relation to restricting the Legislature in borrowing money! I had not thought, sir, that the honorable gentleman would thus decidedly beg the question. His be the distinction and his the honor, that may be gained by such a course!

The gentleman very exultingly says that in discharging my "piece," I have not evidently missed my object, but unfortunately for me the game at which I fired was killed last evening, even its brains knocked out, and the whole body dreadfully mutilated. He then very warmly entreats me, by the use of a Latin phrase, the English of which, he says, is—

"Speak ye not evil of the dead."

This kind of evasion, sir, may do well enough for the careless and unthinking, or for a badly biassed mind; but the pending question is the same animal, clothed in a little different garb, and reads as follows:

"The real and personal property of woman, whether owned before marriage, or afterwards acquired by purchase or gift, (other than from the husband in fraud of his creditors,) devise or descent, shall be and remain secured to them under equitable conditions, by law." But enough of this.

Now in relation to the law of inheritance under the Mosaic economy, he gave a misconstruction of the language of that chapter. He said that it simply proved the law of descent, and that if it did not prove that, what did it prove? This I admit; and while I admit that it proves that, it proves also what I said this forenoon—that when the daughters of Zelophehad married, their property passed into the hands of those to whom they were married, and that consequently the law compelled them to marry men who were sons of their father's tribe. This is the law in the case; but I knew that this principle and these proofs would be denied, and therefore, I stated what I did this morning. The gentleman informed me last week that he would deny them.

Although I have but little experience in discussing the Christian Scriptures, I feel gratified that I can rectify two or three misapprehensions; and in the first place let me remark that the numerous texts which we have heard quoted in relation to the duties of servants, have no connection whatever with the subject under consideration. Nobody denies that the Apostles required that servants should render duties and obedience to their masters; but does the gentleman in sober earnestness, want us to think they meant the same kind of obedience which

is required of the wife? Will he dare to say that? If he does, I ask him to say it out; to say it out before this community, that all may know it. Mr. President, this is nothing more than a sound sophism. [Applause.] It is too absurd to deserve notice; for every one must see that the main thing is wanting to constitute his argument logical, and that is the total want of analogy between the position of the wife and the servant. [Applause.] I know well enough, and so does every man, that there are relative duties appertaining to masters and servants, and to husbands and wives, as well as to parents and children; but the question in dispute is whether the Christian Scriptures recognize a separate interest between husband and wife. [Several voices, "that's the question," and "go on, go on."] Do the Christian Scriptures recognize a distinct and separate interest in the holding, disposing of, employing, and handling personality and realty between the husband and the wife? This is the question. Has the gentleman met it, or has he avoided it? I appeal to you, sir, and to this Convention, for an answer. For in all candor, his speech seems to me to be a kind of last resort, a kind of desperate effort to save the last fragments of a depreciated socialism.

But I want to instruct the gentleman a little in regard to his observations concerning the Sermon on the Mount. In that sermon, true enough, we find the words which he quoted: "Blessed are the meek;" and up comes the gentleman with all his gravity and exclaims, "who are the meek? Why the women." [Laughter.] Agreed that they are; and did the Lord intend to say that they should inherit this earth? Or did he look down the long and dark vista of the future to that period, of which Peter speaks, when he says:

"We look for a new heaven and a new earth, wherein dwelleth righteousness."

[Applause, and "go ahead."]

"Ah! but" says he, "the gentleman from Putnam gave a grievously erroneous vote the other day." What was it? "Why he voted for a provision to enable the people to borrow money when the public wants required it." Yes, sir, I did vote that way, and would vote the same way nine hundred and ninety-nine times out of every thousand. [Applause.] I hold it to be true, that the people are the sons of the soil; and we are only their instruments here. We are not the people, as some gentlemen have boldly asserted; we are only the instruments of that people on whom we depend for prosperity and happiness, as members of this great community. And are we to say to the people "you shall not have the privilege of borrowing a dollar when your necessities require that you should do so." This is not our province, although some gentleman have so regarded it.

But the gentleman quotes this text: "owe no man anything," to show the erroneousness of

my position on that subject. Now for the point, what is it? "Owe no man anything," says Paul in the thirteenth chapter to the Romans, "but love one another." Now if the gentleman from Posey had studied the divine oracles, as most men would conclude that he had, from his eloquence to-day, he would not have misrepresented them quite so much as he has. I must say, however, that last week I gave the gentleman all the texts I had selected. Yes; sir, I gave him a copy of every one of them, and it seems to me that if he had reflected at all, he ought not so miserably to have misconstrued the one he selected from the Sermon on the Mount. Now, what was the object of this remark of the Apostle, "owe no man anything." Do gentlemen regard a man as "owing" a thing until it is due? Answer me that ye men of law. [Several voices, "no, no, no."] I take occasion to say here that this construction is quite as contrary to the genius and spirit of the Christian Scriptures as the subject matter under discussion; just the same. Sir, desperate must be the cause that requires, in order to its sustenance, so manifestly gross a violation of the spirit and import of this divine record. Did the Apostle mean that men were under no circumstances to promise money. No, sir, no; he simply meant to put a check to that system of fraud which is too frequently a distinguishing feature in the character of men and communities. And it is not the contracting a debt, sir, but the refusal to pay, that renders a man disreputable both in the eyes of the law of God and man. [Applause.] I have now about finished my remarks, and will close with two other remarks, which shall be short.

The Bible has not unfrequently been adverted to in this Hall. I am pleased to hear reference made to it; and I must say, that so far as it has been adverted to, gentlemen have adverted to it with becoming reverence, with few exceptions.

And now, sir, so far as this matter has gone, I am still convinced of the truth of the position I have maintained. I hold it to be self evident, that this Convention should have nothing whatever to do with the proposition, now under consideration. I hold it to be altogether foreign to the object for which we came here—that we did not come here to ingraft on our fundamental law any such proposition. It is neither our duty nor our province to do so, although we may regard it as our privilege.

In conclusion I will say to this Convention, that in future, I should be extremely pleased if nothing was presented here but those matters which legitimately belong to the instrument for the revision of which we are here employed.

Mr. MURRAY. My highest ambition is to know and to do the will of my constituents. I have expressed my opinion with reference to this subject to a number of members and other

gentlemen, which I will now briefly rehearse—comprehending the whole in three things:

A man who marries a woman for money, deserves not the protection of law, to enable him to retain it, if he has acted upon a mercenary principle.

A man who marries a woman from affection and esteem, will be able to control the means of his wife, either with or without law.

And the man who misuses the confidence of his wife, ought not to possess her property—he ought to be excluded by law. [Applause.]

I offer these conclusions for my speech.

Mr. KELSO. There is a motion pending to re-commit with instructions, which amounts to an amendment. I will move to lay the motion to re-commit with instructions, upon the table.

Mr. RARIDEN. I demand the yeas and nays.

Mr. ROBINSON. Will the gentleman withdraw his motion?

Mr. KELSO. If the gentleman desires to speak, I withdraw.

Mr. ROBINSON said,—

Mr. PRESIDENT: When I made the motion to commit the section, I made a few brief remarks, giving my reasons for wishing to have the section stricken out, and the one that I proposed adopted in its stead. Fearing, however, that the true question may be lost sight of, after the theological display which we have just witnessed, I will ask the indulgence of the Convention a few moments, for the purpose of saying a few words on the motion to commit. And may I not say that a subject so general in its character, involving, as it does, the blessings of domestic life, deserves to be candidly considered, and that we should not adopt a rash, untried experiment, involving such high and vital interests, without at least a full and patient examination. I am well aware, sir, that such is the feeling of impatience that prevails in this Hall, that, unless a question or debate carries with it something that is amusing, there can hardly be secured for it a fair hearing, even upon its merits.

If there is any subject, sir, that should interest the mind, it is the one now before the Convention. If there is anything on earth worth preserving or being preserved, it is domestic happiness in the family circle. Strike the idea of domestic happiness out of existence—take from us the blessings of social enjoyment around the family hearth, as they are enjoyed when secured and sanctified by love and affection, and, I repeat what I have already said, there is nothing worth living for.

I object to the section as amended by the gentleman from Vanderburgh, (Mr. Blythe,) and I think my objections are well founded. I object to it, sir, because I believe, if finally adopted, it will endanger those peaceable and happy relations which should be cherished and sustained by all well disposed towards happiness and good

order. Sir, the section proposes to invest the wife with separate property—to create between her and her husband, separate, and to some extent, rival interests, which, I fear, might interrupt that peace and harmony which ought to be permitted to flow in one even and unbroken stream.

Sir, in all ages of the world, and in all the relations of life, property has had its alluring and corrupting influences; and permit me to ask the question, what is there to justify us in coming to the conclusion, that, if we adopt this section, thereby setting up in the same family, different and conflicting interests; bringing, as it must in some instances, the interest of the husband and wife in contact, it will not create in many instances difficulties, turmoils, and discord, which should be deprecated by all orderly and well-disposed members of community.

What, sir, does the section proposed to be referred, contain? It contains a provision that the wife may acquire and hold property in her own right, and that her property, whether acquired before or after marriage, shall be under her control, and subject to her own disposal. This would give her the right to manage her own property. It would be dividing the house against itself, and setting up in the same family government, two separate branches. Who, sir, cannot foresee the consequences that such a state of affairs may produce?

But, suppose you secure to the woman separate property, what would be the consequence? How is it to be managed and taken care of? Her situation and habits in life will not justify her in taking upon herself the burthen of managing and taking care of it. She must perform this duty through her husband, or some other agent; and might not this bring with it disquietude and strife, that would embitter the enjoyments of domestic life, and plant thorns in that path that, above all paths, should be smooth and even? Sir, I fear the experiment.

But, Mr. President, the amendment to the section, made by the gentleman from Wayne, (Mr. Newman,) though done from the best and purest of motives, doubtless; for, Mr. President, I am too well acquainted with that delegate to suppose him capable of doing wrong designedly; yet, I repeat, that it makes the section more than ever objectionable. Sir, the original section provided that the woman should have the right to acquire property, real and personal, by gift, grant, purchase, devise, or descent; but by the amendment of the gentleman from Wayne, (Mr. Newman,) it is provided that she shall not hold property by gift from her husband, made in fraud of his creditors. How often, sir, might it occur that the husband, to defraud his creditors, would attempt to place his property in the hands of his wife? How, then, is this question of fraud to be tried?—where, and by what form is it to be settled? Not by the law of Moses, referred to by the gentleman from Putnam (Mr.

Badger). It must be tried before the legal tribunals of the country, and, Mr. President, the creditor, to secure his debt, attacks one of these business transactions between husband and wife. He charges fraud, and the woman asserts her title to the property thus acquired, and this question of fraud, growing out of a transaction between husband and wife, must be settled in a court of justice.

I now ask the question, sir; I now appeal to the delegates on this floor, if they are ready for such results—for litigation of this sort. Pass the section—make it a part of the organic law—and my word for it, you lay the foundation for the most fruitful field of unhappy litigation, growing out of the most sacred relation in life. The discordant hand of the law in this way will be the agent that will invade the only peaceful retreat for which life is worth retaining. I admire, sir, the good feelings that have produced the section. I hold myself to be one that feels devoted to the rights of woman. But, sir, fearing, as I do, the experiment—fearing that it would produce heart burnings and discord between man and wife—I must, as it now stands, vote against it.

I desire here, Mr. President, to say one word in regard to the proposition immediately before the Convention. I made a few remarks when I submitted the proposition. I then stated that our law of descent was wrong—that it did not do justice to the married woman, and ought to be altered. To that opinion I still adhere. Sir, the married relation may well be assimilated to a partnership; it is that union of interest by which the partners should share in profit and loss; for it would not be fair—it would not be just—to exempt property to the woman—place it beyond the reach of her husband's debts, when, perhaps, those debts have been contracted for the mutual benefit of both. Sir, if she participates in the advantages growing out of his good contracts, the property of the firm ought not to be exempt from the liquidation and fulfilment of the bad ones. I concede the fact, that the law of descent, as it now stands, does woman great injustice; I believe it operates towards her harshly; she ought to have justice; and there is a proper time, and a proper way, in which it should be secured to her. That time is when death has severed the tie that binds those mutual interests; when the silken cord is cut; when death has deprived her of the assistance of the husband; when there is no danger of destroying the peace, harmony, and tranquillity of domestic happiness; then, sir, let the law of descent be so regulated as to do her ample justice. The amendment that I propose will do her that justice. It proposes that a woman residing in this State, at the time of her husband's death, shall have the right to claim free, and discharged from his debts, an amount of property not to exceed in value the sum of three hundred dollars, and one-half the

balance after the payment of his debts. This will allow her a small pittance on which to support and sustain a family left on her hands, and a fair portion of his property after the payment of his debts. This, sir, is right; this is giving to her a fair portion of the partnership effects after death has dissolved the partnership, and put an end to that relation most to be cherished; the balance to go to his children in the regular and ordinary line of descent. This amendment strikes at the proper point. It avoids all the danger, the principal objection to the section, as it now stands, and the evils it might produce in the family circle. The amendment disturbs not those relations, but allows them to flow on in an uninterrupted stream until the relation ends. One word, sir, in regard to my friend from Tippecanoe (Mr. Clark). He says that he is in favor of my proposition—believes it right—but is opposed to putting it in the Constitution. In this, I think, he is wrong.

This principle should be fully settled; this right should be well defined and understood; it should be permanently fixed. If we leave it to legislation, it will be vacillating. Establish it in the Constitution, and it will be fixed and certain—as durable as the Constitution itself.

Aid and assist the wife, then, after she is left to provide for herself. This proposition, it appears to me, seems to correspond with the principles of justice more than any other. I hope the section will be referred with the instructions which I have proposed. I hope it will be stricken out and amended as I have proposed, thereby doing ample justice to the wife at the proper time, and not hazarding interests more sacred and more valuable than property or wealth.

These views, sir, I submit with all candor, and are such as I have come to after a deliberate consideration of the subject. Other gentlemen have a right to think and act for themselves; and so they ought to act; I dictate to none.

Mr. PEPPER of Ohio. It seems to me that there must be a proper time when the question should be taken upon all measures brought before a deliberative body, and I think upon this question, that time has already past. I think this question has been argued long enough and that certainly, before this time, gentlemen have been enabled to present all the views which they can reasonably desire to present in regard to this matter. Therefore I call for the previous question.

And there was a second—affirmative 66; negative 36.

The main question having been ordered to be now taken—

The PRESIDENT said: The main question is—shall the section be read a third time?

Mr. ROBINSON. Is not the first question upon my amendment?

The PRESIDENT. No, sir. The gentle-

man's amendment is embraced in a motion to re-commit, and the rule cuts off all motions.

Mr. KELSO. I have simply one favor to ask, to which it seems to me there can be no objection. If the question, by unanimous consent, can be taken upon the amendments, I believe the mover of the amendment would be willing to strike out from it the word "purchase."

SEVERAL VOICES. "No, no," "Go on with the call."

The yeas and nays were then taken under the rule, and the Secretary announced the vote—yeas, 66; nays, 59—as follows:

YEAS.—Messrs. Anthony, Balingall, Beach, Berry, Blythe, Borden, Bracken, Bryant, Carr, Chapman, Chenowith, Coats, Cole, Colfax, Cookerly, Crumbacker, Dick, Dunn of Perry, &c., Duzan, Foster, Garvin, Gibson, Hall, Hamilton, Harbolt, Hawkins, Helm, Hitt, Kelso, Kent, Kilgore, Kinley, March, Mather, May, McClelland, McFarland, McLean, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Mooney, Mowrer, Murray, Newman, Owen, Pepper of Ohio, Prather, Read of Monroe, Ristine, Sherrod, Shoup, Sims, Smiley, Smith of Ripley, Smith of Scott, Spann, Steele, Tannehill, Thomas, Wallace, Wheeler, Wiley, Wunderlich, and Mr. President—66.

NAYS.—Messrs. Alexander, Allen, Barbour, Bascom, Beard, Bicknell, Bourne, Bowers, Bright, Brookbank, Butler, Chandler, Clark of Hamilton, Clark of Tippecanoe, Davis of Parke, Dobson, Dunn of Jefferson, Farrow, Fisher, Foley, Frisbie, Gootee, Gordon, Graham of Miami, Hardin, Hogin, Hovey, Howe, Huff, Johnson, Jones, Kendall of Wabash, Lockhart, Logan, Mathis, Moore, Morgan, Nave, Niles, Nofsinger, Pepper of Crawford, Rariden, Read of Clark, Ritchey, Robinson, Schoonover, Shannon, Snook, Stevenson, Tague, Taylor, Thornton, Trimby, Walpole, Watts, Wolfe, Work, Yocum, and Zenor—59.

[Before the vote was announced—

Mr. BADGER rose in his place, and asked leave to vote, but he was precluded by the rule, which requires the member to have been within the bar when his name was called.]

So the section as amended was passed the third reading, and ordered to be referred to the committee on revision.

COUNTY OFFICERS.

The PRESIDENT said: The next thing in order, is the consideration of the first section of the report submitted on the 29th of October by the Chairman of the committee on county and township organizations, (Mr. Smith of Ripley,) which the Secretary will read:

SECTION 1. There shall be elected in each county by the qualified electors thereof, a Sheriff, Coroner, Recorder, County Auditor, County Treasurer, and a Clerk of the Circuit Court, at

the time and places of holding elections for members of the General Assembly. The Clerk, Auditor, and Recorder, shall each continue in office four years, and until their successors shall be chosen and qualified. But no person shall be eligible to the office of Clerk, Recorder, or Auditor, more than eight years in any term of twelve years. The Sheriff, Coroner, and Treasurer, shall each continue in office two years and until their successors shall be chosen and qualified: *Provided*, That no person shall be eligible to the office of Sheriff or Treasurer more than four years in any term of six years.

The PRESIDENT. The first question pending is upon the following amendment of the gentleman from Allen (Mr. Borden):

Strike out all after the word "provided," and insert:

"Nothing herein contained, shall be construed to prevent county officers now in office from serving during the term fixed by the new Constitution when their terms run beyond that period."

Mr. WALPOLE. I move to amend the amendment by way of substitute—striking out all after the word "provided," in the original section, and inserting the following words:

"That the present incumbents shall continue in the duties of their respective offices until said officers are superseded under the authority of the new Constitution."

Mr. BORDEN. It seems to me that the operation of the amendment of the gentleman from Hancock, (Mr. Walpole,) would be unjust. The object of my amendment is simply to provide that all officers now in office, and such as may be elected before the amended Constitution goes into effect, shall serve during the term fixed in the new Constitution, in all cases where their terms run beyond that period, provided, they are willing so to do. But the object of the amendment of the gentleman from Hancock, if I understand it correctly from the reading, is that all officers shall go out under the new Constitution, and submit to the chances of a re-election. Now I have one observation to make in regard to this matter. I believe that the officers of state, the judges of the Supreme Court, and the circuit judges, should go out under the new Constitution, but I am opposed to the idea that county officers should all be turned out. I think this course would be unreasonable and unjust. If this rule were to be once established, whenever the question might be agitated for the call of a Convention to amend the Constitution, at any time in the future, you would, of course, enlist all who wish to come into office in favor of a call for a Convention. And there are always many persons in every county who would be anxious that a general turn out might take place, to make room for themselves and their friends. It has been said by many leading men in the

State of New York that many counties in that State went for calling a Convention, for no other purpose than this. But this Convention by permitting all persons now in office, to serve out the length of time fixed by the new Constitution, would most effectually check this feeling. For instance, where a county clerk has been elected for seven years, just before the new Constitution goes into effect, he should serve for four years. In this way you would completely discourage the desire which exists in many minds, to call a Convention, simply for the purpose of throwing out all the incumbents of office and open the door for a general scramble to obtain them; I hope, sir, that we shall make such a Constitution as that the people will have no desire, soon, to call another Convention. Conventions are designed for curing dangerous diseases in the body politic, and for removing great evils, while to the ordinary legislation of the country belongs the care of the less dangerous diseases, and the removal of lesser evils. When you call a Convention, for the remedy of the lesser evils, in the affairs of State, you virtually make the medicine of the Constitution its daily bread.

But I am opposed to the amendment of the gentleman from Hancock for another reason. It is unjust. These men who have just been elected to office under the old Constitution, and have just entered upon the discharge of their official duties, having, perhaps, changed their residence for this purpose, and otherwise involved themselves in contract by their change of situation, could not be turned out without loss and disappointment on the part of themselves and their friends; and I do not believe the people have expected such injustice at our hands. I am willing to except the amendment as explained by the gentleman from Switzerland, (Mr. Kelso,) that is, that the men in office shall serve out their Constitutional time under the new Constitution.

Mr. CLARK of Tippecanoe. Having been upon the committee which reported this section, I will state that when the subject was under discussion in committee it was decided not to report any clause of this nature, because there would have to be a general clause inserted in the Constitution, which would have respect to every officer in the State. It should be recollected that we have decided upon biennial elections, and therefore the committee thought the term of these offices ought to be made to terminate, so that their successors could be elected at some general election. But the main reason which influenced the committee not to propose such a clause here, was, that they decided to leave the matter to be embraced in a general provision. I grant that it would be a temporary evil to turn out all officers, and especially those who shall have been just elected before the new Constitution shall be declared to be in force; but if we require those terms of

office to expire so that they can be filled at the period of some general election, the inconvenience could be avoided to a great extent.

Mr. TAYLOR. I had hoped, sir, that this Convention would take some course looking more to the great interests of the State than the subject matter of this discussion—than the question whether it is better to let all the officers of the State and the counties go out one after another for the next seven years, or whether it is better to say, "all broken loose" to all the officers of the body politic. And it is a little singular to me that gentlemen should think of any influence which these questions might have upon the acceptance or rejection of the new Constitution, or that by a general turn out of officers we might beget an influence which might convene other Constitutional Conventions for the benefit of office-seekers. But this is a new idea to my mind. I have been taught that with respect to office-holders the "ins" had more power than the "outs." And I think it is certainly time that if we bring in a new swarm of officers under the new Constitution, that they will have more power with reference to the subject of another Convention than those whose wings have been clipped. This is not a new principle, sir. We find that the President of the United States, with the patronage in his hands, is frequently able to keep himself in power if he desires it. This has been the history of the country.

But I do not think this question ought to figure in this Convention. It is too small a consideration for us here to spend our time talking about a few years servitude as a clerk or sheriff. Still, if it is right that the judges should go out, since the office of a judge is not worth so much as that of a sheriff, it seems to me that by a parity of reasoning the sheriff and the clerk should also go out. But this is all a time-serving business to come here and consider such questions. I am opposed, upon general principles, to a seven years' term; and I hope that no clerk or other officer will be continued any longer than he would be permitted to serve under the new Constitution, if the people should adopt it.

Mr. HENDRICKS. I hold that the people are bound to good faith as well as individuals. There is, in every office, an implied contract between the officer and the people. On the part of the officer that contract is, that he will faithfully discharge the duties of his office, and on the part of the people, that he shall hold the office and receive the emoluments thereof, till the term expires, unless reasons of public policy interfere. I do not say that we have not the power to do what the amendment of the gentleman from Hancock proposes. I would not dispute that. But may it not be questioned whether we have a legal right to do so under the Constitution of the United States, in any case

where we do not change the character or term of the office?

It would certainly be a questionable power on the part of the Legislature where the office is created by the Legislature or on the part of the people, where the office is created by the Constitution for the Legislature in the one case, or the people in the other, to turn one man out of office during his term for the purpose of putting another in, where no change is made in the term or duties of the office, or in the mode of selecting the officer. I do not say that where the public good requires it, that the proper authority in the State may not change the character of the office, the mode of selecting the person to fill it, or abolish the office—and in either case there would be strong reasons for the incumbent going out. But the section to which the amendment is offered makes no change in the nature of the office provided for therein, nor in the mode of selecting the officer; and the duties of the officer will be the same under the amended Constitution as under the old.

But if it were admitted that we have this right, still it would not be acting in good faith to exercise it. Such an action on our part has not been expected by any officer, and, so far as my knowledge extends, the people have not demanded it.

Gentlemen say we will rule out and commence anew. But I do not understand that to have been the intention of the people. We do not change the form of government when we amend the Constitution; it is still the same Constitution though amended, and the same State government.

But, leaving that out of the question, it would be good policy to let the present incumbents of those offices be left over till their terms expire, for if we say to them all, you shall go out and we will elect anew at the first general election under the new Constitution, which will come on in the year 1852, we will then have to elect a Governor, all the officers of State, of the Judiciary, and county officers, at the same time that we shall be called upon to vote for a President of the United States; and so mixing all up together. Besides, I say it is not wise to provide that all the officers throughout the State shall be elected at the same time. We are to have annual elections, I suppose, and we ought to have as few officers to elect at the same time as possible; for if we were to elect all the officers throughout the State at the same time, the importance of selecting good county officers would be swallowed up and lost in the interest which would be excited in consequence of the election of Governor or President. Every four years, under such an arrangement, you would have to elect all the officers which I have enumerated, at the same time. I cannot conceive that it would be wise in us to establish such a state of things. I would prefer to let the Sheriffs go out one year, the Clerks the next,

and the Treasurers the next. I cannot advocate biennial elections. That is a new idea to all, although the people have demanded biennial sessions of the Legislature.

Mr. MORRISON of Marion. I have some objections to the change of these officers whom the people have elected. I consider that in remodeling the Constitution there is a wide difference between those officers who have heretofore derived their official existence from the Legislature, and those other officers who have been elected by the people. I am willing to draw this distinguishing line between such officers as shall have been elected by the voice of the people and those whose election has heretofore fallen on the Legislature, or who have derived their office by other means. I am willing that these latter should come under the curtailing operation of the new Constitution. But I have never yet been able to see the reason why men selected for office by the people, should be turned out. For such individuals are selected to perform certain public duties on account of the confidence which the people have reposed in their ability and integrity. Therefore I think the Convention would be traveling beyond the line of their duty to turn them out. We propose only, to place it in the power of the people to elect such officers as have not hitherto been elected by them. But if gentlemen are disposed to turn out all the officers throughout the State, let them remember that the Clerks, Sheriffs, Auditors, and Recorders, will be found everywhere opposing the new Constitution most heartily, and exercising an influence of a most potent character, which will be felt in every county in the State. They know too, very well, how to exercise an influence of this kind, and they will feel that their rights and privileges have been trenchd upon enough to stimulate them to be active. I hope, therefore, that no attempt will be made to shorten the terms of those officers who have received their places by the votes of the people. If the amendment of the gentleman from Hancock shall be voted down, I shall propose another amendment which will allow all the elections to harmonize. The elections may be biennial, if necessary, and still there need be no official vacancy occurring which may not be filled by the people.

Mr. WALPOLE. There are two arguments which have been offered against my amendment. One is, that the incumbents of office have vested rights in them, and therefore it would be contrary to the Constitution of the United States to turn them out. And the other is the ground taken by the gentleman from Marion, (Mr. Morrison,) that we should hold up the Constitution to the highest bidder; that if we adopt this principle in the Constitution hundreds of office holders in the State will turn out and electioneer against its acceptance by the people.

In answer to the proposition to make this

Constitution suit the views of the highest bidder, I tell these gentlemen that there are hundreds out of office where there is one in office; and if he desires to make the Constitution popular, he should cater for the tastes of the greatest number of bidders. But it is with reference to a question of right that I have introduced my proposition. The people have said that they will revolutionize the old Constitution and set up a new order of things, so that what had been right under the old may be reversed under the new. The same duties may not be required of officers under the new Constitution which were required under the old. Nor the same rights may not be reserved under both. You do not reserve the same rights to the citizens, nor prescribe the same duties. The relation between husband and wife have been very materially changed to-day. You have changed the right to the possession of property from the husband to the wife; and now those gentlemen who bolted against voting upon that question come in here and assert the doctrine of vested rights in offices.

The gentleman from Shelby (Mr. Hendricks) says that the election of the various offices in the State should be taken at broken doses; that the election of a clerk, auditor, sheriff, and recorder should be taken at different elections, so that the people could manage them, asking no favors; that when we throw all four together an undue influence will be brought to bear upon the freedom of elections.

The provision which I have offered, has been selected from a clause in the third section of the twelfth article of the present Constitution, which prescribes that the incumbents of officers under the territorial government shall perform all the duties of their respective departments, until they were superseded by elections or appointments under the authority of the Constitution. This is the principle upon which my amendment proceeds, prescribing that the present incumbents of office shall hold over until they shall be superseded under the authority of the new Constitution; and it places all the officers throughout the State upon the same platform. It does not make fish of one and flesh of another. Besides, it is contemplated that all public officers shall take an oath to support the Constitution; and an oath to support the old Constitution can contain no requisition to support the new Constitution. Any State officer swearing to support the old Constitution would be bound to support a Constitution abrogated and repealed. There would be then some necessity for a new set of officers and another administration of the oath, which exists always in the case of a revolution in any government. But, Mr. President, let me instance a case showing the injustice of the operation of the gentleman's rule of holding over. Suppose, at the next August election there should be elected a clerk of the court, who, under the present Con-

stitution, would be entitled to hold seven years; and then, under the new Constitution, he could serve four years longer, making eleven years in all. Here would be a manifest inequality and injustice, because his neighbor, in the adjoining county, could not serve in the same office more than eight years. I am for placing all the officers throughout the State upon the same platform.

Mr. KELSO. Mr. President—

Mr. BORDEN. Will the gentleman allow me to ask one question?

Mr. KELSO. Yes, I will yield for that.

Mr. BORDEN. I desire to ask the Chair whether I can accept the proposition of the gentleman from Switzerland?

The PRESIDENT. The Chair supposes that the gentleman can accept.

Mr. WALPOLE (to Mr. Borden). You are a little too late. I moved to strike out first.

Mr. BORDEN. I accept of the amendment of the gentleman from Switzerland.

Mr. WALPOLE. I rise to a point of order, and I submit that the gentleman from Allen (Mr. Borden) cannot accept, because my amendment has preference.

The PRESIDENT. The Chair understands that the gentleman has a right to perfect his own amendment as an original proposition.

Mr. WALPOLE. The Chair is right. But my proposition to strike out commences precisely at the same point with that of the gentleman's, and being offered first, the first question, of course, is first upon mine.

Mr. KELSO (resuming). Be that as it may, I am not going to yield the floor. I am sorry that we, who are in favor of amendments to this proposition, cannot agree among ourselves. I cannot concur fully neither with the gentleman from Shelby (Mr. Hendricks) nor the gentleman from Hancock (Mr. Walpole). I deny that there is any such thing as a contract between those who choose him. I say there is no contract, although I admit that there is an obligation of good faith, that the officer elected shall serve out his term. But, sir, all individual interest must yield to great public interests. For example, although a man may have been elected to the office of clerk of the circuit court, to serve for a term of seven years, yet if the court, in the mean time, shall change the term of his office, I contend that it is not proper for him to hold over so long as the term of seven years, if under the new Constitution, the term has been shortened. On the other hand, I contend that it is impolitic and ungenerous, and certainly it is unnecessary, to turn out all county officers because, forsooth, we have made a new Constitution.

In reply to the gentleman from Hancock, (Mr. Walpole,) with reference to the Constitutional oath;—what is that oath? That gentleman has been long in office, and has some idea of it. It

is to support the Constitution of the State of Indiana—not the new Constitution, or the old Constitution—not a Constitution which may be made hereafter, nor a Constitution which has been made heretofore. We suppose that a man takes the Constitutional oath, which applies to an office, the term of which reaches to seven years, and in the mean time, we present to the people a new Constitution, and they adopt it, what is that but the Constitution of the State of Indiana? And I ask if the oath in such a case, is not as obligatory upon the officer to support the new Constitution, as it was to support the old one. It certainly is, and he must support the new Constitution or violate that oath. To my mind, then, the argument of the gentleman from Hancock (Mr. Walpole) is all labor lost.

Is it possible that we have been assembled here, at the public expense, to remain some ten or fifteen weeks, merely for the purpose of turning men out of office throughout the State, in order that others may come in. I ask, sir, if this is not a small business, for us to be employed here, consigning all these little county officers to private life.

In my portion of the State we have nothing to fear from any course which may be taken. In the county of Ohio, they have elected a clerk, who can easily beat any other two men in the county. And in the county of Switzerland, we shall elect our officers at the time when the new Constitution will probably go into effect; therefore we can lose nothing. But I see no propriety in turning out every county officer, until they shall complete the term of service prescribed in the new Constitution. They are all now legitimately in their places, and for this body to take it upon themselves to turn them out, seems to me to be going beyond the business which we have been sent here to do; and, besides, it is rather a smaller business than I am willing to embark in. I hope, therefore, that the last amendment offered, will be adopted, which is in the following language:

“That nothing herein contained, shall prevent the person now holding the several offices in this section named, from serving out the term for which they may have been elected, when such term, or remainder of a term, shall not exceed a full term under this Constitution—but in no case shall any officer now in office, or at any time elected before the taking effect of this Constitution, serve for a longer term, than a regular term, as provided in this Constitution.”

With reference to this idea of biennial elections—elections but once in two years—I am constrained to say it is sheer folly. We must, and will have, annual elections. It is a duty which we owe to ourselves, and which should not be neglected, as we value our free institutions.

It was well remarked by the gentlemen from Shelby, (Mr. Hendricks,) that it would be bad

policy to proceed to the election of all our officers at one single election. The election for the adoption or rejection of the new Constitution should certainly take place about the first of next May, provided, we shall be able to prepare the Constitution by that time. Then, in all probability, the time for annual elections will be changed from August until October, giving ample time for canvassing, before the first election under the new Constitution.

Some gentlemen insist that all the officers should go out under the new Constitution; but I am with the gentleman from Marion (Mr. Morrison) upon that subject. I think that all the officers, with reference to whom we shall change the mode of election, should be subjected to a recollection; that is, where we take an election from one source and give it to another.

Mr. SMITH of Ripley. I claim the indulgence of the House only for a few minutes' speech. And now, Mr. President, the first declaration which I shall make is, that, notwithstanding the gentleman has made a good argument, his proposition is the most absurd thing which has been made to this Convention; and if I do not demonstrate this to the satisfaction—

Mr. WALPOLE (interrupting). I desire to know whether the gentleman from Ripley (Mr. Smith) alludes to my proposition.

Mr. SMITH. No, sir. You are pretty near right in this. But, now, the gentleman from Switzerland (Mr. Kelso) proposes that these officers shall hold over for four years. Let us take an example. Suppose a sheriff, clerk, or a recorder, who hold their office for seven years, should be elected so that their term would run some one or two years beyond the proclamation of the new Constitution. The gentleman asks us here to add to their term of service four years, which, we suppose, is the term prescribed for these officers in the new Constitution.

Mr. KELSO. If the gentleman could not understand my proposition better, it were better for him to say nothing about it. I said that such county officers should hold a clear term of four years under the new Constitution, provided, the balance of their term should reach to that; but that none should go beyond it.

Mr. SMITH. Very good, then. I stand corrected upon that point. The gentleman proposes that they shall not go beyond the clear term of four years, which is the term of these offices under the new Constitution. But I take issue upon that point. The gentleman's doctrine is, that this Convention have a right to appoint officers under the new Constitution.

Mr. KELSO (in his seat). I did not say so.

Mr. SMITH. I know that. But I hold the doctrine that when this Constitution goes into effect, all the officers under the old Constitution go out, and that any person having received an office under the old Constitution, if he be con-

tinued in office, he must hold by virtue of the appointment of this body.

In regard to the proposition that the oath taken to support the present Constitution may be transferred to any Constitution which we may adopt, I take this position: That, if we but insert one fundamental provision in the new Constitution which was not in the old, it is sufficient to constitute the instrument a new Constitution. I hold that an officer who swears to support the new Constitution, should know technically and really what he is swearing to support; and there might be such a thing as a provision in the new Constitution which an officer of the old Constitution would not be willing to swear to support. Then, if we legislate those men out of office, and legislate them in again, we must require them to support the Constitution which we make, and for this reason, I say, there will be created, technically, a new set of officers.

But, Mr. President, how is it that because a man is elected to office he should be continued, and that another officer, who is not elected, but appointed to his place, shall go out. Some gentlemen have insisted that it is a small business to make these discriminations. But this does not effect my position, because I insist that they go out *per se*. But since it is a fact that the office of circuit court judge is not worth so much as the office of a sheriff of a county, it might, with some reason, be thought a small business, so far as compensation is concerned, to turn out the judge and retain a sheriff.

I will now refer to the amendment of the gentleman from Hancock (Mr. Walpole). I have no objection to that amendment, but it will affect nothing if we adopt it. For all the present incumbents of office must hold over until they are superseded, and that is all the purpose of the amendment. I have only one objection to it, and that is this: I object to the adoption of a provision of this kind at the end of every section, respecting the rights, duties, and tenures of office-holders. Would it not be much better to cover the whole ground by one single provision, than to attach the same provision at the end of every section of the Constitution? I think it would be better for the gentleman to withdraw his amendment, although I have no objection to the object of it.

Mr. WALPOLE. I desire to say a word in reply to the gentleman from Ripley (Mr. Smith). If the principle of my amendment be adopted into the Constitution, no matter where, or how many times, it will be the duty of the committee on revision to put it in its proper place.

One word in reply to the gentleman from Switzerland, (Mr. Kelso,) who says, that officers holding over having once taken the Constitutional oath, it remains forever binding. But I think that when the Constitution is repealed the obligation of the oath ceases. I will address him now as a lawyer, and ask him

if in a case where rights and duties are held and acquired under a statutory provision, and the statute is repealed, whether the rights and duties are not also repealed? And if this question must be answered in the affirmative, I ask if it is not clear that in the case where an officer takes an oath to support the Constitution, and the Constitution is abrogated, the duty which the oath imposes to support the Constitution also ceases?

Mr. KELSO. Let me remind the gentleman from Hancock (Mr. Walpole) that there is a principle which prevails in governments as wise as our own, that the king never dies, and that the corresponding principle which we have borrowed from those governments is, that the State is never without a Constitution. And if the Constitution exists all the while, I ask when the obligation of an oath to support the Constitution ceases?

Mr. BORDEN. I move that the Convention do now adjourn.

Mr. PEPPER of Crawford. I appeal to the gentleman from Allen (Mr. Borden) to withdraw that motion, and let us settle this question now.

But Mr. BORDEN adhering to his motion—
The Convention adjourned till Friday morning, 9 o'clock.

FRIDAY, NOVEMBER 29, 1850.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. COOPER.

The Journal of yesterday was read and approved.

Mr. NEWMAN presented a memorial of the religious society of Friends of Indiana, yearly meeting, and said, It is due, Mr. President, to the memorialists to state that this memorial is from a highly respectable religious body of citizens of the most worthy and estimable character. I have been informed by those having satisfactory means of knowing, that the whole number of members of this society in this State, may safely be set down at fifteen thousand, and having about three thousand voters, and if the measures they refer to in this memorial shall be adopted by this Convention, as a part of the amended Constitution, it will not receive their support, and we may calculate that all the votes they cast will be cast against its adoption.

I mention this not to deter members from casting their votes as they may think, after mature reflection, is right, but that they may weigh the risk they run, of having our labors rejected by the people, if we should incorporate into our new Constitution, provisions so odious or unpopular with large bodies of our people.

These people are not political abolitionists. They are an order-loving, law-abiding people. They submit to all the laws of the land; those

which they can yield a direct support to, they cheerfully render obedience to. They have never been found resisting the laws of the land.

A good government they are ever ready to support. If any provision of law comes in conflict with their conscientious scruples, they make no resistance, but submit to it, as all good citizens should do. They are an important branch of our population, and contribute largely to the support of the State. They support their own poor. They do not allow the public to contribute one iota to the support of any of their denomination. No such thing is to be found in the State or in their society, in any country where it exists, as a friend of this Order becoming a public charge upon the country. This memorial comes from what is termed the orthodox society of Friends. There is another denomination called the Hicksites, consisting of a much smaller number. In this matter to which the memorial refers both societies agree. Neither of them are political abolitionists. There is another branch that is called the anti-slavery Friends; they have organized a separate and independent society. They are in favor of carrying their opposition to slavery into their politics. With them, however, this branch of the society (the orthodox Friends) has no sympathy whatever, so far as political action is concerned. They have some feeling in regard to the question of negro slavery, but they do not participate in the views of the political abolitionist. I hope, therefore, that a kindly consideration will be given to this memorial. I will state, in addition, that they have been at the expense of having it printed, and that a copy will be laid upon the desk of each member; and that a deputation, consisting of several respectable members of the society, have come to Indianapolis for the purpose of laying this matter before the Convention, and of conferring with members upon the subject. I move that the memorial be referred to the committee of ten, one from each Congressional district.

Mr. RARIDEN said, Coming, Mr. President, as I do, from that most respectable county of Wayne, from whence this memorial emanates, and for many years having enjoyed the confidence of the memorialists, I feel that it is due to myself fully and clearly to define the position which I occupy on the momentous question embraced in the memorial, or at least so far as the prohibition of colored immigration to this State is concerned; although the present instant is the first I heard of the memorial, yet the subject is not new to my thoughts.

The society of Friends is a pure benevolent and Christian people, full of the milk of human kindness towards this degraded and out cast race; and they have at all times borne a zealous, steady, and Christian testimony against the evils of slavery, and all its demoralizing and concomitant evils, and through that have done more to

rouse the moral feelings of Christendom against its wickedness, than all other societies combined. For that reason great respect and consideration is due to their suggestions; and I hope all that my colleague (Mr. Newman) has asked for the memorial will be readily yielded.

The subject of colored immigration to the State has long occupied my mind, and painfully occupied it, and while I commiserate and deplore the wrongs which that helpless race have been doomed to receive at the hands of the white man, as I trust all do, yet I must say that it is settled in my mind that the black- and white man cannot live together upon terms of equality, and that living together upon any other terms is mutually injurious and tends to the degradation of both, and here let me add, that whilst it gives me great pain to be compelled to disregard suggestions coming from such a source, and upon a subject so vitally connected with the future reputation of my State for wisdom and humanity, yet feeling and believing as I do, that it is humanity to both races to take the incipient step for their final separation, and as I am acting for posterity, I shall be constrained to disregard their suggestions on the point of prohibiting their future immigration to the State, in regard to the few poor souls amongst us. Under the guaranties and protection of our own laws, I say let justice and humanity vie with each other in their behalf. This is my position, and I shall most probably maintain it to the end, and in maintaining it against these suggestions, I say with a hero of poetry :

"Although this cloud is thunder's worst,
And charged to crush me, let it burst.
I am no changeling, 'tis too late."

Mr. BORDEN. After what has been said by the gentleman from Wayne, I will merely add, that I shall be glad to see this petition receive the respectful consideration of this body, as well as of the committee to which it is to be referred. It should be borne in mind by the House, that the persons who come forward with this petition, are not abolitionists. They have never associated with that portion of the society of Friends, and should not, therefore, be identified with them. These persons have never forfeited their political integrity; they have honestly acted with the political party to which they belong, and I think their representations are entitled to receive a more respectful consideration at our hands, than if they came from persons setting themselves up in opposition to the laws of the country. Another remark, and I am done. The persons who are here as a committee, are authorized to act for the Society. From the origin of the Society they have been accustomed, at their yearly meetings, to appoint a certain number, as a committee, to attend to the governmental affairs of the Society. In consequence of our entertaining certain propositions, they have directed this remonstrance to be forwarded, expressive of their views in refer-

ence to those propositions. They are an unobtrusive people, not disposed, as the gentleman from Wayne has observed, to set themselves in opposition to the laws of the country. On the contrary, they are disposed to yield obedience to the laws. I hope that the Convention will give to the memorial a respectful consideration, to which I think it is justly entitled.

The question was taken on the motion to refer the memorial to the select committee already appointed, and was on division—ayes 65, noes not counted—agreed to.

Mr. READ of Monroe, from the committee on corporations, other than banking, reported a section in substance as follows: That corporations shall not be created by special acts, but may be formed under general laws; and all laws conferring corporate powers may be altered from time to time, or repealed.

The section was read a first time, and passed to a second reading to-morrow.

EXPLANATION.

Mr. HALL. I rise to make a personal explanation. I find that my position has been misunderstood in regard to the question of permitting negroes to immigrate into the State and to hold property. I will read the passage which purports to contain my views upon this subject.

The PRESIDENT. Does the gentleman complain of any action on the part of the Convention.

Mr. HALL. Not at all, sir.

The PRESIDENT. If the gentleman is not correctly reported, it is a matter between him and the Reporters, and one which it is not proper to occupy the time of the Convention in rectifying.

Mr. OWEN gave notice that he would, on to-morrow, move an amendment to the rules, so that a motion to re-consider a section that had passed, should not be in order, unless made within three days after its passage.

ORDERS OF THE DAY.

The Convention then proceeded to the consideration of the orders of the day, being the section, in relation to the term of service of clerks, sheriffs, county treasurers, auditors, &c. The pending question being upon the motion of the gentleman from Hancock to amend the amendment of the gentleman from Allen, by striking out all after the words "provided hereafter," and inserting the following:

"That the present incumbents shall continue in the exercise of the duties of their respective offices until the said officers are superseded under the authority of the Constitution."

Mr. BORDEN. Will the Secretary read the modification of my amendment, as proposed by the gentleman from Switzerland, which I accepted.

The Secretary read: "Provided, that nothing herein contained shall prevent the officers from

serving out the terms for which they are elected."

Mr. DOBSON. It does seem to me that it is an inappropriate time to decide this question. I think the proper time for settling this, and all similar questions will be after we have agreed upon the schedule which is to be attached to the new Constitution. For this reason, I move that the amendments be laid upon the table.

The yeas and nays were demanded, and they were ordered.

Mr. LOCKHART. Will the motion carry all the amendments to the resolution if it prevail?

The PRESIDENT replied in the affirmative.

The yeas and nays were then taken with the following result—yeas, 75; nays, 46—as follows:

YEAS.—Messrs. Allen, Anthony, Barbour, Bascom, Beach, Berry, Biddle, Blythe, Bowers, Bracken, Bryant, Butler, Chandler, Chapman, Chenowith, Clark of Tippecanoe, Coats, Cole, Crawford, Crumbacker, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Farrow, Fisher, Foley, Gibson, Gordon, Graham of Miami, Haddon, Hardin, Hitt, Holman, Hovey, Huff, Johnson, Jones, Kent, Lockhart, Logan, Maguire, Mathis, McFarland, McLean, Miller of Clinton, Mooney, Moore, Morrison of Marion, Mowrer, Nave, Niles, Nofsinger, Owen, Pepper of Crawford, Prather, Read of Monroe, Schoonover, Shannon, Sherrod, Shoup, Sims, Snook, Smith of Ripley, Smith of Scott, Stevenson, Tannehill, Taylor, Thomas, Thornton, Trimble, Wiley, Wolfe, and Mr. President—75.

NAYS.—Messrs. Alexander, Balingall, Beard, Bicknell, Borden, Bourne, Bright, Brookbank, Carr, Clark of Hamilton, Cookerly, Duzan, Foster, Garvin, Gootee, Hall, Hamilton, Harbolt, Hawkins, Howe, Kelso, Kendall of Wabash, Kilgore, Kinley, March, Mather, May, Miller of Fulton, Miller of Gibson, Milligan, Murray, Newman, Rariden, Read of Clark, Ristine, Robinson, Steele, Terry, Wallace, Walpole, Watts, Wheeler, Work, Wunderlich, Yocum, and Zenor—46.

So the amendments were laid upon the table.

Mr. BRIGHT moved to amend by striking out the resolution and inserting a provision to the following effect:

"That all county officers shall be elected by the qualified electors of the respective counties, at the time and places of holding the general election, and that they shall continue in office for a period not exceeding four years; provided, that no person shall be eligible more than two out of any three terms."

Mr. BRIGHT. I will submit one or two reasons why I have proposed this amendment. I think it inexpedient that we should, in the Constitution, designate any number of officers without assigning to them their appropriate duties.

The design of the committee, I doubt not, in framing this section was more to provide how county officers should be elected, and how long they should serve, than what should be the number of county officers. If that was the design, as I suppose it to have been, then the amendment I propose covers the whole ground; because, it provides as the section does, that all county officers shall be elected by the qualified electors of the county, and shall serve, as this resolution proposes that they shall serve, for a period not exceeding four years. The section, however, as it now stands, provides that there shall be elected a long list of county officers, some of whom were unknown to the old Constitution—some of whom were unknown even to the statutes of the State, until within the last few years. That is particularly the fact with regard to the county auditor. By this section, as it stands, it is provided that there shall be elected certain county officers—and for what? We elect a clerk, a sheriff, a recorder, a county surveyor, &c.,—and for what? We assign to these officers, by this Constitution, no duties whatever. Now when we create an officer, by Constitutional provision, it seems to me that we ought to assign to him some duty. There is no necessity for creating officers by the Constitution, unless we do so. In the old Constitution it is provided that there shall be a Governor elected—and for what? Why we assign to him certain duties which he is required to perform. He is to see to the execution of all laws; convene the Legislature; remit fines and forfeitures; and to perform various other duties. It is provided also that a Lieutenant Governor shall be elected, and his duties are also prescribed. It is right and proper that where there is a specific duty to be performed, we should provide an officer to perform it. But in the case where no duty is to be performed why say anything about it? It seems to me we ought merely to declare in general terms that all county officers shall be elected, leaving to the Legislature to say what officers there shall be in the county. But here it is proposed that we shall specify what officers shall be elected. The time may come when some of them may be unnecessary. For instance, we provide that there shall be a county treasurer, and a county auditor. These offices have grown out of our new system of revenue within a few years past. Who can tell but that a new system may be adopted within the next ten years by which these offices may be rendered unnecessary; yet if you provide here, that such officers shall be elected, then we must continue to elect them whether we want them or not. The better way, it appears to me, would be to provide that all county officers shall be elected, as my amendment proposes, by the qualified electors of the county, to serve for a period of not more than four years. This will carry out what I believe were the views of the committee.

Mr. BORDEN. I entirely disagree with the gentleman from Jefferson. I supposed that one of the objects, and perhaps, the chief object, which the people had in view in calling this Convention, was to give some stability to the administration of State affairs. What do we see now? A proposition is offered which leaves to the Legislature to direct what county officers there shall be elected, and what their respective duties shall be. It seems to me that the duties of the officers should be specifically enumerated in the Constitution, so that the matter may be placed beyond the action of the Legislature. Why, it is a common thing, if a man falls out with a county officer, to come here and legislate him out of office; that is to legislate in such a way as to force him to resign. There are certain officers required to perform the business of the county, and they should be provided for, and put beyond the control of the Legislature. But gentlemen say that the officers should be elected for four years. Now I do not understand that the people desire them to be elected for four years. But the gentleman objects because we do not set out their duties. Surely the gentleman is not serious, when he says that we should prescribe the duties of these officers. By turning to the Constitution it will be seen, in section five, that it is provided, that there shall be elected a sheriff and a coroner. By referring to another part of the Constitution, we find it is provided that there shall be elected a clerk and a recorder, naming those officers. We have the precedent therefore, in the old Constitution, and these officers will probably be always required. I see no reason, therefore, why we should not state the officers and the period of service. I think the committee have done right in making the report they have, and that that report, ought to be adhered to.

Mr. SMITH of Ripley. There is a great deal of force, it seems to me, in the remarks of the gentleman from Jefferson. In regard to these little offices, the committee have followed the dictum of the old Constitution; they have taken the officers that are provided for, in the old Constitution. With the committee the opinion predominated, that they ought to be made constitutional officers. But I concede that there is a great deal of force and propriety in the remarks of the gentleman from Jefferson. I agree with him entirely in the view which he takes.

Mr. BASCOM. In order to perfect the original amendment, I move to insert after the word "treasurer," the words "two associate judges," and after the word "recorder," the words "and associate judges."

Mr. BUTLER. I move to lay the amendment upon the table.

Mr. BASCOM. I have the floor, I believe.
The PRESIDENT. The gentleman from Wells is entitled to the floor.

Mr. BASCOM. Whether these officers shall be made Constitutional officers or not is to me a matter of indifference. But in accordance with the wishes of those whom I represent, I desire that they shall be provided for in the Constitution. They are not in favor of the one man power, in regard to appointments.

That is the reason why I offer this amendment. I shall not detain the Convention with any remarks.

Mr. BUTLER. I now move to lay the amendment upon the table.

The motion was agreed to.

The question recurring upon the amendment of the gentleman from Jefferson,

Mr. BRIGHT. If no other gentleman desires to speak upon this question, I wish to say one word in reply to the gentleman from Allen. In drawing up the amendment, I used the very language of the section as reported by the committee, with the exception that I have not prescribed the number of county officers, intending to conform as strictly as possible to the views of the committee in regard to the mode of election of county officers, and to their tenure of office. The amendment is objected to on the ground that unless the officers are named in the Constitution, there will be danger of a want of uniformity. The same difficulty exists now—the same irregularity exists. We have an officer that is named in the Constitution in some counties and not in others.

Now that is a feature that has been provided for by another committee—the committee on the uniformity of the laws, and if the section which they have reported be adopted, it will be impossible to have in one county, officers different from those of another. Then in regard to this amendment, the time may come when we shall require different county officers from those which we now have. Those officers have been named which are known to the Constitution and laws as they exist. But the time may come, when we shall want other officers, whose duties will have to be prescribed by statute, and if this section be adopted as it stands, we shall be prohibited from having other officers than those we now have.

There is one officer that I think we ought to dispense with—I mean the coroner. Yet that is a matter that I would leave to the Legislature. I would not provide that this officer shall be elected by the people whether they want him or not; nor would I provide that we shall, at all events, elect the other officers that are named in this section, when there may be nothing for them to do. The duties of all these officers are to be prescribed by statute, and the same statute may just as well designate the officers. There is no necessity for naming them in the Constitution, and it would be much the better and safer course not to do it.

Mr. WOLFE. I hope the amendment of the gentleman from Jefferson will prevail. I do

not think the Convention with all the wisdom that it possesses, can foresee all the changes that may necessarily take place hereafter. It is a matter that should be left to be regulated by the people through their representatives, and should not be made a Constitutional provision, unalterable for all time to come. The proposition of the gentleman from Jefferson seems to me to be so reasonable that I shall give it my cordial support.

Mr. KELSO. It seems to me that there is no officer here named, that is not absolutely necessary. The gentleman from Jefferson is sadly mistaken, when he tells us that in the old Constitution, the duties of these officers are not designated.

Mr. BRIGHT. The gentleman mistakes me. I did not say that there are officers named in the Constitution, whose duties are not prescribed. I admit that there are, and it is proper that they should be prescribed. It is not worth while to name officers unless we prescribe their duties.

Mr. KELSO. Well, sir, it seems to me that it is proper to have the officers designated without going into detail respecting their duties. That is the business of the Legislature. It seems to me that there can be no two opinions about this matter. The gentleman thinks that we can dispense with the coroner. I would ask him, who will arrest the sheriff when it becomes necessary that he should be arrested? For that simple duty alone—that it may be performed by some proper authority—this office ought still to exist as it has existed time out of mind.

The recorder we might possibly be able to do without. The next question is as to the county auditor. There must be some one to do the business of the county. It is true that in some counties the duty of recorder and auditor might be performed by the clerk of the county; but as the intention is to have uniformity—to have the same offices in all the counties—why not name them?

I can see no impropriety in designating these officers, and it seems to me that every one must be satisfied that all the officers named in this section are necessary. I do not wish to make a motion that will stifle debate, but when gentlemen have debated it as long as they wish to do, I will move that the amendment be laid upon the table.

Mr. SMITH of Scott moved to amend the section by inserting after the word "treasurer," the word "assessor."

Mr. CLARK of Tippecanoe. I will state that the committee, in forming this section, thought they were carrying out the design of the Convention. These officers were named in order to put the county organization beyond the reach of unnecessary amendments by the Legislature. The objection made by the gentleman from Jefferson was canvassed by the

committee. It was foreseen that circumstances might arise in which some of these officers might be unnecessary, and therefore the committee limited the specification of officers to such number as would necessarily be permanent county officers, and they named them for the purpose of giving permanency to the organization of counties. The committee were of opinion that these officers would continue to be necessary under any organization similar to our present one, and there is a provision for other officers, if necessary, in future; and unless gentlemen say that some of these officers are unnecessary, there is a propriety, as it appears to me, in specifying them.

Mr. BORDEN. One word in regard to the amendment of the gentleman from Scott. I hope it will not prevail. I find that many counties have adopted the system of choosing a treasurer in each township. I know that there is, especially in the northern portion of the State, a general desire to transact business by townships. It is the old New England mode, and one that has heretofore been considered the best mode that could be pursued. I hope that the amendment will not prevail, and the question be left open for the Legislature to direct whether there shall be a country assessor or not.

In regard to the amendment offered by the gentleman from Jefferson, it seems to me that the committee in their report have provided in the best way for this matter. By turning to section five it will be seen that it is provided that such other officers as may be necessary shall be appointed in such manner as shall be prescribed by law. When that section comes up I shall move to change the phraseology so as to direct that they shall be elected.

As to the objections of the gentleman that some of the offices may hereafter be unnecessary, it appears to me that the gentleman from Switzerland is correct when he says that we shall always require them. The gentleman says that the coroner may be dispensed with. I will suggest to him that there may be occasions when it may be necessary to take the sheriff into custody, and the coroner is the only officer by whom this duty can be performed. I do not think there is a single officer named that is not necessary, and I repeat that I think this Convention ought to regulate this matter by Constitutional provision, and put it out of the power of the Legislature to legislate men out of office. Why, you may begin at Posey and go to Steuben county, and you will find that every county has a different system. This, I think, should be changed so as to have uniformity.

Mr. KELSO moved to lay the amendment of the gentleman from Scott on the table.

The motion was agreed to.

The question then being upon the amendment of the gentleman from Jefferson;

Mr. KELSO moved that it be laid upon the table.

Upon this motion the yeas and nays were demanded, and they were ordered, and being taken were—yeas 82, nays 34—as follows:

YEAS.—Messrs. Alexander, Allen, Anthony, Barbour, Bascom, Beach, Beard, Berry, Bicknell, Biddle, Borden, Bourne, Bracken, Brookbank, Butler, Chandler, Chapman, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Crawford, Crumbacker, Davis of Parke, Dobson, Dunn of Perry, Duzan, Fisher, Foley, Foster, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Haddon, Hardin, Hawkins, Holman, Johnson, Kelso, Kent, Kendall of Wabash, Kinley, Lockhart, Logan, Maguire, Mather, Mathis, May, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milligan, Murray, Niles, Nofsinger, Owen, Pepper of Crawford, Prather, Read of Clark, Read of Monroe, Robinson, Schoonover, Shannon, Sherrod, Shoup, Sims, Snook, Smith of Ripley, Terry, Thomas, Thornton, Wallace, Walpole, Wheeler, Wiley, Work, Wunderlich, Zenor, and Mr. President—82.

NAYS.—Messrs. Blythe, Bowers, Bright, Bryant, Carr, Chenoweth, Cookerly, Dick, Farrow, Hall, Hamilton, Harbott, Hitt, Hovey, Howe, Huff, Jones, Kilgore, March, Mooney, Moore, Morrison of Marion, Mower, Nave, Ristine, Smith of Scott, Spann, Stevenson, Tannehill, Taylor, Watts, Wolfe, and Yocum—34.

So the amendment was laid upon the table.

Mr. SIMS. I move to amend the section by inserting in the ninth line, after the word "qualified," the words "whose several duties shall be prescribed," so that that clause of the section will read:

"The Sheriff, Coroner, and Treasurer shall each continue in office two years, and until their successors shall be chosen and qualified, whose several duties shall be prescribed by law."

Mr. BORDEN. It does not appear to me that this amendment is very material. It is a mere verbal amendment, and the committee on arrangements and phraseology will attend to all these verbal amendments.

The question being taken, the amendment was rejected.

Mr. KELSO. I have an amendment to offer to the first section, which I will endeavor to explain in very few words. As the section now reads, it provides that the several officers therein named shall be elected by the qualified electors of the several counties, at the time and places of holding elections for members of the General Assembly. Now, if we should adopt a provision in the Constitution restricting the Legislature to biennial sessions, we might, as the section now stands, create a difficulty which it would not be easy to remedy. I move, there-

fore, to amend the section by inserting the word "general" before the word "elections," and by striking out the words "members of the General Assembly," so as to make the section read:

"That the several officers therein named shall be elected at the time and places of holding general elections."

Mr. HOVEY. I wish to say, once for all, that I am opposed to this and all other sections which limits the right of the people to elect any man as often as they think proper. As the voice of this Convention, however, is decidedly fixed upon the restrictive policy, I shall offer no factious opposition to this or any other section on that account, and shall therefore vote for the section.

The question being taken on the amendment of Mr. KELSO, it was agreed to.

Mr. MOORE. I have an amendment to offer to the section, which is to strike out the word "auditor," where it occurs in the fourth, sixth, and seventh lines, and insert the word "auditors" in the eighth and tenth lines. As this section was reported by the committee, it provides that the county auditor shall hold office for the term of four years. I think this is wrong. We have already passed a provision deciding that the Auditor of State shall hold office for only two years; and I think the same restriction ought to be applied to county auditors, so as to make the offices uniform.

Mr. SMITH of Ripley. A single word in regard to this amendment. It will be remembered, that, in the cases of the State Auditor and State Treasurer, we fixed the term of holding office in such a manner as to make the Auditor a check upon the Treasurer. The same object was contemplated by the committee which reported this section; and if this amendment is adopted, that object cannot be effected, inasmuch as the terms of holding office will be equal.

Mr. WORK. I move to lay the amendment on the table.

The motion was agreed to.

The PRESIDENT. The question is, Shall the section be engrossed for a third reading?

Mr. BORDEN. I desire to suggest a mere verbal alteration in the section, the propriety of which, I think, will be apparent to every gentleman at once. The "clerk" mentioned in the section is styled "a Clerk of the Circuit Court." But we have not yet determined what the name of the court will be. It may be that it will be denominated "District Court," or by some other name. In order, therefore, to avoid any difficulty, I think it would be better that he should be styled "county clerk." It seems to me that that name would be more appropriate; but I leave it with the Convention.

After some conversation, the amendment was withdrawn.

The section was further amended by inserting the words "and surveyor" in the third and eighth lines; and there being no other amendments, it was ordered to be engrossed for a third reading.

APPOINTMENT OF COUNTY CLERK, *pro tem*.

The Convention then proceeded to the consideration of the second section, which provides that when the office of Clerk of the Circuit Court of any county shall become vacant, the Circuit Court of such county, or the Judge thereof, shall appoint a clerk *pro tempore*, who shall hold his office until the next general election.

Mr. WOLFE. I move to amend this section by striking out the words "Circuit Court of such county, or the Judge thereof," and inserting "board of county commissioners." [Cries of "No! no!"]

There are a great many noes to this proposition; but I think, directly, when I have explained the object of my amendment, some of these "noes" will be turned into "ayes." [A laugh.] Sometimes gentlemen shout "no" to a proposition before they understand what the nature of it is. Now the Judge of a Circuit Court will, in many cases, perhaps in most, have a range of some eight or ten counties; and we all know well enough how this thing goes. A man wants the office of clerk of the county, and he gets up a recommendation from a few individuals known to the Judge of the Circuit Court, and by this means obtains the appointment. One main object, I believe, in revising the Constitution was, to fix it so that all officers should be elected by the people. The county commissioners are directly elected from the people in their several counties; but the Judges of the Circuit Courts are not; and it must necessarily follow that the county commissioners will be better judges of the qualifications of a man for the office of clerk in their county than the Judge of a Circuit Court can be, because he cannot have a residence in all the counties of his circuit. Besides, I go for the principle, in all cases, of vesting the power as near home as may be—that is in the people; and therefore I hope the Convention will adopt the amendment I have offered. If, however, there be much opposition to it, I shall certainly demand the yeas and nays; because I want to see who wants to get furthest from the people, and who nearest to them.

Mr. KELSO. A word in reply to the gentleman from Sullivan. As to the observation of the gentleman in reference to giving the power of appointment to a Judge of a Circuit Court, taking the power further from the people, it is all a mistake, especially if we provide that the Judges themselves shall be elected by the people. ["Consent! consent!"]

Mr. WOLFE. Will the gentleman allow

me to interrupt him one moment for an explanation?

Mr. KELSO. Oh, certainly.

Mr. WOLFE. It is all true enough that the judges may be elected by the people; and yet it is quite possible that a judge, having the power of appointing a clerk in any given county, might not have received one vote in that county.

Mr. KELSO. That may be all so, but does not, in my view, materially alter the position of affairs. I want to know if the gentleman from Sullivan thinks that that officer (the Judge of the Circuit Court) is only to be held responsible to those who vote for him? If that is the notion which the gentleman from Sullivan entertains, I say it is bad democracy.

Now permit me to say one word as to who is most competent to judge of the qualifications of the officer required to fill this post—the board of commissioners or the Judge of the Circuit Court, in which most of the duties appertaining to this office are to be performed. I can only say, that, unless you have very different men in your counties, as commissioners, to some that I am acquainted with, I am free to give it as my opinion, that the judge of any court, a thousand miles away, would be better able to judge of the qualifications of a clerk to serve in his court, than would a board of commissioners. He need not have more than five minutes, conversation with a man to know whether he is qualified or not; or, indeed, to know more about his qualifications for such a situation, than a board of commissioners would know from an acquaintance with him for a year.

Mr. WOLFE (interposing). But I understand by the next section that the candidate for the clerkship is to have a certificate of his qualifications from one of the Judges of the Supreme Court, or one of the Judges of the Circuit Courts.

Mr. KELSO. The gentleman from Sullivan had better not count his chickens before they are hatched, because the next section has not passed yet [laughter], and he can therefore understand nothing from that. But supposing that section was passed in the form in which it is reported, it would be just as vain to expect that any real value would accrue from the certificate as to attempt to make a whistle out of a pig's tail. [Great laughter.]

A VOICE. Especially if the pig had no tail. [Renewed laughter.]

Mr. KELSO. The gentleman said the county commissioners would be the best judges of the qualifications of the applicant for the office of county clerk. Now if that is so, let me ask him where is the necessity for his having a certificate of his qualifications, either from a judge of the supreme court or a judge of the circuit courts. They are to judge of his qualifications and give him a certificate; and when they have given their verdict that he is so qualified, then,

with their certificate in his hands, he is to go before the board of county commissioners, who are to be the "best judges of his qualifications." Does not every gentleman see the absurdity of the thing? What necessity for a certificate if the county commissioners are the "best judges of the qualifications of the applicant?"

I maintain, Mr. President, that the appointing power is placed in the right hands when it is placed in the hands of the judge of the court in which the clerk is to render the services. I think it must be obvious to every man that if he is at all competent to preside over a court, as judge, he must be still more competent to judge of the qualifications of the man who is to be his clerk. He will, at all events, be, in my opinion, a better judge of the matter than the county commissioners. I think, therefore, we had better leave the appointing power in those hands in which it has been ever since the formation of the State, without any serious inconvenience having been experienced.

Mr. READ of Clark. I move to amend the amendment of the gentleman from Sullivan, by striking out the words "board of county commissioners," and inserting "board doing county business."

Mr. WOLFE. I accept that amendment.

Mr. BORDEN. I think, Mr. President, that there is a very important principle involved in this matter. I hold that men who are appointed to be your judges should not have any influences operating upon them in regard to appointments to office in any shape. We are, I believe, about to adopt a provision in our Constitution that the judges of the several courts shall hereafter be elected by the people. It is thought by many that in these elections politics will never be brought into the controversy, but that a strict regard to legal qualifications and unsullied integrity will be the main considerations in the qualifications of the candidates.

But, sir, there is another reason why I think we should take from the judges the appointing power, and, as I imagine, a much stronger one than that I have just recited, and that is, that every officer who has a public duty to perform should be elected by the people, where it can be so done. And, as the gentleman from Sullivan has said, the county commissioners must, in the main, be better judges of the qualifications of a man residing in their county than a judge of a circuit court who does not reside in the county. Now look at the State of Ohio. In many instances the county clerk completely rides over the people. He knows he is not elected by them, but appointed by the judge; and in many instances when information is wanted by citizens, which it is his duty to impart, he will pay no attention to them, or perhaps even go so far as to give them an uncivil answer. There is no office that I know of which more imperatively requires that the incumbent should be elected by the people than

this, and I hope that we shall have a county board in each county elected by the people, whose duty, among others, it shall be to judge of the qualifications of these clerks. I trust that the principle embodied in the resolution of the gentleman from Sullivan will prevail, and that this appointment will be given to that board.

In one point I do not agree with my friend from Sullivan, and that is in regard to the "certificate." I think if anything in this world is a humbug it is this thing of certificates. It simply amounts to this: if you are a judge of the supreme, or one of the circuit courts, some man to whom you are known writes to you stating that a friend of his wants to be a candidate for the office of county clerk; that he is a good, clever fellow, and well qualified to fill such an office. You do not know anything about the man yourself, and what judge, among the vast amount of other business which he may have on his hands, is going to sit down and closely investigate a matter of this sort? If he has the testimony of a friend that the candidate is a pretty fair man, that is generally enough for him, and out of courtesy to his personal friend he will not withhold the certificate. Under all these circumstances, then, I take it for granted that if you have a county board in each of your counties, consisting of three or of five members, they will be the best able to judge of the qualifications of the applicants for this office, and I think in their hands, perhaps, the election ought to rest.

Mr. WOLFE. I am not going to detain the Convention with any remarks on this subject. I will merely say that I will take back all that part of my argument which relates to the certificate, because my friend from Allen (Mr. Borden) is a judge, and knows exactly how the thing is done. [Laughter.]

But I would remark, in reply to the gentleman from Switzerland, that under the old Constitution we have associate judges, and I believe that there is a disposition in this Convention to dispense with them. They had this appointment, and have it yet; and if we dispense with associate judges, unless this appointment is made by a board of commissioners, or a "county board," as the amendment now is, it will have to be made by the circuit judge.

Mr. KELSO. I desire to say one word in reference to what has fallen from my friend from Allen, (Mr. Borden,) who appears to be alarmed about the appointment of a clerk *pro tempore*, when a vacancy may occur. It is less than a year that that officer will serve when thus appointed; and I think it is not much likely to affect either the integrity of a judge on the bench or the people of the State generally, that such *pro tempore* appointment should be vested in the judge of the court.

The question was then taken on the amendment of Mr. Wolfe as amended by Mr. Read of

Clark, and a division being called for, there were ayes 49, noes 46.

So the amendment was adopted.

The question then recurred on the adoption of the section as amended.

Mr. SMITH of Ripley. It occurs to me that this section ought to be stricken out and a general provision reported which will answer the purpose. Indeed I believe there is such a provision reported in another article, and I think this article would look better without the section.

Mr. CHAPMAN. I move to postpone the section indefinitely.

Mr. HARDIN. I move to lay the section upon the table.

The question being taken on the motion to lay the section on the table, there were for the motion ayes 46, noes 47.

So the motion to lay the section upon the table did not prevail.

The question then recurred on the motion to indefinitely postpone the section, and it was decided in the affirmative—ayes 56, noes 40.

CERTIFICATE OF CLERK OF CIRCUIT COURT.

The PRESIDENT. The next question is on section No. 3.

The section provides that no person shall be eligible to the office of Clerk of the Circuit Court, unless he has first obtained from one or more of the judges of the Supreme or Circuit Court, a certificate that he is qualified to execute the duties of the office.

Mr. DUNN of Perry. I move to lay that section upon the table. It is a mere addition to the last section, the consideration of which has been indefinitely postponed.

The motion to lay the section upon the table was agreed to.

ELECTION OF JUSTICES OF THE PEACE.

The PRESIDENT. The next question is on section four of the article.

The section provides that a competent number of justices of the peace shall be elected in each township of the several counties, who shall continue in office four years, if they so long behave well, and whose powers and duties shall be prescribed by law.

Mr. WATTS. I move to strike out the word "competent," in the first line. [Laughter].

After some conversation, the amendment of the gentleman from Dearborn (Mr. Watts) was withdrawn.

Mr. BORDEN. One word in regard to this section. It struck me that, as justices of the peace have to do with the administration of the laws, this section ought to have been reported—or some section on the subject—by the Committee on the organization of courts of justice, and not by the committee on county and township organization. However, as it is here, I do not

know but we may as well dispose of it now. I have an amendment to propose to the section, which is that justices of the peace should be elected for three years, and that there should be three in each township; and that they should be so classified by law, as that one should go out every third year, and another be elected in his place. There ought, I think, to be not less than three in each township, let it be ever so small. If the township be large, it is certainly important that there should not be less than that number, and I think that that number, too, would be sufficient to do all the business. I hear it said by some gentleman that this will conflict with biennial elections. I would observe, with regard to that, that the amendment provides that the election of justices of the peace shall take place only at the time of holding township elections, so that it does not conflict at all with the other elections.

[The amendment was then read by the Clerk—the substance is given above].

Mr. SHOUP. As the office of a justice of the peace is a very important one, and as we ought to have time to consider the effect of this amendment, I move to lay it upon the table.

The motion to lay the amendment on the table was agreed to.

Mr. BORDEN moved to amend, by striking out the word "four," in the third line, and inserting the word "three," so as to make the term of office of a justice of the peace three years.

The amendment was rejected.

Mr. HARDIN moved to amend the section, by striking out the words "a competent number of," in the first line, so as to make the section read, "justices of the peace shall be elected," &c.

The question being taken on the amendment, there were—ayes 35, noes 50.

So the amendment was not agreed to.

There being no other amendments, the question was on engrossing the section for a third reading, which was decided in the affirmative.

FURTHER REPORT FROM COMMITTEE ON COUNTY AND TOWNSHIP ORGANIZATION.

The PRESIDENT. The next business before the Convention is bill No. 6.

APPOINTMENTS NOT PROVIDED FOR.

This is a continuation of the report from the committee on county and township organization. The fifth section of the report provides that such other county and township officers as may be necessary, shall be appointed in such manner as may be appointed by law.

Mr. BORDEN. By turning to the section, it will be seen, as I observed this morning, that the word "appointed" has reference to the appointing power vested in the judges, or Governor, or Lieutenant Governor. Now, it occurs to me that the words "elected or" ought to be in-

serted so as to make it read, "elected" or appointed.

Mr. SMITH of Ripley. That idea was suggested to the Committee when this section was under their consideration, and it was not supposed by the committee that officers would be appointed in any other way than by election. It was held by the committee that an election was an appointment."

Mr. BORDEN. That may be true in one sense; but in the ordinary and common usage of the words, "appointing" is not "electing."

Mr. KELSO. I have heard of a case in which a clerk of a circuit court was "appointed," and it was contended that he was "elected."

The question being taken on the amendment of Mr. Borden, it was agreed to by consent, and the section was then, by consent, ordered to be engrossed for a third reading.

VACANCIES IN OFFICE NOT PROVIDED FOR.

The PRESIDENT. The next question is on section No. 6.

This section provides that vacancies in office in this article, not herein provided for, shall be filled in such manner as may be prescribed by law.

Mr. CHAPMAN. There are no vacancies in office mentioned in this article that are provided for, and therefore the words "not provided for" are superfluous, and ought to be stricken out. I move that these words be stricken out.

The amendment was agreed to.

Mr. WATTS. I move further to amend the section, by striking out the words "in this article." Then it will read "vacancies in office shall be filled in such manner as may be prescribed by law."

[Cries of "No, no, no."]

Mr. MORRISON of Marion. I presume the gentleman from Dearborn (Mr. Watts) might find cases in which his amendment would not be suitable, as, for instance, in the death of a Governor; and therefore, I think we had better retain the words "in this article."

A VOICE. "That's right," and "consent."

Mr. WATTS withdrew his amendment.

Mr. CLARK of Tippecanoe. Is there any amendment pending, Mr. President?

The PRESIDENT. There is no amendment pending.

Mr. CLARK. Then I will move to amend the section in the first line, by inserting after the word "in," the words "county and township." It will then read "vacancies in county and township offices," &c. I will move also to strike out the words "in this article."

The PRESIDENT. The Chair would inform the gentleman from Tippecanoe, that these words are already stricken out. [Several voices, "No no."]

Mr. CLARK. I will explain this, if the Con-

vention will give me its attention for a moment.

If the section is worded as I propose to amend it, it will then read, "Vacancies in county and township offices shall be filled in such manner as may be prescribed by law." That, I believe, is all that is meant by the section, and it is in that way clearly expressed. ["Consent, consent."]

The amendment was agreed to, and the section being read as amended, it was ordered to be engrossed for a third reading.

APPOINTMENTS PRO TEMPORE.

The PRESIDENT. The next question is on section No. 7.

The section provides that no person shall be rendered ineligible to any office, created by that article, by reason of his appointment *pro tempore* to such office.

This section was ordered to a third reading by consent.

RESIDENCE OF COUNTY AND TOWNSHIP OFFICERS.

The next section considered by the Convention was No. 8, providing that county and township officers should reside within their respective counties and townships, and keep their offices at such places therein as may be directed by law.

Mr. CHAPMAN moved to amend the section by inserting after the word "therein," in the third line, the words "perform such duties."

Mr. MORRISON would suggest to the gentleman from Marion whether those words were not already in another section, and applicable to the same officers. He thought the amendment was tautological.

The amendment was adopted—ayes 47, noes not counted; and the section was then ordered to be engrossed for a third reading by consent.

BILL NO. 7—QUALIFICATIONS OF COUNTY OFFICERS.

The Convention next took up bill No. 7, containing four additional sections to those already reported on the subject of county and township officers. Section 9 provides that no person shall be elected or appointed an officer within any county who shall not have been a citizen and an inhabitant therein one year next preceding his appointment, if the county shall have been so long erected; but if the county shall not have been so long erected, then within the limits of the county or counties out of which the same shall have been taken.

Mr. WALPOLE. I move to amend the section by striking out the word "citizen" in the second line, and after the word "inhabitant," in the same line, insert the words, "and a qualified elector therein." My object in proposing this amendment, is this: the word "citizen" carries with it the implication of citizen of the United States. Now a person may be an inhabitant of the State and a qualified elector to

a certain extent, and yet by a construction of that word "citizen" in this 9th section, he could not enjoy the privilege of holding office, although he is by a section reported by the committee on elective franchise, declared capable of voting for township officers in the township in which he resides. With the permission of the Convention, I will read the section to which I refer. It is the first section in Report No. 13.

[Mr. W. read the section.]

My object is to confer the right of holding township offices upon all electors; and I entertain the idea that if the word "citizen" is allowed to remain, it will exclude a large portion of the qualified electors of the State. If there is any difficulty about it, I will ask the yeas and nays.

Mr. BORDEN. Is it to strike out the word "citizen?"

Mr. WALPOLE. It is.

Mr. BORDEN. It seems to me that all the qualification necessary for holding an office is that a man should be an elector of that office. [Cries of "consent, consent."]

The question being taken, the amendment was adopted.

Mr. HALL moved to strike out the word "erected" where it occurs in the section, and insert the word "organized." He thought this was a much more appropriate word than the word "erected." ["Consent."]

The amendment was agreed to by consent, and the section was then ordered to be engrossed for a third reading.

IMPEACHMENT OF OFFICERS.

The Convention next proceeded to consider Section No. 10, which provides that all county and township officers may be impeached or removed from office in such manner as may be prescribed by law.

Mr. SIMS. I move to amend the section by striking out all after the word "office" and inserting "by the circuit court of the proper county."

Mr. BORDEN. It occurs to me that the section is better as it stands. We have not decided that we shall have a circuit court yet; we may have a district court or a county court. As we are upon these county matters, I rose for the purpose of saying that no provision is made in this article for the appointment of an officer to an office which I apprehend will become an important one. I refer to that of Master Commissioner. If the Convention should determine to abolish the office of associate judge, the power to grant writs of *habeas corpus* and injunctions should be vested in this officer. Now, how shall we provide for that office?

The PRESIDENT. The Chair would remark to the gentleman from Allen, that this is out of order. It has nothing to do with the section under consideration.

Mr. BORDEN. I thought we had some little latitude of debate—

The PRESIDENT. The Chair would remind the gentleman from Allen that the section under consideration relates to the impeachment and removal of officers—not the creation of new offices. The subject is out of order now, but that does not prevent the gentleman from talking about it hereafter.

Mr SMITH of Ripley. The committee on the organization of the courts of justice will have to provide for that identical thing.

The question being taken on the amendment offered by Mr. Sims, it was rejected, and the amendment was then ordered to be engrossed for a third reading.

UNIFORMITY IN COUNTY BUSINESS.

The Convention next took up section 11, providing that the General Assembly should provide by law for a uniform mode of doing county and township business.

No amendments were offered to this section, and it was ordered to be engrossed for a third reading by consent.

SIZE OF COUNTIES.

The twelfth section was next taken up. It provides that the General Assembly shall pass no law reducing any county to a less extent than four hundred square miles. When the section was read there were loud cries of "consent, consent," and "no, no."

Mr. MILLIGAN moved to amend the section so as to confer upon the General Assembly the power of changing the boundaries of counties whenever such change might be required for the promotion of the public good.

Mr. KELSO demanded the yeas and nays on the amendment.

The yeas and nays were ordered, and being taken, resulted as follows:

YEAS.—Messrs. Alexander, Bascom, Beach, Bicknell, Biddle, Blythe, Brookbank, Butler, Chandler, Chenoweth, Cookerly, Crumbacker, Dick, Dunn of Perry, &c., Hawkins, Hitt, Hovey, Huff, Kelso, Lockhart, May, Miller of Fulton, Milligan, Mowrer, Owen, Pepper of Crawford, Robinson, Sherrod, Sims, Smith of Scott, Spann, Thornton, Trimby, Walpole, and Yocum—35.

NAYS.—Messrs. Anthony, Balingall, Barbour, Beard, Berry, Bourne, Bowers, Bracken, Bright, Bryant, Carr, Chapman, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Crawford, Davis of Parke, Davis of Vermillion, Dobson, Duzan, Farrow, Fisher, Foley, Garvin, Gibson, Gordon, Graham of Miami, Haddon, Hall, Hamilton, Harbolt, Hardin, Johnson, Jones, Kent, Kendall of Wabash, Kilgore, Kinley, Logan, Maguire, March, Mather, Mathis, McClelland, McLean, Miller of Gibson, McConney, Moore, Morrison of Marion, Murray, Newman, Niles, Nofsinger, Prather, Rariden, Read

of Clark, Read of Monroe, Schoonover, Shannon, Shoup, Snook, Smith of Ripley, Steele, Stevenson, Tannehill, Taylor, Terry, Thomas, Watts, Wiley Wolfe, Work, Wunderlich, Zenor, and Mr. President—75.

So the amendment was not adopted.

Mr. HUFF moved, as a substitute for the section, that no county should be reduced to a less content than three hundred square miles, in the formation of a new county, nor to a less content than four hundred square miles without the consent of a majority of the citizens of the counties to be affected by the formation of such new county.

The yeas and nays were demanded and ordered on the amendment.

Mr. WATTS, That is a pretty plausible amendment on its face, yet under that amendment nearly every county in the State could be disorganized. I know of a few counties in the State of Indiana that have cost the State at least a hundred thousand dollars in litigating on this subject; Crawford, for one, and Dearborn, for another, and I do hope the Convention will put this matter at rest. This is the place to do it. This constant desire to change the boundaries of counties has kept them in a state of continual turmoil year after year, and has been made more a source of litigation and contention in the Legislature than any other subject, and as I have once before said, I do hope we will settle the question here. Four hundred square miles is not too large for a county. And I find, from my experience,—living twenty-three miles from a county seat—that the further a man is removed from the seat of litigation the better—the less inconvenience he has.

Mr. HAWKINS moved to amend the amendment by substituting the following:

"No county shall be reduced in population by a division of her territory below the representative ratio."

Mr. READ of Clarke moved to lay the amendment and the amendment to the amendment on the table.

On this motion the yeas and nays were demanded and ordered.

Mr. DUNN of Perry, &c. inquired of the Chair whether it was in order to move the previous question.

The CHAIR. It is not in order to do anything but to vote. [Laughter.]

The question was then taken by yeas and nays, and resulted as follows:

YEAS.—Messrs. Allen, Anthony, Barbour, Beard, Berry, Bicknell, Bourne, Bowers, Brackne, Bright, Bryant, Butler, Carr, Chapman, Clark of H., Clark of Tippecanoe, Coats, Cole, Crawford, Crumbacker, Davis of Parke, Davis of Vermillion, Dobson, Duzan, Farrow, Fisher, Foley, Garvin, Gibson, Gordon, Graham of Miami, Haddon, Hall, Hamilton, Harbolt, Hardin, Hitt,

Johnson, Jones, Kent, Kendall of Wabash, Kilgore, Kinley, Logan, Maguire, Mather, Mathis, McLean, Miller of Clinton, Miller of Fulton, Mooney, Moore, Morrison of Marion, Nave, Newman, Niles, Nofsinger, Prather, Rariden, Read of Clark, Read of Monroe, Schoonover, Shannon, Sherrod, Snook, Smith of Ripley, Smith of Scott, Steele, Stevenson, Tannehill, Taylor, Terry, Thomas, Wallace, Watts, Wiley, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President—82.

NAVS—Messrs. Alexander, Balingall, Bascom, Beach, Blythe, Borden, Brookbank, Chandler, Dick, Dunn of Perry, &c., Gootee, Hawkins, Hovey, Huff, Kelso, Lockhart, March, May, McFarland, Milligan, Mowrer, Owen, Pepper of Crawford, Robinson, Shoup, Sims, Spann, Thornton, Trimby, and Walpole—29.

So the amendment and the amendment to the amendment were laid upon the table.

Mr. CARR. I move to amend the section by adding to the end of it, "Nor shall any new county hereafter created contain less than three hundred square miles."

Mr. HARDIN moved to amend the amendment by adding: "Nor shall any county under four hundred square miles be reduced below its present area."

After some further consideration, Mr. HARDIN called for a division of the question.

Mr. BASCOM moved to lay the amendment to the amendment on the table;

And the question being taken there were for the motion, ayes 70, noes not counted.

So the motion to lay the amendment to the amendment on the table, was agreed to.

Mr. HOVEY. I should like to have a word or two of explanation, so that I might understand what we are voting for.

The PRESIDENT. The gentleman must get his understanding some other way. The question is on laying the amendment on the table.

The question being taken on laying the amendment on the table, it was decided in the affirmative—ayes 55, noes not counted.

Mr. KILGORE. I move to amend by adding, "Nor shall any county of less extent be reduced in size."

Mr. HARDIN. Here is an amendment which is better in its phraseology than that.

The amendment of Mr. Hardin was being again read when,

The PRESIDENT. It is not in order to offer again what has just been voted upon and rejected.

A MEMBER. He only wants it read for information.

The Clerk proceeded to read:

"Add to the end of the section, 'Nor shall any county—'"

The PRESIDENT. The amendment is not

in order; the Convention has just voted to lay it upon the table.

Mr. ROBINSON. I move to strike out the whole section, and I will say one or two words merely for the purpose of setting myself right.

Mr. SMITH of Scott. I move that the Convention adjourn.

The PRESIDENT. The gentleman from Decatur has the floor.

Mr. ROBINSON. I know, Mr. President, that it only wants seven or eight minutes to twelve o'clock, but there is yet time enough for all I have to say. I remarked that in making the motion that I had made to strike out the section, I had made it more for the purpose of setting myself right than with any hope that it would be adopted, judging from the manifest determination of the Convention. Notwithstanding that, I believe that if the Convention will reflect for a moment, if they will permit a second sober thought to influence them, they will certainly come to the conclusion, at least so far as the rights of the people are concerned, that they are exercising an arbitrary power.

Now it seems to me, that if any question can present itself for the deliberation of the Convention which is a question which should be left for the people themselves to decide, it is this question. The gentleman from Dearborn (Mr. Watts) has correctly remarked, that that county, and perhaps some other counties, have cost the State, by legislation on this subject, a large amount of money. Well, sir, let me ask him, how did it cost a large amount of money? It was because the people, in their sovereign capacity, were determined to avail themselves of that provision guaranteed to them by the Constitution, of petitioning the Legislature for a redress of their grievances, and of enforcing their rights before the Legislature. And, sir, the county from which my highly respected friend comes, was at this time a scene of litigation I admit, and would have been so to this day if the grievances of that people had not been heard.

Now what do we attempt to do by this 11th section? We attempt to place in the mouth of the people, in their sovereign capacity, nothing more nor less than a "gag" law. We attempt to say to them by this arbitrary rule of Constitutional legislation that we here "take from you the rights that you possess as a sovereign people, of petitioning the Legislature for a redress of your grievances." It simply amounts to that. Adopt that 11th section providing that no county shall be reduced below 400 square miles, and although it does not actually prevent the people from sending their petitions to their immediate representatives, although it does not prevent them from calling upon the Legislature for a redress of their grievances, yet it takes from the Legislature the power to redress those grievances, and amounts at once to a prohibition in the organic law, that takes

from the people a sacred right guaranteed to them by the bill of rights.

Sir, it is wrong in principle; it is wrong to place any such restriction in the organic law; it is a question which addresses itself directly to the rights of the people; it is one which may be safely left to the Legislature for future legislation. This has been an agitated question for some thirty or forty years, and the Legislature has always acted with caution, although scarcely a session has passed during that time without petitions being presented on the subject. But let me say that if you adopt this section, instead of redressing the grievances of many parts of the State, you will confirm and enforce those grievances; and I believe that no part of the State will have a greater right to complain than that portion of the people whom I represent on this floor, and whose petitions I have presented to this Convention. That petition, together with the diagram that accompanied it, showed that the people were grieved; that there was a territory sufficiently large to form a new county. Now if that people should petition the Legislature, and that Legislature under that peculiar state of facts, see fit to grant the prayer of their petition, and enact laws for the relief of the petitioners, let me ask gentlemen to say who is injured by it! Where is the mischief? Is the old county injured? Have we a right to say that we will compel men against their interest and convenience, to remain in an old county purely because we want to levy upon them a certain amount of tax? Sir, such a proposition, in my estimation, is perfectly monstrous. The old county has the benefit of the public buildings which have been erected by the aid and assistance of those who desire to form a new county. That much they receive as a gratuity. If, then, that section of the State which I represent, or other sections of the State, no matter where, see cause to organize new counties and erect new public buildings and bear the burden themselves, I would like gentlemen to say upon what principle of right, or justice, or equity, we should stand here and deny to them that privilege? Shall we undertake to deny to the people the right to enjoy life and liberty, and to acquire property in that way which is most conducive to their happiness? Pass this section, adopt it as a part of your organic law, and you will virtually deprive the people of one of their most sacred rights. This Convention has been sent here for the purpose of guarding the rights of the people; for the purpose of framing an organic law by which these rights shall be more effectually secured. But if you pass this section I hesitate not to say that you will have one provision in your organic law by which you forever preclude them from the enjoyment of a sacred privilege—by which you tell them that, be their situation in after times what it may, they shall yield to the will of this Convention. And on what ground is this to be done? Merely

because counties already erected do not wish to part with their taxables. I appeal to the Convention to say if this is an act of justice? I ask this Convention to consider whether, in passing such a section as this, you are securing the rights of the people, or narrowing and restricting those rights?

Sir, I have heard no gentlemen say on this floor, that he votes for this section on any other ground than that of expediency—the mere contemptible question of dollars and cents. Sir, when the right of the people to enjoy liberty and equality is at stake, I do not stop to inquire into the paltry consideration of dollars and cents. I only stop to ask the question, “Is it right? is it justice to require it? are the people capable of self-government? have they a right to manage their own domestic concerns?” And if a question of that kind presents itself to me, I leave that question with them. It is safely left in their hands.

I hope the Convention will reflect upon this subject. I hope they will come to a wise conclusion. And the only conclusion to which they can come as rational men is, that they are voting upon a question of mere expediency; and if that section is adopted, by that vote which adopts it they are taking away from the people an inherent right, guaranteed to them by the Constitution and the bill of rights under which we live. We should pause and hesitate before we do it; we should leave the question as one that belongs to the people and to their representatives in the Legislature, and let them manage it. And if we so leave it I have no fear but that it will be managed in such a way as will give general satisfaction to all the parties concerned. I do hope then that this matter will not be acted upon hastily; that the Convention will consider well what they are doing; that they will strike this section out and leave the matter to the people and the Legislature, to whom the question properly belongs.

Mr. BROOKBANK. My heart responds most cordially to most of what has fallen from the lips of the gentleman from Decatur; and as I hold in my hand an amendment to the original section, which I think will greatly improve it if adopted, and as the hour has now arrived at which the Convention usually adjourns, I will move that the Convention do now adjourn.

Pending the question on the motion of the gentleman from Decatur (Mr. Robinson) to strike out the section—

The Convention adjourned.

AFTERNOON SESSION.

The PRESIDENT resumed the Chair at two o'clock.

Mr. HALL rose and addressed the Chair.

Mr. BROOKBANK. Mr. PRESIDENT, I believe I am entitled to the floor.

Mr. HALL. I was going to ask for a suspension of the rules, to enable me to present a

motion to amend the rules, for the purpose of avoiding an error into which the Convention fell this morning. But, as the motion would require some explanation, I yield the floor.

Mr. BROOKBANK. The proposition under consideration at the time of adjournment, was in relation to the organization of counties.

I propose to amend this section by adding the following, viz.

“Provided, That no county shall contain over four hundred square miles, and the excess arising from such adjustment shall attach to the adjacent smaller counties, if such there be.”

Now, Mr. President, my feeble capacity as a speaker and the embarrassment and diffidence under which I labor in presenting my views to a deliberative body, will no doubt prevent me from doing the subject that justice which its merits demand.

The proposition which I have made, does not necessarily produce any of those dreaded consequences referred to by the gentleman from Dearborn, (Mr. Watts), as it need not in any case be a subject of litigation.

It simply provides, that the provision shall apply to those counties, having an excess of territory above four hundred square miles, which are contiguous to counties of a less area than such amount.

This, Mr. President, in my opinion would tend to equalize and harmonize the interests and policy of many portions of the State, where there is now a great diversity.

It has long been an established principle, and settled conviction in my mind, that the more nearly we can approximate to uniformity in the size of our counties, the more satisfactory will be the civil administration of the government.

In many counties, in consequence of their great size, the taxes are comparatively very light, and the people are able to prosecute works of internal improvement with a great deal of ease, in comparison with those residing in counties of less territory.

This inequality in the burdens imposed upon the people of the various counties, as well as their different degrees of prosperity as bodies politic, I think, sir, in a great measure, results from the present disparity in the size of the counties. The amendment which I have offered, would tend to destroy this inequality, and relieve the hardships of the people of the smaller counties, without doing any injustice to those of the larger ones.

I hope gentlemen will view the proposition dispassionately, and give due consideration to this matter, before passing sentence upon it.

The PRESIDENT. The question is upon the adoption of the gentlemen from Union.

Mr. DUNN of Perry. Would it be now in order to offer an amendment by way of substitute for the original section.

The PRESIDENT. Certainly. The present amendment is to add to the section.

Mr. DUNN. Then I offer the following, and demand the yeas and nays upon its adoption.

Strike out the section and insert—

“No old county shall be reduced, for the purpose of forming a new county, below four hundred square miles, unless by a distinct vote of a clear majority of the legal votes of said county, to be taken at a general election in favor of said reduction.”

The yeas and nays were ordered, and were taken upon the adoption of this amendment, and the Secretary reported—yeas 29, nays 73—as follows:

YEAS.—Messrs. Alexander, Bascom, Beach, Blythe, Borden, Bright, Cookerly, Dick, Dunn of Perry, &c., Gootee, Gordon, Hawkins, Hitt, Holman, Hovey, Huff, Johnson, Lockhart, March, Milligan, Mowrer, Pepper of Crawford, Pettit, Ristine, Shoup, Sims, Smith of Scott, Trimby, Yocum—29.

NAYS.—Messrs. Anthony, Barbour, Beard, Bicknell, Biddle, Bowers, Brookbank, Bryant, Butler, Carr, Chandler, Chapman, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Colfax, Crawford, Davis of Parke, Dobson, Duzan, Farrow, Fisher, Foley, Garvin, Graham of Miami, Haddon, Hall, Hamilton, Harbolt, Hardin, Hendricks, Jones, Kent, Kendall of Wabash, Kinley, Logan, Maguire, Mather, Mathis, May, McFarland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Moonney, Moore, Morrison of Marion, Murray, Nave, Newman, Nofsinger, Prather, Read of Monroe, Robinson, Schoonover, Shannon, Snook, Smith of Ripley, Spann, Steele, Stevenson, Tannehill, Thomas, Thornton, Watts, Wiley, Wolfe, Worke, Wunderlich, Zenor, and Mr. President—73.

So the amendment was rejected; and the question recurred upon the amendment of Mr. Brookbank.

Mr. HOVEY. I propose to amend the amendment by striking out all after the word “provided,” and inserting in lieu thereof the following words:

“Nor shall any county under four hundred square miles, be reduced below its present area, without the consent of a majority of the legal voters thereof.”

Mr. SMITH of Ripley. I think the amendment of the gentleman from Posey is well drawn. I am in favor of it all except that part which proposes to submit the question of reduction to the legal voters. I move to strike out the words, “without the consent of the legal voters thereof.”

Mr. HOVEY said: I accept the modification. It will be seen by examining the section under discussion, that the construction of that section would prohibit any county, exceeding four hundred square miles, from being reduced below that area. That section as reported would leave

all the counties in the State under four hundred square miles, liable to be divided without regard to their size. I have been in favor of leaving this question to the people, but as the action of this Convention plainly indicates that no county exceeding four hundred square miles, is to be reduced below that size, I think it no more than right, that the smaller counties should be governed by like principles. The amendment I have offered will have the effect to perfect the meaning of the section and guard the smaller counties from being torn in pieces.

Mr. Hovey's amendment was agreed to; and the question recurred upon ordering the section as amended, to be engrossed.

Mr. ROBINSON. I believe I have already moved to amend, by striking out the entire section.

The PRESIDENT. If the gentleman has made such a motion, the Chair is not aware of it.

Mr. ROBINSON. If the Chair is not informed of the fact, I will now make that motion.

The PRESIDENT. The gentleman will send up his amendment in writing.

Mr. MILLER of Gibson. I demand the previous question,

And the call being seconded by the Convention, the main question was ordered to be now put.

The PRESIDENT. The first question is upon the adoption of the amendment of the gentleman from Decatur; and then the question will be upon the engrossment.

Mr. ROBINSON. The amendment which I have presented involves the isolated question, whether the people shall govern themselves—

Cries of "order"—"order."

The PRESIDENT. The gentleman from Decatur will take his seat.

Mr. ROBINSON (in his seat). I have a right to call for the yeas and nays, and that is what I got up for.

The yeas and nays being ordered and taken upon Mr. Robinson's motion, the vote was reported—yeas 28, nays 80—and recorded as follows:

YEAS.—Messrs. Alexander, Bascom, Blythe, Borden, Brookbank, Cookerly, Dick, Dunn of Perry, &c., Gootee, Hawkins, Holman, Huff, Kelso, Lockhart, Milligan, Mower, Owen, Pepper of Crawford, Pettit, Robinson, Sherrod, Shoup, Sims, Spann, Thornton, Trimble, Walpole, and Yocum—28.

NAYS.—Messrs. Anthony, Barbour, Beach, Beard, Biddle, Bourne, Bowers, Bright, Bryant, Butler, Carr, Chandler, Chapman, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Colfax, Crawford, Davis of Parke, Dobson, Duzan, Farrow, Fisher, Foley, Foster, Garvin, Gordon, Graham of Miami, Haddon, Hall, Hamilton, Harbolt, Hardin, Hendricks, Hitt, Howe, Johnson, Jones, Kendall of Wabash, Kinley, Logan,

Maguire, March, Mather, Mathis, May, McFarland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Mooney, Moore, Morrison of Marion, Murray, Nave, Newman, Nofsinger, Prather, Read of Clark, Read of Monroe, Schoonover, Shannon, Snook, Smith of Ripley, Smith of Scott, Steele, Stevenson, Tannehill, Terry, Thomas, Watts, Wiley, Wolfe, Work, Wunderlich, Zenor, and Mr. President—80.

So the proposition was rejected, and the question recurred upon the engrossment.

This question was decided in the affirmative.

So the section, as amended, was ordered to be engrossed and receive a third reading on to-morrow.

THE TREASURY.

The PRESIDENT said, the next thing in the orders of the day, is the consideration of the report submitted by the chairman of the committee on finance and taxation, on the 29th of October, consisting of two sections.

The question being upon ordering the same to be engrossed and read a third time—Is it the pleasure of the Convention to consider them together, or separately?

SEVERAL VOICES. "Separately."

The Secretary was directed to read the first section, and it is as follows:

"SEC. —. No money shall be drawn from the treasury but in consequence of appropriations made by law."

Mr. KENT proposed to amend this section, by striking out the words "in consequence," and inserting the words "by virtue."

This amendment was rejected.

The question recurring upon the engrossment of the section, it was decided in the affirmative, without a division.

So the section was ordered to be engrossed, and read a third time on to-morrow.

The PRESIDENT announced the consideration of the second section of the report; and it was read by the Secretary, as follows:

"SEC. —. An accurate statement of the receipts and expenditures of the public money shall be attached to and published with the laws of each regular session of the General Assembly."

The question being, Shall the section be engrossed for a third reading?—

Mr. WOLFE. I propose to amend the section so that it will read as follows:

"An accurate statement of the receipts and expenditures of the public money, or loans authorized by the Legislature, shall be attached to, and published with, the laws of each session of the General Assembly."

This amendment was rejected.

Mr. MORRISON of Marion. I propose to amend the section by adding the following:

"And the Auditor and Treasurer of State shall make full reports annually, of the finances and revenues of the State, to the Governor, who shall, without delay, publish the same for the information of the people."

Mr. BORDEN. Inasmuch as the Legislature is to meet but once in two years, I cannot see how this information can be annually obtained from the Auditor and Treasurer, without a provision of this kind. I believe that in other States, where they have adopted biennial sessions of the General Assembly, similar provisions have been inserted in their Constitutions.

The question was taken on Mr. MORRISON'S amendment, and it was rejected.

Mr. WOLFE. I move to amend by striking out the word "regular." If we should have a called session of the General Assembly, we would have as much need of these reports as we have at any regular session.

This amendment was adopted, upon a division—in the affirmative, 40; in the negative, 38.

And then the section, as amended, was ordered to be engrossed and read a third time on to-morrow.

Mr. READ of Monroe. Is it in order now to introduce a section here, in relation to the subject of taxation?

The PRESIDENT. The Chair supposes that it is not in order to introduce a section at this time.

Mr. BORDEN. It is important that this question should be settled——

The PRESIDENT. The Chair would remark to the gentleman from Allen, that there is no question now before the Convention to be settled.

The next thing in order, in the orders of the day, is the consideration of the report submitted by the chairman of the committee on the rights and privileges of the inhabitants of the State, on the 31st day of October.

Mr. MAGUIRE. Do I understand the President to decide that it is not in order to add an additional section to the article?

The PRESIDENT. Not now because the article has been disposed of.

Mr. BORDEN. It appears, then, that the moment the Convention agrees to consider a report by sections, that moment the opportunity for amendment, by introducing a new section, is gone from us.——

The PRESIDENT. Does the gentleman appeal from the decision of the Chair?

Mr. BORDEN. No, sir.

The PRESIDENT. Then the gentleman has nothing to hang a speech upon.

Mr. BORDEN. I propose, then, that we take up the report, and consider it as a whole; [cries of "no"—"no,"] and go on and accept or reject it as a whole. Otherwise there will be no adequate opportunity for making amendments.

The PRESIDENT. The Chair has not decided that an amendment could not have been offered to the report, the last section of which has been just ordered to be engrossed. The Chair has decided this: that, after the Convention has ordered a section to be engrossed and read a third time, it has passed from before the Convention, and that it is not then in a condition to be amended on the same day.

Mr. BORDEN. What I meant to say, was, that we do not want to amend the section—we desire to amend the report by an additional section. We want to say in that report, for instance, that the taxes shall be uniform and equal throughout the State; but, if we want to introduce a new section to this effect, we cannot do it.

Mr. SMITH of Ripley. The gentleman was only half a minute too late in offering his amendment.

Mr. KELSO. I have found, in my little experience, sometimes, that a great deal of time might be saved by asking questions. I would, therefore, ask the Chair whether, upon the second reading of a report, it would be in order to offer an entire new section? That is what we want to get at.

The PRESIDENT. Certainly; the gentleman will have the right now to amend the report before the Convention in that way. Any time before the Convention goes entirely through the bill, it will be in order to introduce a blank section.

Mr. READ of Monroe. That is really what we desired to do in the case of the report just now under consideration.

PREAMBLE.

The PRESIDENT. The Secretary will read the preamble, or first part of the first section of the report of the committee on rights and privileges.

The section is as follows:

"SEC. —. We declare that all power is inherent in the people; and that all free governments are, and of right ought to be, founded on their authority, and instituted for their peace, safety, and happiness. For the advancement of these ends, the people have, at all times, an inalienable right to alter and reform their government."

The PRESIDENT. The question is, Shall this preamble be engrossed for a third reading?

Mr. HALL. Is it in order now to amend this preamble? I know that in the consideration of a bill before the Legislature, the title is the last thing which is acted upon.

The PRESIDENT. The Convention, I believe, has reversed that order, and the Chair does not feel disposed to interfere with the decision.

Mr. HALL. How does the Chair decide?

The PRESIDENT: That it is in order to amend the preamble.

Mr. HALL. Then I move to strike out the preamble reported by the committee, and insert the following, which I will read:

"We, the people of the State of Indiana, acknowledging the gracious providence of God, in bestowing upon us the great and manifold blessings of a Christian civilization; and, in particular, in vouchsafing to us a condition of society in which the rights, social, political, and religious, conferred by Him on mankind, are recognized and respected; for the protection of these rights and the establishment of justice, liberty, and the general well-being, do solemnly ordain and establish this Constitution."

Mr. HALL said: Some weeks ago I received a memorial from sundry citizens of the county which I represent, to which was appended the preamble I have just read. Prior to the reception of the memorial, the committee on rights and privileges had reported to this Convention a preamble for the new Constitution. I therefore did not introduce the memorial, and ask for its reference, as I otherwise would have done; I reserved it for this occasion, intending to introduce it as a part of my remarks, when the subject came up for consideration before this Convention. Upon looking over the list of the many respectable signatures to this petition, I find amongst them the names of the Rev. John McMaster, Rev. A. T. Hendricks, Rev. Samuel Baldrige, and Rev. W. Shumate, clergymen of profound learning, and of a high order of talents. Sir, I need say nothing in favor of this preamble; it speaks for itself. It is chaste in style, and the sentiment is just what it ought to be.

We, as a Christian people, ought to acknowledge our gratitude to the All-wise Being for the manifold blessings he has bestowed upon us as a nation. It is a duty—a Christian duty. A friend, who writes to me on this subject, justly says: "That it has, on the part of religious and thinking persons, generally been considered a defect, greatly to be regretted, that, both in the Constitution of the United States and in that of our own State, there was no direct recognition of that Great and Glorious God, who plants a nation and plucks it up at his pleasure, and of our common Christianity. Had the votaries of Mahomet been framing such an important instrument, they would have begun: *In the name of God and Mahomet, His Prophet*. Thus the very Heathen reprove us in this matter. An opportunity is now offered us to remedy this defect, as far as our own Constitution is concerned." I trust the preamble I have read, so fitting for the occasion, will be adopted, and will conclude by calling for the yeas and nays upon the question.

The following is the memorial signed by A. T. Hendricks, John McMaster, Samuel Bal-

drige, and ——— Shumate, and eighty-one others:

"We, the citizens of Gibson county, of various religious denominations, avowing hostility to all *profane* alliances between Church and State, and repudiating every form of persecution; yet, believing our civilization and morality to be Christian, would respectfully ask that such an acknowledgment be made in a preamble to our fundamental laws, and that this preamble be substantially as follows:

"PREAMBLE.

"We, the people of the Commonwealth of Indiana, acknowledging the gracious Providence of God in bestowing upon us the great and manifold blessings of a Christian civilization, and in particular in vouchsafing to us a condition of society in which the rights, social, political, and religious, conferred by Him on mankind, are recognized and respected; for the protection of these rights, and the establishment of justice, liberty, and the general well-being, do solemnly ordain and establish this

"CONSTITUTION:

"Farther, we would respectfully ask that the following alteration be made in article I, section 3: Strike out all the first sentence before the colon, and insert in its place as follows: 'The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State, to all mankind.' Then, allowing the following part to remain as at present, *add*: 'But this liberty of conscience, worship, and profession secured, shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of this State.'"

Mr. BORDEN. I have in my hand the preamble of a Constitution, which I propose as an amendment to that proposed by the gentleman from Gibson. It is this:

"We, the people of the State of Indiana, acknowledging the goodness of God in vouchsafing to us a republican form of government, in order to establish justice, maintain public order, and perpetuate liberty, do ordain and establish this Constitution."

It is short and to the point. It is becoming, and I believe it is a duty which we owe to ourselves, in some solemn form like this, to acknowledge the goodness of God in vouchsafing to us a republican form of government.

Mr. OWEN. I have but a single word to say upon this subject; and that is on behalf of the committee on rights and privileges. In adopting the preamble which has been reported, we did so from a desire to make it as simple as possible; and we finally took up the preamble of the old Constitution, and agreed to adopt it as our model, striking out only those portions

having special reference to the change from the Territorial to the State government.

Mr. BORDEN. I will ask leave to withdraw my amendment, and offer the following:

"Insert in the first line of the original preamble, after the word 'Indiana,' and before the word 'in,' the following words: 'Acknowledging our gratitude to God in permitting us to make choice of our form of government.'"

Mr. RARIDEN (speaking aside). It is great goodness in God to vouchsafe anything to such a set of fellows. [Merriment.]

Mr. BORDEN's amendment was rejected.

Mr. SMITH of Scott. I propose to amend the amendment of the gentleman from Gibson, by inserting after the word "well-being," the words "of society."

This amendment was rejected, and the question recurred upon Mr. HALL's motion to amend by way substitute.

Mr. MORRISON of Marion. I, sir, have as much reverence for the name of the Almighty as any member, perhaps, of this Convention. But I shall have no hesitation in voting against striking out, for the purpose of inserting a preamble furnished by the clergy of the State. I respect the reverend clergy, also, and I attend upon their public ministrations with pleasure; but whenever they step out of their sphere of influence; whenever they affect to dictate to the legislation of the country, they go beyond their privilege. If they are thankful to the Almighty, they ought also to be thankful to our fathers, the sturdy sires of the Revolution, that, by their prowess and their arms, they did vouchsafe to the clergy of this land the privilege of speaking their sentiments in the pulpit, and the protection of the laws in their work of enlightening the people with respect to the various tenets of doctrine which they teach. We have just as good a right to call upon all the schools of the various religious denominations in the State to send up the forms which they might severally prefer, and make our selection from amongst them, as to adopt this which has been sent to us from the clergy of the good county of Gibson—

Mr. HALL (interposing). I desire to explain. I believe there is not one in ten of the petitioners whose names I have sent up, who are clergymen. The petition comes from the people themselves. But, seeing the names of two clergymen amongst them, I named them here as distinguished for their high character.

Mr. MORRISON. I understand the gentleman to say that the character of those reverend gentlemen gave weight and consideration to the petition, because their names were attached to it.

Mr. HALL. Yes, sir.

Mr. MORRISON. I would just as soon cast my vote with reference to the wishes of one man as another; and it certainly would make no difference with me whether he wore a brown

coat or a black one; their voice should be heard with the same degree of consideration. I am no churchman, of any sect; and, therefore, I trust I can do justice to all. I would do injustice to none. But I am not hypocrite enough either to raise my voice or cast my vote in favor of what I believe to be right, or in opposition to what I believe to be wrong, for fear of offending against any man because he wears a black coat.

Mr. WOLFE. I propose to amend the original preamble, by inserting the words "civil and religious" after the word "liberty."

This amendment was rejected, and the question again recurred upon the substitute.

Mr. HOWE proposed to amend the original section, and said: As the section now stands, I shall feel myself bound to vote against it. It implies, I think, if it does not express, a principle which every republican should repudiate. It is not true that the people have a right to alter and reform their government without restriction, unless that right is specially reserved. We live under a written Constitution. There are two kinds of Constitutions; there is a written Constitution, which becomes a basis for future legislation—

The PRESIDENT (interrupting). The Chair would inform the gentleman that the question is in regard to the preamble, not the section.

Mr. HOWE. My amendment is intended to be applied to the section, and not to the preamble. If it is out of order, I withhold it.

Mr. McLEAN. I propose the following as a substitute for the original section and the amendment:

"We, the people of the State of Indiana, in Convention assembled, having been permitted, by the favor and patience of our constituents, to remain here so long, do ordain and establish this Constitution." [Merriment.]

This proposition being also rejected, the question again recurred upon Mr. HALL's amendment.

Mr. CRUMBACKER. I was struck with the remark of the gentleman from Marion, (Mr. Morrison,) which was to this effect: that the clergy of the State should feel themselves peculiarly thankful to our fathers of the Revolution for having secured for them the exalted privilege of expressing their opinions in the pulpit. But now, with deference to that gentleman, I should think that he, as a politician, has just as much occasion as the reverend clergy to be thankful to our fathers for the privilege of expressing his political sentiments.

Mr. MORRISON (aside). I acknowledge it.

Mr. CRUMBACKER. But why should the gentleman affect any political disparagement because a man wears a black coat? For my part I will receive a man's advice with the same readiness, whether he wears a black or a grey coat; and I cannot but observe to the gentle-

man that his own coat is about as black as that of any of the reverend clergy in our State. And I will add, that to designate the clergy in this manner, and in such a place as this, it is calculated by an indirection to cast a slur upon the Christian profession, and it is, as I conceive, entirely improper and out of place here.

But, with reference to the matter before the Convention, I think that, assembled as we are in this place, in behalf of the people of a great State to establish the organic law, it behooves us especially to acknowledge our dependence upon the Supreme Being, from whose beneficent hand our people have received the greatest blessings, civil and religious, which have ever been vouchsafed to man, and I cannot think it would be at all improper for us solemnly to make this acknowledgement in the preamble to the Constitution, and it seems to me that on this account the Constitution would be received with more favor by the people. Certainly it becomes us here (as at all times we are in duty bound) to acknowledge our obligations to the Supreme Being, whose providence has elevated to so high a position amongst the States of this Union and the nations of the earth. Hence it is with great pleasure that I support and shall vote for the amendment of the gentleman from Gibson.

Mr. READ of Monroe. I have a letter from a very intelligent gentleman residing in the county of Monroe, urging it upon me to support this preamble which comes to us from Gibson county. My correspondent says he has examined it and compared it with the preambles of several of the State Constitutions, and in his opinion there is not a single one of them all which is more correct and perspicuous in language and sentiment than that to which he referred—which is the same with that here presented by the gentleman from Gibson.

Mr. MORRISON of Marion. I wish to have the liberty to correct a misapprehension in regard to the position which I occupy upon this subject. I say that this Convention is simply and purely a political body, and that we ought not blindly to submit to have our action shaped according to the dictation of any body of ecclesiastics. I have as much reverence for religion, and for the reverend clergy, as any gentleman, but I see no necessity to support and encourage this spirit of officiousness.

In the history of all countries where the Christian religion prevails, we see a great deal of this kind of religious sentimentality connecting itself with legislation. If we turn back to English history, in the days of Cromwell and the "Praise-God-Parliament," we find that no action of the Government could be taken without some specification of religious opinions.

If it is the pleasure of the gentleman to say that the Almighty superintends all his works, and disposes the hearts of the people to do good, I assent to it all; but why is it necessary that

these sentiments should be inscribed in the Constitution?

Again: why is it that certain gentlemen are so desirous to have a certain phraseology adopted in this preamble? Do they want to see a great hierarchy established in this country to overlook the affairs of State? If not, why do they seem to be so anxious to produce a certain result, or why have we been furnished with this declaration? I can see no reason at all for it, unless we were to make it an open question and invite all theological schools and colleges to come up here with their propositions.

Now here is this word "vouchsafe." It is an old word; I hardly know what it means, and would certainly have to go to a dictionary to ascertain its meaning fully; for it doubtless has more meaning, in a secondary sense, than any of us would be at once aware of. I consider it a word which would be much better understood in common prayer, or in a sermon, than in such a place as the gentleman from Gibson has proposed for it.

In regard to the notice which the gentleman from the north-west (Mr. Crumbacker) has taken of my allusion to the black coats of our clergymen, I have to say that I did not refer to the color of their coats by way of disparagement. But my meaning was, that the wearing of a peculiar kind of coats ought not to confer any peculiar privilege.

Mr. KELSO. I was not aware that there had been any importunity by way of letters upon this subject; and perhaps we have not yet had as many as might be profitable; therefore, for the purpose of giving all parties a fair chance to send up their letters, I move to lay the whole subject on the table.

Mr. HARDIN. I demand a division of the question.

But the Convention refused to divide.

The yeas and nays being demanded, ordered, and taken upon this question, the vote was reported—yeas 9, nays 110—and recorded as follows:

YEAS.—Messrs. Berry, Bicknell, Kelso, Miller of Clinton, Milligan, Moore, Pettit, Rariden, and Spann—9.

NAYS.—Messrs. Alexander, Allen, Anthony, Barbour, Bascom, Beach, Beard, Biddle, Blythe, Borden, Bourne, Bowers, Bracken, Bright, Brookbank, Bryant, Butler, Carr, Chandler, Chapman, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Colfax, Cookerly, Crawford, Crumbacker, Davis of Parke, Dick, Dobson, Dunn of Perry, &c., Duzan, Farrow, Fisher, Foley, Foster, Garvin, Gootee, Gordon, Graham of Miami, Haddon, Hall, Hamilton, Harbolt, Hardin, Hawkins, Hendricks, Hitt, Holman, Hovey, Howe, Huff, Johnson, Jones, Kent, Kendall of Wabash, Kinley, Lockhart, Logan, Maguire, March, Mather, Mathis, May, McFarland, McLean, Miller of Fulton, Miller of Gibson, Morrison of Marion, Mowrer, Murray,

Nave, Newman, Niles, Nofsinger, Owen, Pepper of Crawford, Prather, Read of Clark, Read of Monroe, Ristine, Robinson, Schoonover, Shannon, Sherrod, Shoup, Sims, Snook, Smith of Ripley, Smith of Scott, Steele, Stevenson, Tannehill, Taylor, Terry, Thomas, Thornton, Trimble, Walpole, Watts, Wheeler, Wiley, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President—110.

So the Convention refused to lay on the table.

Mr. HOLMAN. I propose to amend the original section by inserting, after the word "Indiana," the following words: "grateful to Almighty God for our freedom;" so that the preamble will read, "We, the people of Indiana, grateful to Almighty God for our freedom, in order to establish justice, maintain public order, and perpetuate liberty, do ordain this Constitution." I do think, Mr. President, that some recognition of an overruling Providence should be adopted here, at the same time, as an humble member of this body, I should be opposed to the adoption of any tedious preamble.

Mr. MURRAY. As one of the members of the committee which reported this preamble, I desire to say that we had several Constitutions before us, in which there was no acknowledgment of obligation to the Almighty Ruler; and that we endeavored upon comparison to select the simplest and shortest preamble. Not that we did not intend to acknowledge that we owe the highest duty to God, but that we did not think we were here as a synagogue to make a special appeal to the Divines for their advice in this matter. I make this statement whilst I feel perfectly aware that no member of the committee considers himself amenable to the charge of anti-religious views. I can have no objection at all to the language of the substitute; it is what I acknowledge every night and morning, and profess in my life. But I am unable to see any special necessity for introducing it into the amended Constitution.

Mr. OWEN. There is only one thing which I wish to say in addition to what has been advanced by the gentleman from Huntington, (Mr. Murray,) and I wish to say this because of the position which I occupy as chairman of the committee on rights and privileges. What I desire to say is this: that whatever may be the decision in regard to this matter—whether the preamble reported by the committee be adopted or rejected—I protest, in advance, that no inference ought to be drawn thence, with reference to the religious opinions of any member of the committee or of the Convention.

We have before us here a copy of the Constitution of the United States, the preamble of which reads as follows: "We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the bless-

sings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America." And, sir, no gentleman here would be willing to say or believe for a moment, but that a majority, or at least a very large minority of those men who drafted and adopted that Constitution—the most renowned Constitution which ever was adopted, and which I hope will stand forever—were men deeply impressed with a sense of religion. Nor should we forget that the President of that Convention—whose name stands at the close of that Constitution—George Washington—"first in peace, first in war, and first in the hearts of his countrymen"—was a man against whose opinions, either civil or religious, not one word of blame was ever uttered.

Mr. SMITH of Ripley. I would suggest to the gentleman from Dearborn (Mr. Holman) a small modification of his amendment—merely to add, after the word "freedom," the words "civil or religious."

The PRESIDENT. Does the gentleman from Dearborn accept?

Mr. SMITH. Then I will move so to amend the amendment—

Mr. HOLMAN. Yes; I accept that, of course.

The reading being called for, the preamble, as originally reported, and as proposed to be amended, was now read by the Secretary.

Mr. BORDEN. I doubt whether it can be made better than as the gentleman from Dearborn has proposed.

Mr. HALL. I would not trouble the Convention with any further remark, but I think the gentleman from Marion (Mr. Morrison) has been disposed to give to my words a sense different from that which the facts will justify. I expressly stated, that I found the petition signed by a number of the inhabitants of my county, and a number of the clergy. Amongst the latter, there are Baptists, New School and Old School Presbyterians, and Covenanters. The facts do not justify the idea that the petition was got up by clergymen. It is a petition emanating from the people; and any attempt to give it any other coloring cannot be justified either by the facts, or by what I said.

I understood the gentleman from Huntington (Mr. Murray) to say, that the committee had examined a number of the State Constitutions, and could find amongst them no precedent for acknowledging the Providence of God. Now I have just opened the book of State Constitutions in my hand, and the very first one, the Constitution of the State of Maine, contains this acknowledgment; and the Constitutions of Massachusetts and New York contain the same thing. I do not pretend to say that the gentleman is altogether mistaken; but here are precedents coming from most respectable sources, and I think it cannot be unsafe for us to follow in their wake.

I think, sir, that we ought to have a direct vote upon the amendment which I have offered. This way of interposing amendments I do not think is the proper way in which a petition of the people should be treated. Let us have a direct vote, and then, if it should appear that a majority are opposed to my proposition, I shall submit.

Mr. MURRAY. I did not say we had examined all the State Constitutions. I said we had several.

Mr. HOLMAN's amendment was now rejected, and the question recurred upon the adoption of Mr. HALL's substitute.

Mr. PETTIT. Is it in order to move to lay the amendment of the gentleman from Gibson upon the table?

The PRESIDENT. Yes, sir.

Mr. PETTIT. Then I move to lay the amendment upon the table, and call the yeas and nays.

Mr. HALL. That motion has been voted down once, I believe.

The PRESIDENT. No, sir; the question before was to lay the section, with the amendments, upon the table.

The yeas and nays were now ordered and taken upon Mr. Pettit's motion, and the vote was reported—yeas 45, nays 70—and recorded as follows:

YEAS.—Messrs. Anthony, Bicknell, Biddle, Bourne, Bracken, Carr, Chapman, Chenowith, Clark of Hamilton, Dick, Dunn of Perry, &c., Duzar, Foley, Graham of Miami, Haddon, Holman, Howe, Kelso, Kent, Kendall of Wabash, Kinley, Logan, Mathis, McFarland, Miller of Clinton, Milligan, Mooney, Moore, Morrison of Marion, Murray, Owen, Pettit, Rariden, Ristine, Shannon, Sherrod, Sims, Snook, Spann, Steele, Tannehill, Terry, Thornton, Wheeler, and Wiley—45.

NAYS.—Messrs. Alexander, Allen, Barbour, Bascom, Beach, Beard, Blythe, Borden, Bowers, Brookbank, Bryant, Butler, Chandler, Clark of Tippecanoe, Coats, Cole, Colfax, Cookerly, Crawford, Crumbacker, Davis of Parke, Dobson, Farrow, Fisher, Foster, Garvin, Gordon, Hall, Hamilton, Harbolt, Hardin, Hawkins, Hendricks, Hitt, Hovey, Huff, Johnson, Jones, Lockhart, Maguire, March, Mather, May, McLean, Miller of Fulton, Miller of Gibson, Mowrer, Nave, Newman, Niles, Nofsinger, Pepper of Crawford, Prather, Read of Clark, Read of Monroe, Robinson, Schoonover, Shoup, Smith of Ripley, Smith of Scott, Stevenson, Thomas, Walpole, Watts, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President—70.

So the Convention refused to lay the amendment on the table.

Mr. MARCH proposed to amend by inserting after the word "Indiana," in the first line of the original preamble, the words, "Grateful to Almighty God for our freedom."

Mr. HALL. For the sake of getting more directly at the vote upon the proposition which I have introduced, I will move to lay this amendment upon the table.

Mr. SHOUP. I demand the previous question.

The PRESIDENT. The motion to lay on the table has precedence.

Mr. HALL. I withdraw my motion for the purpose of saving time.

Mr. BORDEN. Several gentlemen are opposed to the proposition of the gentleman from Gibson (Mr. Hall,) because it is too lengthy. [A voice—"Not at all."] I think the Convention would be willing to take the proposition of the gentleman from Dearborn, (Mr. Holman,) with the modification now proposed by the gentleman from Delaware (Mr. Marsh). The House has twice, by its vote, determined to insert some words of the kind.

Mr. SHOUP now again demanded the previous question.

And there was a second.

The main question being ordered—

The PRESIDENT said, the first question was upon the adoption of the amendment of the gentleman from Delaware (Mr. March); the next question upon the amendment of the gentleman from Gibson, (Mr. Hall,) and then upon the engrossment.

Mr. OWEN demanded the yeas and nays upon Mr. March's amendment; and the same being ordered and taken, the vote was reported—yeas 107, nays 12—as follows:

YEAS.—Messrs. Alexander, Allen, Anthony, Bascom, Beach, Beard, Berry, Biddle, Borden, Bourne, Bowers, Bracken, Bright, Brookbank, Bryant, Butler, Carr, Chandler, Chapman, Chenowith, Clark of Tippecanoe, Cole, Colfax, Cookerly, Davis of Parke, Dick, Dobson, Farrow, Foley, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Haddon, Hall, Hamilton, Harbolt, Hardin, Hawkins, Hendricks, Hitt, Holman, Hovey, Howe, Huff, Johnson, Jones, Kelso, Kent, Kendall of Wabash, Kinley, Lockhart, Logan, Maguire, March, Mather, Mathis, May, McFarland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milligan, Mooney, Moore, Morrison of Marion, Mowrer, Murray, Nave, Newman, Niles, Nofsinger, Owen, Pepper of Crawford, Pettit, Prather, Rariden, Read of Clark, Read of Monroe, Ristine, Robinson, Schoonover, Shannon, Sherrod, Shoup, Sims, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Stevenson, Tannehill, Terry, Thomas, Thornton, Watts, Wheeler, Wiley, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President—107.

NAYS.—Messrs. Barbour, Bicknell, Blythe, Clark of Hamilton, Coats, Crawford, Crumbacker, Duzan, Fisher, Foster, Helm, and Walpole—12.

So the amendment was adopted; and the question recurred upon striking out the original

preamble, as amended, and inserting that proposed by Mr. Hall.

And the yeas and nays having been demanded and ordered upon this question, they were now taken and reported—yeas 43, nays 72—and they were recorded as follows:

YEAS.—Messrs. Barbour, Bascom, Beach, Blythe, Bowers, Brookbank, Bryant, Chandler, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Colfax, Crawford, Crumbacker, Duzan, Foster, Gordon, Hall, Hardin, Hawkins, Hendricks, Hitt, Hovey, Lockhart, Maguire, Mather, May, Miller of Fulton, Miller of Gibson, Mowrer, Nave, Niles, Nofsinger, Pepper of Crawford, Prather, Read of Monroe, Sherrod, Shoup, Stevenson, Walpole, and Zenor—43.

NAYS.—Messrs. Alexander, Anthony, Beard, Bicknell, Biddle, Borden, Bourne, Bracken, Bright, Butler, Carr, Chapman, Chenowith, Cookerly, Davis of Parke, Dick, Dobson, Dunn of Perry, &c., Farrow, Fisher, Foley, Garvin, Gibson, Graham of Miami, Haddon, Hamilton, Holman, Howe, Huff, Johnson, Jones, Kelso, Kent, Kendall of Wabash, Kinley, Logan, March, Mathis, McFarland, McLean, Miller of Clinton, Milligan, Mooney, Moore, Morrison of Marion, Murray, Newman, Owen, Pettit, Rariden, Read of Clark, Ristine, Robinson, Schoonover, Shannon, Sims, Snook, Smith of Scott, Spann, Steele, Tannehill, Taylor, Terry, Thomas, Thornton, Watts, Wheeler, Wiley, Wolfe, Work, Wunderlich, Yocum, and Mr. President—72.

So Mr. Hall's amendment was rejected.

MR. WATTS. Is it in order now to amend? **THE PRESIDENT.** No, sir. We have yet another turn under the previous question.

And then the original preamble, as amended, was ordered to be engrossed and read a third time to-morrow.

On motion by **MR. LODHART,**

The Convention now adjourned till to-morrow morning, 9 o'clock.

~~~~~ SATURDAY, Nov. 30, 1850.

The Convention met, pursuant to adjournment.

Prayer by the Rev. **MR. FARROW.**

The journal of yesterday was read and approved.

MR. ZENOR presented a petition praying for the introduction of a clause prohibiting traffic in spirituous liquors.

The petition was read and referred to the committee on the legislative department.

MR. BIDDLE presented certain resolutions passed at a public meeting held at Logansport, in favor of a system of free banking, and in opposition to the establishment of a State Bank.

MR. BIDDLE remarked that as the committee on banking had reported, he did not know

that it would be necessary to refer these resolutions to that committee. He moved that they be laid upon the table.

The motion was agreed to, and

The resolutions were laid upon the table.

The committees were called for reports.

No reports were made.

MR. OWEN. It will be recollected by the Convention that yesterday I gave notice that I would introduce an additional rule in regard to motions to reconsider—declaring that no such motion as to a section actually passed, shall be in order, unless such motion be made within three days after the passage of the section.

[Cries of "no," "no," and "consent."]

If gentlemen will bear with me for a moment, they may find no cause to dissent from what I am about to say. The notice given by me was chiefly prompted by the fact that a number of sections have been referred to our committee of revision, and it occurred to me, in the first instance, that it would be well to know whether the Convention had finally acted upon these before the committee proceeded to arrange and revise them.

Upon further reflection, however, I arrived at the conclusion, that the inconvenience or injury of such a rule might be greater than its advantages. It is true, indeed, that in most legislative bodies, a motion to re-consider must be made within twenty-four hours. But the sections we pass here are far more important than bills passed by a Legislature; and as I believe, that, upon the whole, it is best that we should reserve the right to re-consider at any time, if after-thought should chance to change our first opinions, I shall not move the rule at all. [Cries of "consent."]

THE COMPROMISE MEASURES OF CONGRESS.

MR. RARIDEN. Mr. President, as this is resolution day by our rules, I now propose to offer the resolutions I read the other day, in order to take a vote upon them. I will read them again to the Convention, so that they may be distinctly understood, as it is my intention to call the previous question without troubling the Convention with a word of comment.

MR. RARIDEN read the preamble and resolutions as heretofore published. [See Daily Journal, Nov. —.]

The reading of the resolutions was again called for, and they were again read by the Secretary.

MR. RARIDEN demanded the previous question.

MR. ANTHONY requested the gentleman from Wayne to withdraw the demand for the previous question.

MR. RARIDEN refused to withdraw the demand.

MR. PETTIT. I understand that the previous question is demanded; and therefore debate is of course out of order. I am afraid, sir,

there is a cat in the meal tub, or a snake in the grass, and I move that the preamble and resolutions be laid upon the table.

Mr. RARIDEN demanded the yeas and nays, and they were ordered.

Mr. ANTHONY inquired whether a motion to reject the resolutions would not take precedence of the motion to lay on the table.

The PRESIDENT. A motion to lay on the table has precedence over all other motions, except a motion to adjourn.

The yeas and nays were then taken with the following result—yeas 60, nays 57:

YEAS.—Messrs. Alexander, Anthony, Balin-gall, Bascom, Beach, Beard, Biddle, Blythe, Borden, Bryant, Butler, Chandler, Chapman, Clark of Hamilton, Clark of Tippecanoe, Cole, Col-fax, Cookerly, Crawford, Crumbacker, Davis of Vermillion, Duzan, Garvin, Gootee, Gra-ham of Miami, Hardin, Hawkins, Howe, Kel-so, Kent, Kilgore, Kinley, Maguire, March, Mather, Mathis, May, McFarland, Milligan, Morrison of Marion, Mowrer, Newman, Niles, Owen, Pettit, Robinson, Shannon, Shoup, Snook, Smith of Ripley, Spann, Thomas, Todd, Trimby, Wallace, Watts, Wheeler, Work, Wunderlich, and Zenor—60.

NAYS.—Messrs. Allen, Barbour, Bicknell, Bourne, Bowers, Bracken, Bright, Carr, Chen-owith, Coats, Davis of Parke, Dick, Dunn of Perry, &c., Farrow, Fisher, Foley, Foster, Frisbie, Gibson, Gordon, Haddon, Hall, Ham-ilton, Hitt, Holman, Hovey, Huff, Johnson, Kendall of Wabash, Lockhart, Logan, Mc-Lean, Miller of Clinton, Miller of Gibson, Milroy, Mooney, Murray, Nave, Nofsinger, Pepper of Crawford, Prather, Rariden, Read of Clark, Read of Monroe, Ristine, Schoono-ver, Sherrod, Sims, Smith of Scott, Steele, Tannehill, Terry, Thornton, Walpole, Wiley, Wolfe, Yocum, and Mr. President—57.

So the preamble and resolutions were laid on the table.

Mr. LOGAN offered the following resolu-tion:

Resolved, That the Committee on Accounts be instructed to inquire of the Doorkeeper of this Convention if he furnishes the S'enogra-pher with stationery and candles; and if so, the amount, and report the same to this Con-vention.

The question being taken, the resolution was not agreed to.

Mr. NOFSINGER offered the following res-olution:

Resolved, That the Committee on Public In-stitutions of learning be instructed to report the following article, to-wit:

"It is the duty of the State to provide for the comfort and happiness of all its inhabitants, and especially the unfortunate, such as the Deaf and Dumb, the Blind, and the Insane; therefore it shall ever be the duty of the Gen-eral Assembly to cherish and support the vari-

ous institutions erected in this State for their benefit."

The resolution lies over one day.

Mr. BORDEN offered the following resolu-tion:

Resolved, That the Committee on Education be instructed to inquire into the expediency of an-nually dividing the interest on the University Fund among the several incorporated colleges of this State, in proportion to the number of students in each of said colleges during the year.

Mr. B. remarked, that this course was pur-sued in several of the States. He hoped that the resolution would be adopted, and that the committee would make an investigation in rela-tion to the subject.

Mr. FOSTER said, he hoped the resolution would not be adopted. He did not know how the gentleman could expect such a resolution to pass, when he must be aware that the com-pact upon which the land was granted, required that it should be strictly applied to the uses of the State University; and that it should not be diverted without the co-action or co-operation of Congress. And even then it was doubtful whether it could be done. He did not wish to enter into an argument upon the subject, but he was prepared, at any time, to show the mis-chievous effects that such a disposition of this fund, would produce. It would only be building up sectarianism.

Mr. BORDEN. I hope the gentleman will allow the resolution to go to the committee, and when the subject comes back to us, and comes up for consideration, I shall be pre-pared to meet the gentleman in argument upon the question.

Mr. WOLFE. It appears to me to be hardly necessary to send this matter to a committee. The subject has been already referred, and the committee have reported that the fund cannot be transferred. If it could, I presume that the Convention would decide that it should be di-vided, not among the colleges, but among the common schools of the State.

Mr. BORDEN. The gentleman says that the committee have come to the conclusion that the fund ought to go to the common schools, and not to the colleges. I submit to him wheth-er the Convention may not provide that all the Colleges shall constitute the University of the State. In some of the States of the Union they have a board of regents to manage the University Fund, and the same is divided out among the Colleges. Mind you, an University is made up of Colleges. I think the subject is at least worthy of consideration. I came here instructed on this subject. The gentleman from Monroe (Mr. Foster) says, it would be building up sectarianism. Well I do not know that there is more sectarianism in the College at Greencastle than there is in the College at Bloomington. Now, sir, I am not strenuous up-

on this subject, but the resolution only proposes an inquiry into the subject—let it go to the committee, and let them make a report upon it.

MR. READ of Monroe. MR. PRESIDENT, I would like to make a few remarks on this subject.

The gentleman from Allen (Mr. Borden) says, it has been the practice in other States to divide the University fund among different institutions. Now, sir, I undertake to say, that such a thing as seizing upon the fund once given for the founding of a college, and diverting it to a different purpose, has never yet occurred in a single American State. Least of all, has anything of the kind taken place in the State of New York, a State, the policy of which on the subject of education, has been eminently wise and liberal. That State has given munificently from her own treasury to her different Colleges. From no one of them has she ever taken, or even proposed to take a single dollar.

There is in that State a body called the Regents of the University. This body has at its control a fund called the literature fund, which is distributed under their direction to the different Academies in the State, and in a few instances something has been given from this fund to Colleges. But of the immense donations made by the State to Union College and to other institutions, the State never attempted to reclaim any part, or to take from one institution and give to another. Nor has any such proposition ever been made there.

In the very inception of the system for the disposing of the public lands, Congress adopted and settled a policy in making a provision for education in the new States, which was wise and liberal. That policy has been continued as eminently beneficial to the present time. Well, sir, what is it? Congress has made large donations from the public lands for the purpose of common schools, and has reserved, in comparison therewith, a very small quantity of land—the merest minimum—for the endowment of higher institutions of learning. In this State the terms of the grant were for a seminary of learning.

Well, sir, in each of the new States, in consequence of this provision of the General Government, a College has sprung into existence, almost as soon as the State government has been formed. Young men in our new settlements in moderate circumstances, have had the means of higher education brought home to them.

The opinion prevails with some, that Colleges are for the rich only. This is utterly a mistake, and without facts to sustain it. I appeal to every gentleman who knows anything of Colleges, if the greater portion of the students are not from the humbler walks of life—some from the very humblest. What is it to the man of wealth, if there were not a College within a thousand miles? He can send his sons

to other States, to Europe even. But the poor youth must have the means of education near at hand, or go without it.

It was, I hold, a wise policy on the part of the general Government, to make provision which would secure higher institutions of education in all the new States, with their very origin. Shall Indiana be the first State to condemn this policy of Congress? Indiana has never given a dollar to the University. The fund is a mere trust for a specific purpose. The State of Indiana is the trustee, and nothing else. She is not the donor of any part of the fund. Its diversion to any other object, than that for which it was given by Congress, would be an act of repudiation, and unworthy the State. It would be casting back a gift which has been generously bestowed for a noble purpose.

What, sir, would be thought of the United States Government, if after having received the Smithsonian Fund, (and in so doing accepted a sacred trust,) after having erected buildings, purchased a library, apparatus, &c., for the institution which that Fund was designed to endow, Congress should seriously set about the inquiry whether there was not something else to which the Fund might be appropriated?

But my present purpose was merely to correct the statement as to the action in like cases by other States.

MR. KELSO. This resolution proposes nothing more than to inquire into the propriety of doing or not doing a certain thing. I have not bestowed much thought upon the subject, as to whether we have the power to make a different application of the fund from that which has been made for years past. But if we have the power to make a different application of it, I maintain that to divide it among the common schools would be a better application of it, than to divide it among the colleges. I am not prepared to say that we have the power, but I am prepared to say that we should gain something by allowing the resolution to go to the committee, and letting the subject be investigated. It is a very fine thing to have a good education, but education alone does not give a man capacity. I had the good fortune to get ten months and a half instruction in a log-cabin school house, and yet gentlemen who have had the advantage of college education may bring in propositions here for discussion, and I will meet them in argument and be very apt to give them some trouble, too. [A laugh]. A man must have a head, or else all the education in the world will be of little avail.

MR. READ of Monroe. I am not disputing that.

MR. KELSO. I know the gentleman does not. I am not sure, sir, about the propriety of dividing this money among colleges. I think it should go to the common schools. I have no great charity for colleges; they never did me

much good. But about sectarianism. There was in 1834, a struggle as to who should be installed as professors. And the moment they proceeded to put in a Methodist, I never saw such a broil created in my life. One denomination having got the control, they seem disposed to keep it if they possibly could.

Now there can be, to say the least, no impropriety in letting this resolution go to the committee, and having the subject investigated. I remember when the practice in Indiana was, and it was a practice that was corrected by law, that all recognizances that were forfeited to the State, were applied to the use of seminaries of learning. In 1844, we sent a resolution of this character to a committee. The subject was inquired into, and it was determined that the forfeitures might be applied to common schools; and they were so applied, and the common schools have been considerably benefited in consequence of such application of them. Now we might, with little labor, find out that we may dispose of this fund more legitimately and properly than we have heretofore done. It is, I think, at all events, worthy of inquiry.

Mr. WATTS. I have grown up sir, in the same neighborhood with my worthy friend from Switzerland, and I am similarly situated in point of education, with himself. I am, like him, not college bred, but I always thought that as great a misfortune as it is to be college bred, it was better to be college bred, than to have no breeding at all. ["Consent"—"Laughter"]

But to the question. This subject matter, sir, has been referred to a committee, It has been investigated by the committee, and the committee have reported that these funds cannot be diverted. They have examined all the authorities upon the subject, and I do not see any necessity for traveling over the same ground again. If it is the shortest way of getting rid of this resolution, however, I have no objection; for my object is to get rid of it in some way or other.

Mr. READ of Monroe. It is not my object to get rid of the inquiry.

Mr. WOLFE moved to strike out the word "colleges," and insert the words "common schools."

Mr. FOSTER. I would barely remark that I am much obliged to the gentleman from Sullivan for having investigated the subject in relation to common schools; and certainly, no committee have recommended that the fund should be divided among the colleges of the State. The gentleman from Allen, I suppose, is mistaken in the position he has assumed, that a collection of colleges, constitutes a university. In England, the universities of Oxford and of Cambridge, are composed of fifteen or twenty colleges each, but each college has its own separate funds. They are all contiguous to each other, yet were all founded by different individ-

uals, and supported by their own funds, and not by what is called the university fund. In England, we know that sectarianism prevails, but that cannot be urged against our institutions of learning. It is not long since, the President of our University published a pamphlet declaring that sectarianism is heresy. In regard to what the gentleman from Switzerland has represented as having occurred some years ago, I am not able to say, but I know that it has been the endeavor to select the trustees from among the various religious sects, so that one should have no superiority over the other. With regard to the professors, they are of various religious denominations.

If it were left to my choice, I should have no hesitation in saying that I would appropriate the fund to common school purposes, rather than devote it to the use of the colleges, and I am sure that the Convention will not sustain such a proposition.

Mr. KELSO. My main object in rising now, is to suggest to the gentleman from Sullivan (Mr. Wolfe) so to frame his resolution, that the inquiry may be whether the application could be made to the colleges of the State, or to common schools, and let them have the benefit of both grounds.

Mr. WOLFE. I accept the suggestion and will so frame the resolution.

Mr. KELSO. While I am up I want to say one word to my friend from Monroe (Mr. Foster) for the purpose of brushing up his recollection when he says that there is nothing of a sectarian character about that institution. I want to know whether he had not a contest with President Wiley on the subject, and whether he did not beat him.

Mr. HOLMAN observed that this was a subject of great interest, and that it had already been before the Convention in the shape of a resolution of inquiry. The committee on education had already made their report, and he had great respect for that committee, and for its chairman. That committee had reported that the fund could not be, consistently with the grant in which it originated, be diverted from the State University. He presumed that no gentleman of information would object to having the matter properly investigated; and it might be presumed, inasmuch as the committee on education had already examined the matter and made their report, the report which they would hereafter make, would be in consonance with that which they had already made. On that ground he would move as an amendment to the motion to refer the resolution to the committee on education, to refer it to a select committee of nine, and that the gentleman from Allen (Mr. Borden) be chairman of that committee.

Mr. BORDEN. I accept of that proposition. Perhaps it would be better to refer the resolution to a select committee, although I

have no desire to be placed at its head as chairman.

Mr. KILGORE. I do not see the necessity of consuming the time of the Convention upon a matter which has been already settled. The Supreme Court gave an opinion yesterday, showing conclusively that the Legislature had no power over that Fund; that it belongs to Congress exclusively to make any further disposition of it. I have traveled over the whole ground, and that is settled to my entire satisfaction.

Mr. BORDEN. The gentleman from Delaware may be very well informed of the fact; but it might be well to make the inquiry whether it could not be divided amongst the colleges.

Mr. KELSO. The decision of the Supreme Court is as to who were the proper owners of the land; and I believe that there are some here who know just as much about it as the Supreme Court. I do not pretend to do so; but I believe others do. [A laugh.]

Mr. FOSTER. I merely wish to say one word in explanation of what fell from the gentleman from Switzerland (Mr. Kelso) in reference to my having a fight or a contest with the President of the Institution, in regard to sectarianism. No charge was made against the President of the College on account of sectarianism; but there were other and very grave charges against him, of which the gentleman from Dearborn is well aware, for he was present on the committee of investigation.

The question was taken on the resolution, and it was adopted.

Mr. OWEN. I have a resolution to offer, and in introducing it I wish to say two or three words. From several movements which have been made in this Convention—one by the gentleman from Decatur, (Mr. Robinson,) one by the gentleman from Jennings, (Mr. Spann,) and one by the gentleman from Wayne (Mr. Rariden)—it must be evident that there is a desire that some constitutional provision should be made with reference to our laws of descent, securing to the widow in case of the death of her husband, intestate or not intestate, a larger amount of her husband's property than she now has. I offer this merely as a resolution of inquiry. The resolution was to the effect that the committee on rights and privileges be instructed to inquire into the expediency of reporting a section providing that the life rental of all real estate of which an intestate husband shall die seized, shall be secured to his widow, under equitable conditions by law.

The question being taken on the resolution it was adopted—ayes 50, noes 43.

Mr. MORRISON offered a resolution on the same subject, but he said it would go a great deal further in reference to children than any resolution that had yet been offered. It was that the committee on rights and privileges be

instructed to inquire into the expediency of reporting this section—

That the Legislature shall pass such laws as will more perfectly and extensively protect the rights of widows out of the property of their deceased husbands, and also providing for the children of deceased parents a more equal use of the property of the decedent.

The amendment was adopted by consent.

Mr. TAYLOR offered a resolution to the effect that the committee on the legislative department be requested to inquire into the expediency of prohibiting the Legislature from passing any law authorizing special copartnerships in this State. He observed that if there had been any other resolution offered on this subject, he would withdraw his resolution, but he was not aware of any such; and he thought that the object to be accomplished by the resolution was one of too much importance to be omitted by the Convention. It was known to the Convention that in some of the States special copartnerships were authorized. He had had some experience on this subject, and he looked upon this system as nothing more nor less than licensing swindling in the body politic. He hoped that there would be no objection to the inquiry. Every man was aware that men of wealth availed themselves of this kind of special legislation for speculative purposes. They would enter a concern as special partners, invest a few thousand dollars of ready capital, which would go out as the capital of all the partners. They would work away perhaps for four or five years, and get into an enormous credit, merely on account of the little capital invested by the special partner, and would break down in the end, carrying the honest and industrious with them in their fall. All this was, in many instances, the result of these partnerships. It might be true that all the provisions of the law had been complied with in regard to such partnerships, such as advertising, &c., but this was all forgotten in the course of two or three years, and the special partner was regarded as a general partner, and credited the concern on that supposition. Then, when the crash came, it was discovered that this partner, on whose account perhaps an immense amount of credit had been given, was only liable to the amount of his capital originally invested, and the general partners being worth little or nothing, the creditors were thus swindled by false appearances. He thought such a system should be constitutionally prohibited.

Mr. KELSO. In partnership transactions every partner is liable to the full extent of his capital.

Mr. TAYLOR. But I am speaking of special partners, who are only liable to the amount of capital invested.

Mr. KELSO. I maintain it that in partnership transactions every partner is liable to the extent of his last dollar. Now where there are

special corporate powers granted to special corporations, it is a different thing to men going into partnership in the transaction of business. It was a part of our business in coming here to put down the granting of these special corporate powers. The doctrine of the gentleman from Laporte would be correct if it related to these; but in ordinary partnerships I think it cannot have any application; and I hope the Convention will not do any act by which men will be prevented from joining their capital together in business as partners.

Mr. TAYLOR. The gentleman from Switzerland totally misapprehends me. I am not seeking at all to prevent men from going into partnership. My object is to do away with this thing of special partners who are only responsible to the creditors of a concern for so much of the capital as such special partners have invested in it and no more. I suppose the gentleman is quite aware that a separate act of the Legislature, authorizing special partnerships, is quite a different thing from a general partnership in which all the partners are liable to the full amount of their capital.

The resolution was adopted.

Mr. WATTS offered a resolution to the effect that the Convention should adjourn *sine die* in two weeks from Monday next.

Mr. KELSO moved to lay the resolution on the table.

The motion to lay the resolution on the table was agreed to.

Mr. KILGORE moved that when the Convention adjourn on Tuesday next, it adjourn until the fourth Monday in December.

Mr. LOCKHART moved to lay the resolution on the table; which was agreed to.

Mr. CHAPMAN moved that the committee on matters appertaining to criminal law be instructed to report a section to the following effect:

"Embezzlement of the public money shall be deemed felony, and be subject to such punishment as the General Assembly shall prescribe."

Mr. OWEN. I think that is an imperative resolution. I would suggest to the mover of it whether, if everything were stricken out after the word "felony," his object would not be obtained. If we declare such embezzlement felony, it will be punished as such, of course.

The resolution laid over under the rule.

Mr. THORNTON offered a resolution to the effect that the committee on education be instructed to inquire into the expediency of providing in the new Constitution about to be adopted, that lands returned delinquent in the payment of State and county revenue, shall not be sold therefore so as to enable private individuals to purchase them, but that they shall be forfeited to the State for the benefit of common schools. With the permission of the Convention, he would explain his object in a very few words. In the year 1832 he had had the honor

of a seat in the Legislature, when an act of this kind was passed. At that time a great deal of heartless speculation was going on, and he had not unfrequently witnessed valuable property sold for a few cents, and the title vested in the purchaser—notwithstanding such property was of great value. It was necessary, as every one would admit, to have stringent laws for the collection of the revenue; but it appeared to him that the course which he proposed seemed better calculated to subserve the ends of justice than the present mode, and at the same time to furnish an ample fund for one of the most important purposes. It might, perhaps, for a time make a great inroad upon the revenue of the State; but taking everything into consideration, it would prevent a system of the most heartless speculation, and among other advantages it contained a salutary provision for the benefit of the community in general. In 1832 the principle involved in this resolution was adopted almost unanimously, and was continued in force by an act of the Legislature till the year 1841 or 1842, when it was repealed.

He would remark, that when real estate was purchased for taxes it was seldom that the title could be sustained. He had had an extensive practice as a lawyer in this State, and he hardly knew of a solitary case in which the title to lands thus purchased had been sustained. The rigid construction of the law on the subject, generally operated as a defeat to the title of the purchaser. It did sometimes happen that titles of that kind were good, but the instances were very rare in comparison with those on the other side of the case. It seemed to him, then, the principle involved in the resolution was one that ought to be adopted. The resolution was only a resolution of inquiry, and it was for the Convention to say whether they deemed the subject worth inquiring into. So far as he was concerned, he should like to see it adopted.

Mr. CLARKE of Tippecanoe. I have no objection to this resolution, as a mere resolution of inquiry, but I protest against the principle involved in it. The gentleman tells us that the old law operated badly, because the property was sold to private individuals. If it operated badly on that ground, it would operate with equally evil effects if purchased by the State. If it be wrong to sell the property of one individual to another for the payment of taxes due to a county or State, it would be equally wrong to sell such property to the State. Besides the gentleman tells us that those tax titles are seldom good when sold to individuals. So it would be if the land were sold to the State.

Now I maintain that the principle is wrong altogether. The State has only a claim upon the land for the amount of taxes due, and has only a right to sell so much property as will pay those taxes. It has no right whatever to declare the property forfeited.

Mr. READ of Clarke. I have no doubt whatever that my friend from Floyd (Mr. Thornton) is actuated by the best of motives in introducing this resolution. It is quite true that in the year 1832, the Legislature did pass a law of the kind he mentions; but they very soon found that it resulted in very bad effects. One of those effects was that the law pressed very hardly upon the poor. How did it work? Why just in this way. When the property had been sold, the owner of it had to pay the last cent, both of purchase money and interest and expenses, before he could reclaim his title. Sometimes, indeed, the land was purchased in by a neighbor, who had the money, which his poorer neighbor did not possess, and he would restore the title without charging any interest. But these were cases which rarely happen, and in nineteen cases out of twenty, the land went into the hands of speculators, who exacted the last farthing, or retained the land. Thus it was that the law of 1832 operated very harshly upon the poor man, and favored those who were more fortunately circumstanced, and the Legislature finding that such were its effects, very soon repealed it; and no Legislature has attempted to pass any similar law, from that day to this. Believing that such a law would work very injuriously both to the interests of the poor land owner, and to the State, I shall move to lay the resolution on the table. I do not see that there is any use in occupying the time of a committee with such a proposition. They would have to make a report, which would only encumber the journal, give the Convention trouble, and produce no good effect.

Mr. TAYLOR. Will the gentleman from Clark withdraw his motion to lay the resolution on the table for a few moments?

Mr. READ. Certainly.

Mr. TAYLOR. As this appears to me to be a question of great importance, I desire to make a few observations to the Convention on the subject. It appears to me that this is a question which ought to claim from the Convention the coolest deliberation. Anything relating to taxes, or to the title of real estate, demands from the Convention the most serious and deliberate consideration. The tax system, for many years past, in many of the sister States, has been the same; and, according to that system, an individual may purchase the land of his neighbor at a sale for taxes, and charge him a hundred per cent. for the use of the money. In some States, from one to two years are given for redemption of the property. In New York, however, the land is struck off to the State; and I think that is the best plan, and I will give my reasons for thinking so. This mode can do no person any harm, except the land speculators who hang about the office of the county clerk or county commissioners, and purchase lands to speculate in. What is the consequence of this? Why, that all the lands that are not worth the

taxes, are knocked off to the State. Nobody will buy them. If they are not redeemed, they remain in the hands of the State. All persons having lands that are worth more than the taxes, or more than they have been knocked off for, will be sure to redeem them within the time specified by law; and if they do not redeem them, the best way is to allow the State to receive them and apply their proceeds to the purposes of common schools. In some instances the parties may not redeem them; and in such case let the land be taken up and sold for the highest consideration that can be obtained for them; and let the overplus, if there be any, after paying the taxes and cost and interest be restored to the owner, or his heirs, but never let the title be litigated.

This mode would do away with all attempts to deceive a man—attempts that in times past, have been too successfully practiced. I have seen a man having, say 160 acres of land sold, when he was there to pay the charges upon it. And this has been done by dividing the lot, say into two, of eighty acres; and the man knowing that his lot contained a hundred and sixty acres, did not know that it was his own land that was being sold, because the sheriff or treasurer was selling only eighty acres. And when the land was redeemed, he had to pay double costs in every way.

As the gentleman from Clark (Mr. Read) has said, it will sometimes happen that a man may purchase the land of his neighbor, and restore to him the title, without charging a cent of interest. But he has a right to charge this hundred per cent. interest, and in nineteen cases out of twenty it is done.

Now such a provision as this, I think, will work well. Let all the delinquent lands be advertised. And every man, knowing that his land is advertised, will pay his taxes within six or twelve months; and if he does not, why, then let the State get the benefit of it. Let the State then put up the land and sell it to the highest bidder; and let the State give a good title; and if there be any balance over and above the charges on the land and the interest, let it be handed to the owner; or, if the owner cannot be found, let it be deposited in the State treasury, without interest, for the use of the owner or his heirs, if they ever should be found. That mode will prevent any man from ever losing his entire tract of land, for the sake of five or ten dollars taxes. The land, in such case, will be in the hands of the State; and, if she acts, as she certainly would act,—having no desire to oppress her citizens—and if they come within one or two years, or whatever time is specified, and redeem the land, then there is no harm done; the State receives the interest, and it goes into the school fund. If it is not redeemed, the State loses nothing by having the land. If it is worth nothing, it falls back into the hands of the State anyhow; and if it is worth

redemption, it is sure to be redeemed. And if in some cases valuable lands should not be redeemed, what is to prevent the State from disposing of it for more than the five or ten dollars charge upon it? I believe that a statute could be framed that would better answer the wishes of the people, and better secure the revenue than that which is now in force. Thus, if a man paid a hundred per cent. for the redemption of his land to the State, it would only be like putting it out of one pocket into another, for he would receive the benefit of it in increased facilities for the education of his children. I hope, therefore, that this resolution may be permitted to go to the committee on education.

Mr. GIBSON of Clark moved to amend the resolution by striking out all after the enacting clause, and inserting:

"That a select committee of five be appointed to inquire into and report the best method of enforcing the payment of taxes."

He said that there was something wrong in the present system, which ought to be amended. You would not unfrequently see a tract of land put up, worth a thousand dollars, and the question would be asked: "Who would pay the taxes for the smallest portion of the land?" It was necessary that the taxes should be promptly paid, and equally necessary that a part of the land should be sold to pay them; but it not unfrequently happened—yea, in nine cases out of ten—the whole tract was sold, when a part of it would have been quite enough to have secured the payment of such taxes. The man who purchases land in this way, buys under the merest chance in the world of getting a good title. The Supreme Court, in all such cases where land titles are in dispute, requires the most perfect compliance with the law, which, in many instances, it is not within the means of human ingenuity to do. The statute of 1824 says that the deed shall be "conclusive evidence" of the regularity of the sale; but the Supreme Court says it is only *prima facie* evidence. If we can do anything in this Convention that will stop this construction, or rather destruction of the law by the Supreme Court, it would be well; so that when a man goes to a sale and offers to purchase two or three acres for the amount of taxes, interest, and cost charged against the land, he may know that his title would be good. This is the kind of provision, I think, that we want; and it would not operate unjustly upon any party.

Mr. THORNTON. This is the first and only resolution I have yet had the honor of presenting to this Convention—one in regard to which I have received instructions from a very respectable portion of those constituents whom I represent on this floor. I hope the Convention will not stifle it by adopting the amendment. I am perfectly aware of the truth of what has been said by my friend from Clark (Mr. Gibson). I have had some experience on

the subject, and I know how it operates. I have known cases in which a court has decided that the omission of the collector or assessor to endorse his name on the back of his return, was a fatal defect, and resulted in the defeat of title. I concur with the gentleman in regard to what has fallen from him in reference to the course usually pursued by the Supreme Court. They have, in many respects, adopted a system of legislation, rather than of judicial construction; and it certainly would be well if we could have something definite upon this subject. I hope that the Convention will permit this resolution to go to the proper committee. If it does no good, I cannot see that it can do any harm.

One word now in reply to the gentleman from Clark (Mr. Read). I fear he had a hand in repealing this law; but it was not repealed quite so soon as he seemed to suppose. It was adopted in 1832, and was not repealed until some ten or twelve years afterwards; and, although the law was badly executed, I do not think that that is any objection to the principle of it. I would like to see the principle adopted and incorporated into our system. The people do not submit very readily to be taxed, even for the good purpose of education—especially bachelors (a laugh) and those who never knew what it was to be the father of a child. If we could only have some mode of indirect taxation for the purposes of education, I think the people would willingly submit to it. The only objection that I can see to this proposition is, that it might reduce the revenue, but it could do other harm. I have not introduced this resolution, I assure the Convention, for the purpose of making Buncombe. Far from that. I have introduced it because I regard it as containing a salutary principle which I think ought to be incorporated into our system. I will go as far as any other man to sustain the common schools, and this is a proposition to create a fund to conduce to that much desired object. The present system is bad and requires a remedy. I have known land sold near the city of New Albany, for sixty cents, for which the owner would not now take two thousand dollars an acre. Now this system of heartless speculation should be put an end to. That is one reason why our courts have resorted to such a system of construction as that which they now adopt, in reference to titles of lands sold for taxes.

The only question now is, will the Convention allow the resolution to go to the committee? If the Convention think it ought not to go to the committee on education, or to any other committee, I will cheerfully acquiesce, although I cannot but entertain the opinion that a very salutary principle is involved in the resolution—one which, if carried out, would do no harm, while it would effect much good.

Mr. GIBSON. I did not intend by any means to stifle the resolution of the gentleman by of-

fering my amendment. It includes in it everything contained in his resolution, but is more extensive inasmuch as it does not confine the committee to any particular mode. I rose, however, for the purpose of moving to change the reference in this way—that the resolution be referred to a select committee, of which the gentleman from Floyd (Mr. Thornton) shall be the chairman.

Mr. KENT. As the gentleman from Floyd says this is the first resolution which he has offered here, and it is merely one of inquiry, I think that courtesy requires that we should accede to the motion of reference.

After some conversation,

Mr. GIBSON moved to refer the resolution to a select committee of five, Mr. Thornton to be the chairman.

Mr. SPANN moved to amend the motion of Mr. Gibson by making the committee to consist of one member from each Congressional district.

Mr. READ of Clark rose to explain that his opposition to the principle contained in the resolution was general, not special. He was not aware that his friend from Floyd (Mr. Thornton) felt any anxiety about having the resolution referred, or he would not have objected. He would take back a part of his remarks—that part which urged that there was no necessity for referring the resolution to a committee.

The question was then taken on the amendment, constituting the committee of one from each Congressional district and it was adopted by consent.

And the question then recurring on the motion to refer the resolution of the gentleman from Floyd to said committee, it was agreed to by consent.

Mr. BOWERS offered a resolution to the following effect:

“That the several standing committees be discharged from the further consideration of all matters referred to them, and that the Constitution, as adopted on the 29th of June, A. D. 1816, be referred to the committee on revision, arrangement, and phraseology, with instructions to amend the same, so as to provide for biennial sessions of the Legislature, instead of annual sessions; the election of all officers by the people, and the applying of all funds arising from fines and forfeitures, to the support of common schools, instead of applying them to the support of county seminaries, and to report the same back to the Convention, so amended, with as little delay as possible; and that this Convention now adjourn until Monday next, at two o'clock, P. M., to enable said committee to discharge the duties required of them by this resolution.”

Mr. KENT moved to lay the resolution on the table.

Mr. BOWERS called for the yeas and nays on that motion.

The PRESIDENT said he would remark to the Convention that this resolution was not in order. By the 44th Rule it was provided that any resolution or other proposition, introduced by any delegate, for the purpose of referring the same to any standing committee, shall embrace one subject only. The gentleman's proposition embraces several subjects, and it cannot, therefore, be entertained.

Mr. BOWERS. Then I ask leave to withdraw the resolution.

The PRESIDENT. There is no necessity to ask leave to withdraw it, for it is not here. It cannot be entertained.

MR. RARIDEN'S RESOLUTION.

Mr. SHOUP. I move that the Convention re-consider the motion by which the resolutions offered by the gentleman from Wayne (Mr. Rariden) this morning were laid upon the table.

Mr. PETTIT. I hope that motion will not be re-considered. I should not have offered it if the gentleman from Wayne had not called the previous question.

Mr. RARIDEN. I will withdraw the call. Mr. PETTIT. I hope this vote will not be re-considered. A long string of resolutions are introduced here by the gentleman from Wayne (Mr. Rariden), and the previous question is called for to gag us without an opportunity either of seeing them in print or of hearing them read—except as the gentleman himself read them, and I will not comment on his fine reading—and as they were read once by the clerk—an allopathic dose of political medicine administered by that gentleman. I thought, sir, that there was a cat in the tub—a snake in the grass. I will say to the Convention that if one of my own political friends in whom I had the utmost confidence had introduced that string of resolutions, or any others as long, I would not have voted for them—much less would I vote for them coming from the source from which they did. [Laughter.]

Now, Mr. President, I have not said heretofore one word about politics in this Convention. It has been said by a dozen members on this floor who have been the readiest to break through all restraint, that we came here to drop all party feelings, all prejudices, and the very gentlemen who are the most clamorous for that proposition are the very first to mix up political doses and try to ram them down the throats of the members of this Convention.

Sir, these resolutions have no business here, though they are as true as truth itself. We do not speak for the State on this subject; the Legislature has soon to be in session, and let them endorse these resolutions if they will. I am satisfied they should. I give my hearty assent and approval to the whole *policy* of the measures of last winter, called the compromise measures, not that they are every one right in detail; but in their principles I hold that they

are right. Sir, I may be allowed to say—and I think it is no digression from this proposition—that I approve of all these measures. But here is a long string of resolutions with an assumption that these measures were all necessary on account of the slavery agitation. Now I do not believe it. In the first place it was the plain Constitutional and absolute duty of Congress to admit California; they ought to have admitted her on the second day of the session. Not, however, because of the slavery agitation, but because she was within our jurisdiction; because our population had settled there; because we owned the territory, and because the people of California had formed a State Constitution and Government; and not because, as is assumed in that preamble, that the slavery agitation made it necessary that California should be admitted as a State into the Union. No such thing, sir. There is no truth in it at all. Was it necessary to abolish the slave trade in the District of Columbia because of the slavery agitation? Not at all. It was not called for by any such considerations. Was it necessary to pass the fugitive slave bill on account of the slavery agitation? There is more truth in the application of these words to this law than to any of the others, for there was no necessity that any of the other measures should be passed on account of that agitation. Was it necessary to pass the Texas boundary bill, or to provide Territorial Governments for Utah and New Mexico, on account of this agitation? Not at all; not at all.

Now is it necessary to pass this string of resolutions, endorsing every sentence, every line, every syllable? It is not necessary at all. It is none of our business. We were not sent here to do anything of the kind, and while I say that I give my hearty assent and approval to the *principle* of the measures of last winter, I utterly repudiate one or two of the features of the fugitive slave bill. I never would have voted for that bill in its present form without trying to amend it. I never would have voted for it without, in the first place, proposing so to amend it that the certificate of the commissioner should not be conclusive evidence, but merely *prima facie* evidence.

Now all those who favor the measure, glory in the idea that Governor Crittenden gave it as his opinion that the law is Constitutional. Who ever doubted its constitutionality? I did not suppose that the veriest dolt in the Union would doubt its constitutionality. The whole question of catching runaway servants, is a right that is transferred to Congress. The States have nothing whatever to do with it. Anything that the States may do individually, and independently of Congress, is wholly nugatory. They cannot add to or take from the power of Congress.

But then Governor Crittenden says, that this law does not suspend the writ of *habeas corpus*.

That, sir, is a mockery—nothing but a mockery. He says the writ of *habeas corpus* may issue. So it may; and then the slave owner comes in and says, "Here is my certificate," and then the Judge is compelled to discharge the writ of *habeas corpus*. The certificate of the Commissioner is conclusive as to the master's right to remove the fugitive. Whereas a full examination ought to be allowed before a learned Judge on its merits. And it applies equally to the indentured apprentice, who may leave his master and abscond into another State. If the Yankee apprentice who is learning to make wooden nutmegs, should run away and come into Indiana, under that law the man to whom he was apprenticed may recapture him, and take him back. It applies not only to negroes but to white apprentices. The objection then, that I make to the law, is not to its principles but to its details—that is that the certificate should not be conclusive, but *prima facie* evidence of the right.

Now these resolutions we shall see in print in the papers on Monday morning. There is no necessity of going to the expense of printing them by the Convention. The newspapers will print them. We shall have them on Monday morning in our papers; and we can then judge whether it would be wise and proper to adopt them, or whether they ought to be amended, or whether they express the sentiments and language of this House, or not.

Sir, I am not in the habit of taking political doses of medicine of anykind, from political opponents. The gentleman has introduced the matter here and it must be met accordingly.

Mr. RARIDEN. I can assure the gentleman from Tippecanoe, (Mr Pettit,) that I had no intention in the introduction of this series of resolutions and preamble, that they relate to any, except two political parties which I recognize—and that is the *Union* party and the *Anti-Union* party.

Mr. PETTIT (in his seat). Oh, the Union party is only another name for the old federalist party.

Mr. RARIDEN. The gentleman may adopt the name or reject it, as he may think proper. It makes but little difference to me; but let me tell him, before I go any further, that as to his having confidence in my political integrity, I shall not lose much sleep about that hereafter. Without impeaching the gentleman's candor I desire to show that he has a behind-the-bush opposition to these resolutions, which he does not disclose.

Now he denounces the idea of these measures having arisen out of the question of slavery. He says that they arose out of the Mexican war—that California should have been admitted at once, &c. I perfectly agree with him; but is there a member of this House, that doubts that if there had been no sensibility on the subject of negro slavery, there would have

been any opposition to her admission? Is any gentleman prepared—

Mr. BORDEN. Mr. President, I rise to a question of order, and I think I have a high authority upon the subject, that will settle the matter. I understand that this motion is not debatable; and I understand so by repeated instances of the kind that have occurred in the House of Representatives at Washington, and other deliberative bodies. The point of order is, that the House having decided to lay a motion upon the table, a motion to take up that motion from the table is not debatable.

The **PRESIDENT.** But this is not a motion to take the resolution from the table. It is a motion to re-consider the vote by which they were laid on the table.

Mr. BORDEN. But it applies equally to a motion to re-consider. Here is the authority: "The motion made by Mr. Hopkins, on the 23d instant, that the House do re-consider the vote of the 22d instant, on the motion that the said memorial and petition do lie on the table, came up for consideration, and the question was stated by the Speaker; when

Mr. Everett inquired of the Speaker, whether the motion to re-consider was subject to debate.

The Speaker decided that inasmuch as by the rules of the House, the motion to lie on the table "shall be decided without debate," the motion to re-consider a vote of the House, or a motion to "lie on the table" must be decided without debate.

From this decision Mr. Everett took an appeal to the House, but subsequently withdrew the same."

I understand that a motion to take from the table is not debatable.

The **PRESIDENT.** The Chair has already informed the gentleman that that is not a motion to take from the table, but a motion to re-consider.

Mr. BORDEN. In the situation in which this question is placed, I regard the motions as the same.

The **PRESIDENT.** If the gentleman from Allen is not satisfied with the decision of the Chair, he can take an appeal.

Mr. BORDEN. I am not disposed to quarrel with the decision of the Chair. I shall not take an appeal.

The **PRESIDENT.** The gentleman from Wayne will proceed with his remarks.

Mr. RARIDEN. I hope that none of this mis-spent time will be taken out of my half hour, for, if that rule were to prevail, then a man might be so situated as not to get an opportunity to speak at all, by reason of such untimely interruptions.

I shall proceed regularly to reply to the gentleman from Tippecanoe; and I say again that it is my object to demonstrate from the gentleman's own remarks, that there is not anything objection-

able in the resolutions themselves, nor that they came from the wrong quarter, as he supposed.

Now, what are the resolutions? They contain a faithful recital of what has been done by the Congress of the United States, with the view of producing a general pacification on certain subjects throughout the United States; and it is an avowal that certain misguided persons within the States, have taken upon themselves to declare that those laws—particularly the law for the reclamation of fugitive slaves—are hostile to the principles of the Constitution, and a violation of the laws, both of God and man, and that all persons who aid in their execution, or advise allegiance to them, are traitors to God and to humanity. These are the resolutions and outgivings that have been given to the four winds of heaven. These are the kind of resolutions that have been reported back from the South, as the common public sentiment of the State of Indiana. This, Mr. President, is a matter of history—no dispute about it whatever. The gentleman must know it. Now for what consideration is he willing that the State of Indiana shall be so understood and represented abroad,—he approving of these acts as he does, though, as he says, not in all the details of some of them—with what propriety, I say, can he stand here and say, "I am not willing to give a contradiction to these resolutions, which I have seen reported in the newspapers, as representing the feelings of the State of Indiana, in reference to these laws—resolutions which have gone to the South, and been reported back through the States, as the orthodox sentiments of our people." Sir, he cannot intend such a blight to come over the State of Indiana, if he thinks that those measures which were passed by Congress, during its last session, were good. No, sir; there is something else about this matter; and it is nothing appertaining either to whiggery or democracy; but it is to leave the question open; it is because a certain portion of politicians in the State of Indiana have taken a position to stand by the laws and see them administered, that other men want to make political capital by taking a doubtful position. Then, sir, I am for bringing every gentleman up. It is quite proper that the Convention should express an opinion; and in doing so, they do not express their opinion as a Convention, acting for the revision of the Constitution, but merely as members of this body, coming from every county in the State, and professing to know the public sentiment on the subject. And they will say "we speak advisedly;" and we do speak advisedly. And, for myself, I fully believe that the public sentiment of the people of the State of Indiana, is, that these measures were brought about by generous and magnanimous concessions from all quarters, and that they had no other object in view than the general restoration of harmony with the sister States; and they

believe that if these laws were carried into effect in good faith, they will produce that result. I believe that we speak advisedly of the sentiments of the people of the State of Indiana on the subject.

And, Mr. President, let me say that one reason why I introduced these resolutions, is, that I see in the county which I represent, meetings have been held and resolutions of the most offensive character adopted, in which the people holding the meeting, declare—particularly in reference to the fugitive slave law, that it is hostile and antagonistic to the Constitution of the United States; that it is opposed to every principle of humanity, and that all those persons who aided and contributed to its passage, or who advise its execution, are traitors to God and humanity; and they conclude with a resolution advising violent resistance to its administration. Yes, sir, and these very resolutions have been quoted back from the newspapers, as the public sentiment of the State of Indiana. Sir, I am not willing, whether whig or democrat—and these are names that ought never to be mentioned when a subject of this sort is on the *tapis*—I am not willing, I say, that such resolutions should be reported as the public feeling of our State, and, if the gentleman from Tippecanoe wishes to propose the course he has advised, he may do so; but he must not profess to me or to anybody else, that he does not believe the question of domestic slavery was the cause of the irritation spoken of in these resolutions. He cannot be so insensible to the events passing before him, as to doubt that the question of slavery and its extension had everything to do with all the questions embraced in what was called the “omnibus bill.” Nobody can doubt it. Whether it was right or wrong that it should have been involved in these questions, is a matter which I cannot now discuss; but it certainly was involved in it, and that is the reason I have mentioned it in the preamble to these resolutions. Now, if gentlemen think that this should be an open question, and that the community should be encouraged, from the idea that it is popular to make an open resistance to this law, let it be so; I can only regret it, while at the same time I must express my willingness to do my duty on this and on all other occasions, in sustaining the law. Admitting that this is a constitutional law, why will the gentleman from Tippecanoe stand idly by and forbid me and every other gentleman, coming from every county in the State, from giving it forth to the world, that it is the public sentiment of Indiana that the law is constitutional; that it was originated and passed in a spirit of compromise and concession; that the object of it was to restore harmony and good feeling among the sister states,—and that it will result in that end, if it be lived up to, I have no doubt.

The gentleman from Tippecanoe (Mr. Pettit) resorts to the old fable of a cat in the meal tub,

or a snake in the grass, to scare his friends into his views. All that I can say is that he is mighty suspicious. I can tell him, however, that I have never palmed anything of the kind off upon him in my life, and I apprehend that is not what he fears. True, I might be ignorantly led into it. But there is no ground for his suspicion here. The thing is drawn up in as clear English language as I am capable of using. The sentiments contained in the preamble and resolutions, are by no means dubious or uncertain. It is just that kind of sentiment, straight up and down, which every man who wishes the world to know the ground he stands upon, would wish to see expressed.

Mr. NILES. It is not my purpose to occupy one moment of the time of the Convention in speaking of the character of the resolutions submitted by the gentleman from Wayne. I have not read them, and I hardly took the trouble to listen to them when they were read by the Clerk. They may, as was alleged by the gentleman, be written in simple and pure English, and they may also contain very simple truths, or they may not. I know not that they do, neither do I care. Sir, for what purpose are we assembled in this Hall? [A voice—“That’s the question.”] Are we not assembled here, an hundred and fifty men, as a Constitutional Convention, for one specific purpose, and that an all-important purpose? And, sir, is it not a well known fact that we are not permitted the necessary time even for deliberate discussion of the most vitally important measures upon which we are called to act? And would the gentleman from Wayne come here and throw upon us a series of resolutions upon which we have no right to act, which must lead to lengthy debate—which will be like a fire-brand in this Hall—and upon which our opinions are worth no more than the opinions of any other one hundred and fifty men within the limits of the State?

Sir, I voted to lay the resolutions on the table, and I shall vote to keep them there. But, sir, I protest that such a vote and such action on my part shall never be construed by the gentleman from Wayne (Mr. Rariden) as indicating hostility to the union of these States. Sir, it shall not be inferred from such action that I am ready to tear down the pillars of this confederacy, or to revel among the broken, and severed, and bleeding fragments of our Union. [Applause.] Sir, I protest again, that because I voted to lay these resolutions on the table, and because I shall vote to keep them there, no such inference shall be drawn; and I say it here now, that because of that vote, neither that gentleman nor any other, shall infer that I hold to any “higher law,” so far as that phrase is understood to mean my own caprice, than obedience to the law of the land in which I live. [Great applause.] No man, sir, shall be allowed to infer from that vote that I am

ready to resist the laws; or to bid them defiance.

The gentleman from Wayne complains that certain misguided citizens, as he deems them, and as, indeed, they may be, residing in his own county, have got up a meeting and passed resolutions which he deems unsound and dangerous. Well, sir, all I have to say to that is, that if he thinks so, let him go back to his own county and call another meeting, and elicit the true and wholesome sentiments of the county of Wayne. [Loud cries of "consent."] Or, sir, if the gentleman deems that the integrity of this Union does depend not upon the deep-seated affections of the people of these States for those institutions which have been transmitted to us from our fathers, upon which our happiness and prosperity so largely this day depend—if he deems that the preservation of these institutions depends essentially upon any momentary expression of opinion offered by any body of an hundred and fifty men, let him call a meeting of the people in this town. There are, today, more than a hundred and fifty men in this town from distant portions of the State, who are as competent to express an intelligent opinion on any such subject as we are who are in this Hall. Let him call such a meeting if he chooses, but not obtrude upon this Convention matters which are as foreign to the province of its duties as questions regarding the tariff, or international intercourse, or any other question of national legislation.

And, sir, more than this: I protest that an opinion should never be sent out upon the wings of the wind that our attachment to the Union of these States is so slender, so doubtful, so divided, that it is necessary for us, in order to maintain our fidelity, to be engaged in making such protestations. [Great applause.] Such protestations on the part of the people of Indiana are not necessary, and they never will be necessary. [Applause.] * Sir, it never has been in the power of demagogues in or out of Congress to dissolve this Union. All their gasconade upon the subject is only like "a tale told by an idiot, full of sound and fury, signifying nothing." Such action as is proposed in this Convention only ministers to an excitement which would die of itself. The people of this State will cling to this Union, they will abide by the compromises of the Constitution; they will submit to the laws of the land; there is no more law-abiding people upon earth, and there is no need of the adoption of resolutions of any kind to convince not only the people of the North, but South Carolina herself, that such is our purpose. [Renewed applause.]

Mr. KILGORE. I most cordially concur in the sentiments of the gentleman who has last taken his seat, (Mr. Niles,) when he says that these resolutions ought never to have been introduced here.

Mr. RARIDEN (interposing). That is your opinion.

Mr. KILGORE. In my opinion, with all due deference, nevertheless, to the opinion of the gentleman from Wayne. But, sir, they are here, and "in my opinion" [a laugh] they have been placed by the Convention where they ought to be allowed to remain. ["Hear, hear."] I should have been proud if my experienced friend from Wayne had given us, in detail, the great advantages derived to these States from what are commonly denominated the compromise measures. When we speak of a "compromise" we understand that there are mutual concessions on both sides; and I should be glad to hear the gentleman from Wayne explain to this Convention, in support of the motion to reconsider the vote, what, in this "compromise," has been given up on the part of the South. In this great compromise question, or batch of questions, I would like to know what the South has surrendered? As was correctly remarked by the gentleman from Tippecanoe, (Mr. Pettit,) in the question of the admission of California there was nothing compromised on the side of either party. It was a stubborn determination on the part of Congress to abstain from acting directly on that question when first presented—a determined resistance to the admission of California as she ought to have been admitted under the Constitution of the United States, without keeping her in a state of delay and uncertainty for nine long months. Was there any surrender of principle or of interest on the part of the South when she was admitted? I say I would like to know what the South surrendered? No change whatever was made in her original Constitution. She was admitted upon the same terms and principles as those on which she originally applied for admission. There was, therefore, no surrender here of anything on the part of the State—nothing, sir, except a disobliging delay to the State of California herself in resisting her admission into the Union.

Then, sir, let the gentleman from Wayne tell me again in relation to the abolition of the slave trade in the District of Columbia, what the South surrendered there. This was a question on which the majority of the Senators and Representatives of the United States had a right to act; and they did act upon it, and that decisively. But I would like to know where were the concessions of the South so far as that question was concerned?

Then again, in relation to the Texas boundary question, I would like to know what the South surrendered in regard to that. Why, sir, is it not a notorious fact, that everything was yielded up on the part of the North, and that the government of the United States gave to Texas seventy thousand square miles of territory, in exchange for sixty thousand square miles, to which Texas had no right to carry

slaves! Thus they got ten thousand square miles more of territory than they owned, and ten millions of dollars into the bargain, the major portion of which is contributed by the Northern States. That was a "compromise," sir—a great "compromise." There was much yielding on the part of the South there, sir—a great amount of "concession" in that. No, sir. The South has yielded nothing, and got everything—everything has been done in favor of the South; and to talk about "compromise" between the North and the South, is to talk nonsense—absolute foolishness.

Then, sir, in regard to the territorial bills for Utah and New Mexico. I would like to know from gentlemen here, of all parties, both whig and democrat, who surrendered principle in regard to these bills? Was it the South or the North? Each party in the free States, both whig and democrat, were in favor of carrying into the territorial organization the principle of the Wilmot Proviso. They abandoned that principle on the floor of Congress for the gratification of the South. The North yielded everything. There was no consideration given to the North for this; and the territorial bills, like the other measures, passed without any concession on the part of the South. The compromise upon that question was all upon the part of the North. And yet these are the great peace measures, according to the position of the gentleman from Wayne, adopted for the purpose of securing harmony and insuring the peace of the country.

Sir, the course of the South in regard to these measures is the course which she has universally pursued. Whenever they desire to obtain the repeal of an unpopular measure, or to carry a favorite one, they raise the cry of "nullification" and "disunion." What do they propose? Have they compromised any principle? Have they yielded a single thing to the North? No, sir. They demand that the compromises should all be made in favor of the South; and if that is not done, then "nullification and disunion" are their watchwords; and we have been in the habit of yielding to their dictation; and then, when we have done so, we receive from them the courteous appellation of "Northern doughfaces." Then, sir, when we talk about these measures as a great compromise—as measures of mutual concession—we talk nonsense; for the concession is all on one side, and the two great parties, so far as the Wilmot Proviso was concerned, gave up everything, while nothing whatever was given up on the part of the South.

Well then, sir, I come to the fugitive slave bill; and I should like to know what the South has yielded there? She has now got a fugitive slave bill a hundred per cent. stronger than ever she had at any other period of the government—a law that makes the certificate of a commissioner or a county justice of the peace

conclusive evidence, not only here, but elsewhere. It is said by some gentlemen that this bill does not suspend the writ of habeas corpus. It does not do so in so many words; but when that writ issues, it is only necessary to return the certificate of the commissioner or justice of the peace, and that stops every proceeding; it is a sufficient answer; for, in the language of the bill itself, it is conclusive, and *shall be* conclusive to all courts on that question. But let us examine it a little more. It is conclusive so far as the rights of the master are concerned; but is it conclusive in favor of the slave? No, sir; even if a suspected slave should be discharged by one commissioner, the claimant can have an examination before another. Yes, he may have five or six examinations if he pleases; and thus, while this certificate is conclusive in favor of the master, as to his right to the slave, the discharge of the slave, upon a proper trial and legal hearing, is no bar to subsequent proceedings against him, by the real or pretended master; it is not conclusive as to the unfortunate negro's right to freedom. Not only is the law much stronger in this respect than any heretofore passed, but a largely increased penalty has been denounced against those who aid in the escape of a slave. By the law of '93, the penalty was five hundred dollars for aiding in the escape of a slave. This law makes it a criminal offense, subject to an imprisonment for six months, and a fine of one thousand dollars. Thus, sir, a man by this law is not only made a criminal for doing that which his conscience tells him, according to the law of God, he should do; but the old penalty is increased from five hundred to one thousand dollars. Thus you see that everything has been surrendered in favor of the South—everything surrendered on the part of the North in this matter of compromise. Truly, this is a great compromise!

But the gentleman said that these measures were all necessary to save the Union. If the declaration of the Southern gentleman is evidence that this Union is to be dissolved, my word for it, five years of our existence will not pass over before we have the tocsin of alarm sounded from the South that the Union is in danger. Now, sir, we know that they have been trying to hold meetings in the South, and have made a great noise about "disunion;" but now, after all, what is the result of all their meetings? Why, to use a common expression, they have "fizzled out." [A laugh.] And, sir, it will be just so with that class of meetings referred to by the gentleman from Wayne as having been held in his own county. This meeting passed resolutions denouncing the fugitive slave law. I do not know what the feeling of that county may be. But, at all events, these resolutions may be simply the expression of the opinions of a minority; and if that be so, why, then, let it go to the world for just so much as it is worth. Where, sir, is this great

Union meeting which we saw advertised to take place in Indianapolis some five or six weeks ago? Why not let the people come here and freely express their opinions with regard to these compromise measures, if they wish it? But it is well known to every gentleman here that these compromise measures were never discussed before the people when the question was taken as to calling this Convention; and I will venture the assertion, that there is not a single gentleman who rode into this Convention as a passenger in that Omnibus. And yet, sir, we are asked to travel beyond our legitimate sphere, and pass resolutions approving of everything contained in these measures.

Now, if the motion to re-consider should prevail, and this preamble and resolution should be adopted, I should like to learn from the gentleman from Wayne in what part of the new Constitution he designs that they should have a place? Will he affix them to the end of the Constitution, in the shape of an appendix? I, for one, shall be decidedly in favor of affixing them to the Constitution, and as a last clause, to have the yeas and nays—every man's name there for and against them, [applause,] that it may go down to posterity as a memento of the folly of those who preceded them. ["Consent" and applause.] It is suggested to me by a friend who sits near me, that we might likewise add "the song of Moses." [Laughter.] Well, perhaps that also might be appropriate as an appendix to the Constitution. It is certainly just as appropriate to introduce the song of Moses into our new Constitution, or even into this Convention, as it is to introduce the preamble and resolutions offered here by the gentleman from Wayne. I regret to be under the necessity of differing with the gentleman. We have been fighting together in this good cause for a great many years; but if he is resolved to part association and go off with a new party, I cannot help it. This union party will unquestionably embrace all parties, and it may be possible that the gentleman from Wayne may become the leader of that party, and that he may, for once in his life, be in the majority. [Laughter.] If he should become the leader he certainly will be in the majority if it be a great ruling principle that the majority will forever be in the ascendancy, for if the abstract question of union or disunion were placed before the people of Indiana to-morrow, I venture the assertion that five hundred people in the State could not be found who would say that they were favorable to disunion. Nay, more, sir. I will still further venture to say, that of those persons who have examined those measures which were discussed in Congress during the last session, there are not five hundred sane men in the State of Indiana who have ever entertained any fears of dissolution. [Cries of "no, no."] It is all gammon, sir. Political men may talk about it as they please; but let the question of

union or disunion be put to the masses of the South—even if every bill in Mr. Clay's omnibus had broken down—and you would find that four out of every five of the entire population of the Southern States would be in favor of the Union to the last. That is the opinion I have always entertained. Why, sir, how was it in Congress, when all these exciting speeches were made? Why, sir, as a general thing, there were not more than thirty members in their seats listening to these inflammatory speeches from Southern gentlemen who were all the time holding out before the country the terror of "disunion" and "dissolution." Why, sir, if there had been half as much danger to the Union as one might have supposed from reading these speeches at home, there can be no doubt that they would have been listened to in the Halls of Congress with the most lively attention. No man would have left his post, when questions of such vital importance to the interests of the country were being discussed.

Now, sir, we have reached the hour of adjournment, and perhaps I may be allowed to say that we have occupied quite as much time as we ought to do in discussing a matter so entirely irrelevant to all the purposes for which we were sent here. I hope, therefore, that the vote may not be re-considered. Those who voted for laying the preamble and resolutions on the table, I have no doubt intended that they should remain there. I rose in my place for the purpose of making a motion that they should be laid upon the table, but the gentleman from Wayne gave notice that he would recall the previous question. The gentleman from Tippecanoe (Mr. Pettit) opposed it, and the resolutions now lie upon the table, and I hope that they may be allowed to lie there, and that we may proceed to take up the business which legitimately belongs to us, and try in the most expeditious manner to re-model the Constitution and go home to our constituents. If we have any fear of the perpetuity of the Union in consequence of the resolutions which have been passed at the meeting in Wayne county, let us call mass meetings and repudiate these Wayne resolutions.

Mr. PEPPER of Crawford. This is not the proper place to discuss the merits of the Fugitive Slave Law, the admission of California, nor the Texas Boundary Question. Our convening in this Hall was for a far different purpose. And, sir, in my humble opinion, we can more certainly show our attachment to the Union by attending to the business we have been sent here to perform. I have never yet moved the previous question, and dislike to do so, but for the purpose of cutting off useless debate which can result in no good, I would be pleased to see the previous question sustained at this time.

Pending the question on the motion to re-consider,

On motion by Mr. PETTIT,
The Convention adjourned.

AFTERNOON SESSION.

The PRESIDENT. The business pending at the time of adjournment this morning was a call for the previous question, made by the gentleman from Crawford (Mr. Pepper) on the motion to re-consider.

Mr. KENT. Before we proceed to the transaction of any business we should have a majority at least of the members in their seats. I move, therefore, a call of the Convention.

The motion was agreed to; and the roll having been called through by the Secretary—

Mr. BORDEN moved to dispense with the further call of the Convention, and the call was dispensed with.

The PRESIDENT. The question is now upon the call of the gentleman from Crawford for the previous question.

Mr. PEPPER, by request, withdrew his motion.

[Mr. WALPOLE here took the floor and spoke at some length in support of the resolutions introduced by the gentleman from Wayne (Mr. Rariden). His speech is now under revision, and will be published hereafter.]

Mr. BASCOM. I desire to say a few words in regard to my position on this question. I presume, sir, that however loudly and dictatorial gentlemen may choose to speak, no member here will be driven or forced into a wilful transgression of duty. I am opposed to the question being argued here on Union ground, for I do not believe that there is a man in Indiana in favor of disunion. What, sir, is the use of calling Union meetings and keeping up agitation and excitement, and talking about the dissolution of the Union? Who fears dissolution? who cries dissolution? No one, sir; but broken down politicians, such as the one who introduced the resolutions now under consideration.

I am opposed, sir, to occupying the attention of the Convention by reading extracts from the newspapers of the day; but then as there seems to be a fitness in connection with the present subject in reading a short extract from a newspaper in my possession, I will do so. This paper, sir, is published in the county from which the gentleman from Wayne hails. It purports to be from a Centreville correspondent:

"As Mr. RARIDEN is the oldest, I will place him first on the list. He is endeavoring to manufacture capital for himself by mounting the hobby of opposition to negroes and advocating their extermination. By catering to the prejudices against that unfortunate class he obtained a seat in the Convention, and he hopes to be equally successful in getting a seat in Congress on the same ground. Hence his course in the Convention, in speaking in favor of negro prohibition and in favor of the fugitive law. He is bidding high to get to be the administration

candidate for Congress, and I should not wonder if he would succeed, for he has taken bolder ground than any of the other aspirants."

Mr. RARIDEN. What paper is that?

Mr. BASCOM. It is the "Jeffersonian," dated November 18, 1850.

Mr. RARIDEN (in his seat). I suppose the gentleman wrote the article himself.

Mr. BASCOM. What did the gentleman remark?

Mr. RARIDEN. I would ask the gentleman if he is not in the habit of writing articles in which my name is used?

Mr. BASCOM. Not to answer the gentleman in an abrupt manner, I would say that it is none of his business. I shall write for whatever paper I may see fit.

A portion of the preamble I consider false so far as I am concerned.

Now, sir, this preamble is not a fair one. I do not know what the sentiment of the people in my county is upon the subject. When I left home they did not know of the passage of the fugitive slave law. From what I know, sir, I believe my people are opposed to the law; and yet the members of this Convention are requested to endorse it, although their constituents may be opposed to it.

Not only that, sir, but these resolutions are out of place in this Convention. We have assembled here not to pass slavery resolutions, or resolutions affirming the acts of Congress, but simply to revise and amend our old Constitution. If the people are satisfied with the action of their representatives let them say so to them personally or by mass meetings. Let them not call upon us to call Union meetings and pass resolutions endorsing their action.

If the Delegate has got into a squabble with his constituents on the subject—if there are disunion men in his county that he wants to put down—let him go home and adjust the matter.

He should not rise in this body, sir, and ask one hundred and forty odd men, residing out of his county, in other parts of the State, to pass resolutions for his benefit to support him against a portion of his constituents. If these resolutions are passed the gentleman from Wayne can go home with them and say that the Constitutional Convention, assembled in the Capitol of the State, has sustained him in the position he has taken on the subject mooted in his resolutions.

I am as willing, sir, to stand by the Union as any other man. My people are entirely in favor of the Union. I do not, sir, believe in Union meetings, for I have no fears of disunion. It is nothing but some political tricksters who are trying to raise an excitement amongst the people.

Mr. RARIDEN (in his seat). Such political tricksters as Clay, Webster, and Benton.

Mr. BASCOM. I am talking about the Constitutional Convention of Indiana, and not of

our Congressmen. I look upon all these attempts to create dissension, sir, with contempt, and their authors cannot fail to receive the just indignation of the people. I hope, sir, that the Convention will not re-consider the motion that laid these resolutions on the table; if they do, sir, I shall offer an amendment to strike them out entirely.

Mr. OWEN. This morning, sir, the resolutions before us, covering three pages of foolscap, were introduced by the gentleman from Wayne (Mr. Rariden). I was not so fortunate as the gentleman from Wells, who had previously seen them in print. I but heard them read hastily at the Secretary's desk, and was called on, under the previous question, without opportunity to examine or time to consider them, to vote for their acceptance or rejection. Thus urged to instant decision, I voted to lay them on the table; and under the same circumstances, I should repeat, twenty times, the same vote.

I say this, not that I do not approve the general tenor of the resolutions; but because no series of resolutions, containing so many words, involving so many propositions, on a subject so important as this before us, ought to be thus urged to a vote here, without a single chance afforded to utter a syllable, or to offer an amendment. This is not the proper manner to obtain the calm, deliberate judgment of this Convention, on questions which, for a twelve month past, have convulsed the Union.

I had yet another reason for the vote to lay on the table. I doubted whether the resolutions could be received, discussed, and passed upon here, without stirring up hard feelings, and giving birth to sectional heart-burnings. The result has justified my expectation. Indiana, like the Union of which she forms a part, has her North and her South; and popular sentiment on the subject matter of these resolutions, is very different in one of these sections from what it is in the other.

But now things are changed. On a motion to re-consider the vote to lay on the table, debate has arisen, and speeches have been made—especially by the gentleman from Delaware (Mr. Kilgore)—which, if we refrain from acting in this matter, must create false inferences. It has been urged that we should frown down these resolutions, because they sanction a series of acts passed last summer by Congress, which are, in fact, but a tissue of injustice to the North, and which ought, therefore, to be condemned and denounced. That is not my opinion; nor, very certainly, is it the opinion of more than a small minority of this Convention. And we ought not to suffer so false an inference to go abroad, a fire-brand cast forth amidst the inflammable matter which the recent action of our National Legislature has smothered only, not wholly extinguished. We must not, by our action or by our silence, supply texts to fanatics, Northern or Southern, in their preach-

ings against the Union, or in their efforts to dissolve it.

It is nothing to me, sir, whatever it may be to others, whence these resolutions came, whether from a whig or a democratic source. I can say, with perfect sincerity, that, as to one-half, at least, of my fellow-delegates here, I have forgotten or never knew, to which political party they belong. Some there are who take good care we shall not forget it. Among them are the gentleman from Delaware, (Mr. Kilgore,) and the gentleman from Hancock (Mr. Walpole).

Mr. WALPOLE, As one of the gentlemen alluded to by the gentleman from Posey, I would say, that any reference that I have made to the action of political parties was made because of provocation given by that gentleman in his speeches. As for instance, the one in regard to internal improvements, the other day.

Mr. OWEN. I gave no such provocation, as the Convention well knows. In adverting to the action in 1835-6 as to internal improvement, I referred not directly or indirectly to party; and spoke of it solely in proof that the people may, for a time, approve and endorse a law of such a character, that it has led half way to ruin and bankruptcy.

Mr. WALPOLE. I challenge the gentleman from Posey to name one only of the multiplied cases in which I have attacked his party without provocation.

Mr. OWEN. Has the gentleman already forgotten—the Convention at all events has not—his recent denunciation of democrats and democratic leaders, as distrusters of the people, as men who set themselves up as “thinking machines” for their fellow-citizens? And all merely because we did not think it necessary or wise to leave an open clause in the Constitution, submitting the question of an increase of the public debt, to the people.

I had yet another reason, sir, for voting to lay the resolution on the table. They do not suit me in their present form, with their present wording.

Mr. WALPOLE (in his seat). Ah! now it comes out.

Mr. OWEN. I suppose that when a proposition is submitted to us here, whether it be a series of resolutions or a section of the new Constitution, it is our privilege, if we do not like it as it stands, to state our objections, and move to amend.

Mr. WALPOLE here rose to interrupt Mr. Owen, but was declared out of order by the Chair.

Mr. OWEN. It has seldom been my fortune to attempt a reply to anything that has fallen from the gentleman from Hancock, without being interrupted by him some half dozen times. He calculates, perhaps, the difficulty of preserving the connection of an argument, if in

the course of it, the thread be continually broken.

There are two things which, in my judgment, as the question now stands, we ought to do. The one is to declare in a general way, our approval of the series of Acts, usually called the compromise measures, passed by Congress during its last session. The other is, to assert, in terms the most unequivocal, that it is the duty of every good citizen to obey the law, whether he approve its provisions, or not. Let us do these two things in the briefest and plainest language; and that is all we need do.

As to the details of these various measures, I doubt whether half the delegates on this floor, have ever read them through; at all events with a view to scrutinize the several provisions of each. In these detailed particulars, then, it would be unreasonable to ask this body to pass judgment for or against them. And as regards one of them—the fugitive slave law—many of its provisions has yet to receive a construction from the courts; and we may well be excused if we scruple to endorse its details, since neither of our Senators voted for or against it.

Mr. PETTIT (in his seat). They dodged the question.

Mr. OWEN. There may be some vindication. I do not know the circumstances that caused their absence from the Senate Chamber at that time.

For myself, I say frankly, that, there are some of the details of that law which I cannot approve. Had I been a member of Congress at its last session, I should have resisted these, by every legitimate means—by offering amendments or otherwise—to the very last. But if, finally, when all attempts to modify had proved unavailing, the passage of the bill had become necessary as the sole means of calming the wide-spread and pestiferous agitation which pervaded the land, I should have cast my vote for it, faulty as I conceive it to be.

The opinions of the Convention on these matters should be expressed, I think, as briefly as possible. To this end I have prepared a preamble and resolutions not more than one-fourth as long, I think, as those offered by the gentleman from Wayne, which I propose, at the proper time, to offer as a substitute; and which I will now ask to have read by the Secretary.

The preamble and resolutions were read by the Secretary, as follows:

WHEREAS, the Congress of the United States, passed at its last session, a series of Acts, commonly called the compromise measures and including the law for the reclamation of fugitive slaves; and

WHEREAS, certain misguided individuals in this and other free States, have expressed their determination to resist said fugitive slave law; Therefore, be it

Resolved, That in the opinion of this Convention, the common sentiment of the people of

Indiana sustains and endorses, in their general features and intention, the said series of compromise measures passed by Congress, and recognizes in the success of these measures, an earnest of security and perpetuity to our glorious Union.

Resolved, That whatever may be the opinions of individuals as to the wisdom or policy of any of the details of the fugitive slave law, it is the duty of all good citizens to conform to its requisitions, and to carry out, in good faith, the conditions of that compromise on the subject of domestic slavery, which is coeval with the Federal Constitution.

Resolved, That a copy of this preamble and resolutions be transmitted to the Governors of each State and Territory in the United States, and to each of our Senators and Representatives in Congress.

Mr. RARIDEN. If it will shorten debate, and harmonize the action of the Convention upon this subject, I will accept of the resolutions of the gentleman from Posey, as a substitute for those I have presented.

Mr. OWEN. The general tenor of my resolutions is similar to that of the resolutions submitted by the gentleman from Wayne. One or two of the expressions, even, I have retained.

Mr. TAYLOR. I wish to make a few remarks, Mr. President, merely to place myself right upon this great Union question. I think, sir, this is a question which, above all others, merits, as it should receive, the action of this Convention. When we see sir, that the Congress of the United States, for the last six months, have been constantly occupied in trying to settle and harmonize the differences that have existed between the South and the North, and have succeeded in adopting a series of compromise measures, why should we not come forward, as representatives of the people of Indiana, and endorse in a public manner the propriety, and the correctness, and the justice of the settlement they have made of questions that have so long distracted and divided this nation. I must confess, sir, that I have been considerably surprised in hearing gentlemen very nearly my equal in age, and much in advance of me in talents and experience—getting up and expressing their amazement and regret that such resolutions as those now under consideration should be introduced into this body. I confess my surprise, that gentlemen assert that this is not the proper time nor occasion, for sending forth such an expression of our sentiments, as the adoption of these resolutions would present to the world. This conduct, sir, is the more strange because there never has been a period in our history, as a republic, when it becomes the friends of this glorious Union, to stand up more earnestly in its support. A feeling has been in existence for a number of years favorable to the disunion of this confederacy; and no man can shut his eyes to the dissensions that

have been created by that portion of the people entertaining those opinions, and which are, even now, sapping the very foundation of our Republic. And yet gentlemen get up here and say there is no necessity of acting upon the question—there is no fear of a dissolution of the Union.

I think, sir, some of the remarks of the gentleman from Hancock (Mr. Walpole) were exactly in point, particularly where he alluded to the evasion of duty, so often the characteristic of public men. If there is any one thing more than another that I dislike, it is to see time-serving, truckling, politicians, afraid to come out and give an expression of their opinion in regard to public questions, although those questions may be of the utmost importance, and involve the very existence of this Government. It is too often the case, sir, that men, who set themselves up for party leaders, avoid all action upon questions of importance, until they discover which side meets with public favor; and when they have discovered what is the public will, and the popular feeling, then, and then only, do they make their views known. I utterly despise such politicians, and I earnestly hope there are none of that character here. The vote proposed to be taken upon these resolutions, or some amended proposition, will bring the question properly before this Convention, and we shall know the views of members in regard to this matter. Gentlemen cannot get rid of their responsibility, or evade the question, by rising in their places, and declaiming of the impropriety of the introduction of these resolutions, or by any other subterfuge.

Gentlemen tell you that there is no danger of disunion. Why, sir, not only are political parties divided upon the question, but the religious denominations of our country are also divided. Three of the strongest and most powerful of the religious organizations of the nation are divided upon the great question of slavery. Why was it, sir, that the Methodist Episcopal Church met at Baltimore in conference, and divided the northern and the southern portions of it upon the slavery question, if there was no agitation in regard to it? Had they not the same political and social ties binding them to this Union that we have? Was not their religious fidelity to their church more binding than any mere political or party ties? And yet they met in conference and determined to divide their churches, and set their ministers off, some in the South and some in the North, to promulgate different religious views upon the subject of slavery. Such also has been the action of the Baptist Church; and the Presbyterians are even now on the point of taking the same course. In view of these things can it be said, there is no danger to this beloved Union. I feel, sir, there is great danger of this Union; and it is my deliberate judgment if it is ever dissolved, upon any question, it will be up-

on the slavery question. It is evident then, sir, that this is not a matter of such small importance as gentlemen seem to flatter themselves it is. The question is now before the Convention, and how are we to get it out? As the gentleman from Posey (Mr. Owen) has remarked, how can we get rid of this question, when it is now before us, by moving to lay it upon the table, or by smothering it down in some other way, without giving cause for false impressions abroad as to our conduct in the premises. The question is whether the members of this Convention have the nerve and the determination of purpose to assert that they will carry out and sustain the compromises that lately passed Congress, and under all circumstances, give them their support, while they are the law of the land. All that is necessary, sir, for us to do is to acknowledge the principle contained in those measures, and this can be done in a few brief resolutions. The principles contained in the fugitive slave bill, that of surrendering the fugitive from labor, to his master, who may pursue and claim him, is a principle guarantied by the Constitution of the United States, and one that we should seek to carry out in good faith.

For one, sir, I am determined to give my vote for any set of resolutions that will combine all these objects. I have not had the pleasure of hearing the resolutions, offered by the gentleman from Wayne, read, that are now lying upon the table. I may prefer the proposition of the gentleman from Posey. I think it is probable that I shall, as the series he proposes are more brief and to the point, I understand, than those offered by the gentleman from Wayne. It is our duty, under the Constitution, to carry out such laws as may be passed by Congress. There can be no truckling or evasion on this point. Gentlemen may endeavor to evade their Constitutional duty, but the country will hold them responsible for such action. I do trust, sir, that we will take up these resolutions from the table, and if it be necessary, that we amend them in such manner, as that they shall suit every member of this Convention when we come to vote directly upon the subject, and ascertain whether there is any one desirous of repudiating the late action of Congress, or of not carrying into effect the measures of conciliation and compromise, which they adopted.

Mr. COOKERLY. I am one of those, sir, who voted to lay these resolutions on the table, and that too without fear of being called a disunionist, as one not in favor of preserving this Union. I voted to lay them on the table, sir, because I believed this was not the place nor the occasion for their introduction. I ask the members of this Convention, for what have they assembled here? For what did the people send us here? Did they send us here to discuss resolutions, declaring whether or not this

Union shall be dissolved—whether slavery is right or not? Whether the North or the South are acting correctly or not? No, sir. They sent us here to alter, revise, and amend the organic law of the State. We are here, sir, for that purpose to-day. We are not here to consume the time of this Convention and wasting the means of the people in discussing measures which have been decided in Congress, and which have become the fixed laws of the land. And, sir, I will not permit any gentleman because I take this position, to call me a disunionist. Because, sir, every one who is acquainted with my political action, knows very well that I am no disunionist. If gentlemen apprehend a dissolution of the Union, why do they not return to their constituents and get up Union meetings. In their meetings, they can present resolutions sustaining the action of Congress, and have them passed without interfering with the public business of the State.

The gentleman from Hancock (Mr. Walpole) appears to have become very patriotic all at once, and comes out a most determined champion of the Union. If that gentleman has always been so much in favor of Union, why did he not jump upon the democratic platform in 1848 and assist in electing General Cass to the Presidency, whose election would have prevented all this agitation and difficulty. [Applause and cries of "consent, consent."]

As has been well remarked by the gentleman from Posey, (Mr. Owen,) this matter has assumed a serious aspect, and we are bound to vote upon this question now it is before us, and after what has been said in regard to it—otherwise it will appear as if we desired to avoid the issue. If the gentleman from Wayne was so desirous of having an expression of the sentiment of the people of Indiana on this question, why did he not wait a few weeks, until the representatives of the people had assembled here? He would have then heard a voice from the people of Indiana that could not have been misunderstood, for I am well assured that those who have taken a prominent part in bringing about the adoption of these compromise measures will be sustained by the people of Indiana.

Gentlemen talk about the danger of dissolution, but I affirm, sir, it cannot be dissolved; it is too firmly seated in the hearts of the American people. Politicians might dissolve it if they could for the purpose of elevating themselves, but the people would never consent to it. I shall vote for the re-consideration, sir. I am bound to do it although, at the same time, I believe these resolutions were unnecessarily and inappropriately brought in. We have spent already about six hundred dollars of the people's money over the question, and I say let the blame rest upon him who introduced it.

Mr. RARIDEN (in his seat). Consent, consent! and those who voted against it.

Mr. KELSO. I should not trouble the Convention now if it was not for the fact that if the motion which laid these resolutions on the table is re-considered, it will bring us back to where we started; and the previous question having been called, I will be deprived of the privilege of expressing my sentiments in regard to the matter, and having a little to say on this question, I will take advantage of the present motion to re-consider to say what I desire to say. Gentlemen may call me time-serving, or anything else they please, but it will not change my position, nor deter me from saying what I consider to be right. What I have to say, sir, upon any question will always be uttered without fear of favor or reproach.

Now, sir, I am directly opposed to the proposition upon the table, and also to the proposition of the gentleman from Posey, (Mr. Owen,) because I do not think that such propositions should be entertained by this body. I care not where these propositions come from, or how short and pointed they may be, I am utterly opposed to their being entertained by this body. I maintain, sir, a vote upon these resolutions will be but an expression of our opinion in regard to the great question of slavery or anti-slavery—no more, nothing more, nor nothing less, than this subject; and its introduction here is just about as appropriate as the question of the tariff or the correctness of the privilege of taxing foreign merchandise for the protection of home industry, and I presume no gentleman on this floor will contend seriously that that is a fit subject for our consideration. The question simply is whether this Convention will send forth to our constituents our approbation or disapprobation of the fugitive slave bill. That, sir, is the real bone of contention. I have to say, sir, in regard to this bill, that taking the law as it stands, all together, if I had had a vote in the Congress of the United States when it was first presented for their action, I should have voted against it.

Mr. RARIDEN (in his seat). Would you vote to repeal it now that it is passed?

Mr. KELSO. If gentlemen think that I am afraid to express my sentiments on this or any other subject, they have mistaken the man. I declare, sir, I would vote to repeal it. We had two worthy and talented men in the Senate, or they ought to have been there when the fugitive slave bill passed, but were not. I have conversed with both of these gentlemen since the law passed, in this Capital, and one of them has stated to me that he believed amendments were necessary to that law, and that amendments, this winter, would be made to it. Suppose, sir, that we take up these resolutions from off the table and pass them. Now I ask you if that will be anything more or less than saying to our Senators that we are satisfied with the law as it is—you need not amend it.

Mr. President, I am opposed to the law, and I am not ashamed to avow it here. I say, sir, any law that forces me to become a slave catcher will meet with my condemnation here and elsewhere. I am no abolitionist, sir; neither will I become one until you present to me some good and legitimate place of getting rid of this class of people. At present I will favor no proposition calculated to make their condition worse than it now is. If you turn them loose, give them their freedom, and allow them to live among us, you must allow them to become part and parcel of our community and admit them to all the privileges of citizens, and until you do that by giving them freedom, you put them in a worse condition than they now are. But that, sir, should not be done. Let them remain where they now are until you can make other provisions for them where they can live as freemen indeed; but to live among us on an equality they never can.

I would as soon engage in almost any other unholy business as to engage in the pursuit of runaway negroes, for I look upon such business as I would upon stealing black sheep in a dark night. No one was formerly compelled to do it. And now striking directly at the conservative rights of the people of Indiana and the other free States, the Congress of the United States has passed this law compelling the citizens of this State, through the agency of the United States Marshal, to aid upon the demand of the owner of slaves to catch them, and that officer has the right to compel every citizen of Indiana to become *particeps* in that business. The Constitution of the United States has always required the delivering up of the fugitive from labor; but under this law there are new and more stringent provisions by which the citizens of the free States are called upon to comply with. Here is a negro in Indiana who has absconded from his master and finds his way here. He gets here and he feels partially secure, as there is no one here to claim him. He is not regarded as property by the laws and Constitution of this State. When he puts his foot upon our soil, so far as our laws are concerned, he is a freeman, and if his master lands him here, knowingly and intentionally the strong presumption would be that he would be a free man indeed, and that his master could not reclaim him. But if the slave comes here of his own accord, without the knowledge or consent of his master, it is certain that he is not a freeman; he can acquire no additional freedom by his own act, so far as the ownership of his master is concerned. As no man here claims to be the owner or can take possession of, and claim, him, and the master alone can do it, why should the citizens here be called upon to take him and deliver him up? No man claims the negro, no man has him in possession, no one is harboring him; he is running at large upon his own hook. I say, sir, in view of that fact no man should be

compelled, against his will and against his conscience, to interfere for or against the negro, and it is a bad law. As has been well remarked by the gentleman from Delaware, (Mr. Kilgore,) I desire that that which is bad shall be taken out of the law, and the bare principle of the right of the master to the slave be recognized. No man should be allowed, under heavy penalty, to aid the slave to escape; and in case of resistance to the law, by any but the negro himself, the Marshal should have the right to command the citizen, and not otherwise. You may arrest the slave to-day and take him before the proper officer, and to-night be discharged, and to-morrow you can arrest him on another process, and so arrest him from time to time until the magistrate gives you a certificate whereby the claimant can take possession of the negro.

And such a course must, and inevitably will, produce more or less of excitement in any civilized community. It is a desperate and bitter struggle on the part of the colored man for his rights and his freedom, which is undoubtedly as dear to him as it would be to us. On the other hand the struggle is equally desperate for the ownership, and a valuable acquisition of property in the negro; it is submitted to the judicial administrators of the law, and after full proof and due deliberation the negro is discharged.

Should the claimant still pursue his victim, as if determined to subject him to the shackles of slavery in defiance of law, order, and humanity, would not any community of Christian people feel the full force of such an outrage, and become incensed at it.

And where, I ask, would the fault lie? Not at the doors of the people who became excited at an open attempt to defeat the law by dogging the officers of justice into compliance. Not at the door of the negro, who certainly has an indisputable right to contend for and maintain his rights and freedom, if he can do so by law. Who then, I again ask, is in the fault? None, sir, but he who tramples upon the law and the rights of other men in open defiance of the law.

Well, sir, the moment they have succeeded in producing an excitement the whole burden is thrown upon the shoulders of the United States Marshal and the citizens of your State.

All the claimant has to do is to make an affidavit that he has reason to fear, and does fear, that there will be forcible opposition to the removal of the slave; after that he may stand back and take his ease by leisurely looking on. The Marshal, as a public functionary, is bound to act; he cannot act efficiently alone; he commands the citizens to aid, not only in capturing the negro, but in delivering without the limits of Indiana; and the General Government pays the expense of it. And in case the negro, when so captured, shall escape *either with or without* the fault of the Marshal, or his deputy, the Mar-

shall pay for the negro; the master himself might aid the slave to make his escape, and thereby compel the Marshal to pay him for the negro which he had aided and induced to escape from the Marshal.

And by these resolutions I am called upon to endorse that fugitive slave law, and virtually say it is now good and sufficient, and needs no amendments. Sir, I will do no such thing.

And, sir, in addition, there is almost a direct bribe offered to the officer to give the certificate to the claimant of the negro; for if he will give the certificate to the owner that the negro is his slave he shall receive ten dollars, whereas, if he declares the negro free he only receives five dollars. Now, sir, is that a just provision in such a law, where the freedom of a human being is at stake? shall there be held out by way of inducement to the officer having the question before, to decide against humanity and freedom an advancement to his own pocket of *one hundred per cent*? Such a provision, sir, is nothing more or less than a burning disgrace upon those who passed it, and will do much more to harrow up dissension, discord, and even rebellion, than it will ever do toward allaying either.

The question then is shall we say indirectly by the passage of these resolutions that honorable Senators and Representatives in Congress shall not move any amendments to this law—that we are satisfied with it as it now stands. No, sir, never—never.

Mr. President, I have heard many say that they were apprehensive for the perpetuity of the Union. Now, sir, I see no ground for such apprehension. I have no fears of the dissolution of the Union. True, some persons are making a great deal of noise about it, and it is now brought in to occasion agitation and excitement among us: whether to make political capital out of it or not I do not know.

Mr. RARIDEN (in his seat). It was introduced to make gentlemen show their hands.

Mr. KELSO. What seems to be the difficulty. I voted against the resolutions, I voted to lay them on the table, and what can the gentleman do with me about it? What can he do among my people? Why, sir, I can beat him in running for any office from constable up to Congressman among my people, and vote—against these resolutions. [Laughter and applause.] If I was to go into the county of Wayne perhaps he might beat me in running for office, though I am not so sure about that. I say, sir, that every man should act boldly on this subject—should express his sentiments clearly and unequivocally. I think in regard to any subject that has come up for consideration before this body that I can challenge any man to point out the time when I have flinched. I hope I never shall flinch; and, sir, I do not charge this upon the gentleman from Wayne (Mr. Rariden) by any means. I believe he is

a bold and fearless politician, and I think he has boldly introduced a question here which should have been kept out of this body. I do not, as some have suggested, charge any bad motives on him—that he has introduced these resolutions for the purpose of building up a little political capital for himself; but if he even did, it is not by any means criminal; but I do think if he had held them back until nearer the close of our sessions, and not thrown a fire-brand, as it were, among us to consume the time of this body in unprofitable discussions, he would have pursued a better course, and one that would more generally have been approved of.

I have thus spoken my sentiments, sir, fully and freely, not for the sake of influencing any one, but because I deemed it my duty to present the views that I conscientiously entertain and believe, and I am now prepared under all circumstances to vote against the resolutions for two reasons: because they contain matter which I am not prepared to endorse, and because I believe this Convention has no legitimate jurisdiction or control of the subject matter itself.

Mr. NEWMAN. I desire, briefly, Mr. President, to give the reasons which influenced me to vote to lay these resolutions on the table. I differ entirely with gentlemen who believe in the propriety of introducing this subject here, and I gave my vote conscientiously therefore, for the purpose of getting rid of it. I would have been willing to have seen a silent vote taken upon the motion for the previous question, as a motion less calculated to disturb the harmony of this body than any other on the subject. But as the motion was made to lay on the table I voted for it without any feeling of responsibility, as to any principle that was to be decided by that vote contained in the resolutions. I did not think there was any responsibility to be incurred by any gentleman in voting either one way or the other, further than that of occupying the time of the Convention unnecessarily by voting in the negative.

I yield, sir, to no man on this floor in an ardent attachment to this Union; and my colleague, I think, knows me too well to doubt that that attachment is as strong as his. No gentleman ought to feel himself bound to vote either one way or the other upon the question involved in these resolutions, because they have been introduced here. I do not think it necessary either to discuss the principle involved in them.

Ninety-nine out of every hundred persons in this State, are attached to the Union, and no person can alienate that attachment. I do not believe in the dissolution of the Union; it cannot be dissolved. I look upon all clamors concerning it as foolish and absurd—in fact as trivial, and unworthy of the attention bestowed on them. The less dignity you give to the idea by grave discussion of it, the sooner it will die out and be lost in the mists of time. We came

here, sir, for the purpose of attending to certain delegated duties. It is a true remark, sir, often made, that if individuals, assembled in the capacity of representatives of the people, were to attend more to the business which they are elected to execute, and less time in endeavoring to create political capital for themselves, in the introduction of subjects calculated to inflame the public mind, the more faithfully their duties would be discharged, and the better the interests of the public service would be subserved.

I do not wish, sir, to discuss the question of the attachment of any portion of the people of this Union to the Constitution of the confederacy of the United States; nor their disposition to yield obedience to those laws of the land which are constitutionally made. Nor am I going to question the constitutional power of Congress to pass such laws as these resolutions now under consideration apply to. So long as they are the laws of the land, good citizens will yield obedience to them; and I do not believe, for one, that, so long as they are in force, the public mind is so prejudiced against them as to prevent their being executed. If such a feeling existed, which I do not believe, I should hold it to be unworthy of law abiding and good citizens.

If there should be a majority of the people opposed to them, it is one of the glorious privileges we enjoy to discuss them freely, and to bring them to the bar of public opinion, and hold them up to the light of day and see if they can stand public scrutiny. There is no call upon us, sir, to pass upon their character, even if, as is said by my friend Hancock, (Mr. Walpole,) our action will afford some consolation to southern slaveholders.

Mr. WALPOLE. I spoke of the slave States.

Mr. NEWMAN. Slave States then let it be. We came here, sir, for other objects than to give our opinions pro and con, upon the merits of slavery or the action of slaveholders. Our southern brethren know this well, and they can have no reason for complaint if we confine ourselves within the just limits of our appropriate duties.

My conviction, sir, is that the introduction of these resolutions will have a mischievous tendency, not merely from the fact of its leading to divisions in this Hall, but because it will inflame the public mind out of it; and it is more than probable that more good will result to the cause that they are designed to subserve, by the withdrawal of them from the Convention altogether, than by any action we can take in reference to them. Therefore, Mr. President, it was that because I was opposed to the introduction of exciting questions, that I voted to lay these resolutions upon the table, and I shall vote to retain them there. Whatever other gentlemen may do, I shall take the responsibility of doing what I think to be right.

Mr. BLYTHE. If it had not been for the character of the remarks of the gentleman from Hancock, I should not have deemed it necessary to have said anything upon this subject. I voted to lay these resolutions on the table, because I felt very sure that I was not sent here for the purpose of engaging in the discussion of the principles involved in them. It is distinctly understood among the people I represent, that controversy on political questions forms no part of the legitimate business of this Convention. I came not here to advance the interests of one party in preference to the interests of another. I came not here to assist in laying the foundation of a new party, whether that party is to be called a Union or an anti-Union party; but I came here for the purpose of assisting in framing a Constitution for the benefit of the people. Gentlemen say that the opposition to these resolutions came from a wrong quarter this morning; reference, I suppose, being made to the gentleman from Laporte, (Mr. Niles,) and the gentleman from Delaware (Mr. Kilgore.)

I have only to say, sir, in reference to the charge which has been made against those who were unwilling that these, or any similar resolutions, should be introduced and discussed here, of abolitionism, that for myself, I entertain not the slightest fear that anybody will believe that I am tainted with that doctrine, or any other in the slightest degree approaching to it. What I have heretofore said, and the votes which I have already given upon the subjects of negro suffrage and the principle of negro exclusion from the State, afford evidence enough upon this point. Those subjects were legitimately before the Convention, and I have spoken and acted upon them as I believed my duty required me to speak and act; and upon all other questions which properly come before the Convention, I shall pursue the same course. I do not recognize the right of any man to introduce here a series of resolutions upon any subject which does not form properly a part of the work of this Convention, and tell me that I shall vote for them under pain of being denounced as a "time-serving politician," or as traitorous to my country. Gentlemen may keep such epithets for those who fear them.

Men may persuade me sometimes to do that which is contrary to the dictates of my judgment, but they cannot drive me to do anything. Denunciation cannot force me into the support of a measure which does not meet with my approval. You may denounce if you please; but I choose to do that which I believe to be right—that which duty requires at my hands. I do not choose to put my political conscience in the keeping of any man, or set of men. These being my feelings, I voted to lay these resolutions on the table, and when the question comes up again, I shall vote to keep them there.

But, if the majority of this Convention are determined to have a vote taken upon these resolutions, so as to ascertain who are for and who are against the *principle* contained in them, then I say, sir, that as far as the resolutions of the gentleman from Wayne are concerned, I shall vote against them, because there are expressions contained in them that I cannot sanction. If the question comes up upon the proposition of the gentleman from Posey, (Mr. Owen,) I say that for that proposition I will vote; but I will not act upon that or any similar proposition, until you compel me by the force of majority to do so. I should vote against the proposition altogether, were it not that I am unwilling to record on the journal of this House a vote which is not in accordance with my opinion.

Mr. WOLFE. I wish to make a single remark in regard to this subject. I did not vote to lay these resolutions on the table, though I would have been glad if they had not been introduced in the Convention but as they had been introduced here, I thought it was not the better way to lay them on the table, as an impression might go out into the world, that we did not wish to act upon them. Inasmuch as they are introduced here, I believe that we should act upon them; and I shall vote for the motion to re-consider, on the same principle.

Mr. KENT. I cordially approve of the remarks made by the gentleman from Vanderburgh (Mr. Blythe). They are worthy of the place and the occasion, and I hope the sentiments which he has expressed upon this floor will be taken into serious consideration by this Convention.

Mr. SHERROD said: I had no agency, Mr. President, in bringing these resolutions before the Convention, and it is to be regretted, sir, that they have been introduced here, inasmuch as they have created heart-burnings and caused gentlemen to criminate and re-criminate each other upon this floor.

I voted, sir, against laying these resolutions upon the table, from the fact that they not only embody my sentiments, but the sentiments of the people of Indiana, and I may say the friends of law and order, the friends of the Union throughout the nation. Now, sir, we have these resolutions before us, and what do they ask of us? Simply to recognize or endorse the late compromise acts of Congress. I see nothing uncommon or dangerous in this; it is simply an expression of opinion.

The question, then, is, shall we endorse them, or shall we disprove of them in a summary manner by allowing them to lay upon the table. For one, sir, I hope the resolutions may be passed by an unanimous vote. I am unwilling that it should be said of Indiana that she refuses to stand by our inestimable Constitution and its compromises, and that her people are not a law-abiding people. And, sir, if this

Convention refuse to adopt these resolutions, after the debate that has taken place upon this floor, I ask, sir, what will be the natural inference of our sister States? Why, sir, it would be heralded forth upon lightning wings, from the centre to the circumference of the Union, that Indiana, the great conservative State of the Northwest—the key-stone of the Union, has fallen from her high and enviable position—that she refuses to endorse the late compromise acts of Congress, and instead of pouring oil upon the troubled waters, she is adding fresh fuel to the fire of incendiarism in the North and in the South. Sir, this is a grave question, and we should approach it with a spirit of harmony, concession, and compromise.

But let us examine, sir, for a moment, the objections urged by those who oppose the adoption of these resolutions. In the first place it is contended that we have no right to pass these resolutions. Now, sir, I assert that we have not only the right, but inasmuch as they have been introduced here, it is a duty that we owe to ourselves and our country to adopt them. Sir, I cannot agree with the gentlemen who de-claim so loudly against the Convention giving an expression of opinion upon this question.

I believe it is the right as well as the duty of the people, whether assembled in mass, or through their representatives in Convention, in conferences, or in legislative bodies, to give an expression of their sentiments upon any question in which they may feel deeply interested; and I ask who will attempt to say that the question now under consideration is not one of great magnitude, and one in which the people are vitally interested. It is a question, sir, which involves the destiny of this nation; a question, sir, which, in my humble opinion, rises as far above any other National question as the heavens are above earth. And yet gentlemen talk about this question as though it was of no importance, and bring up their sickly objections against the Convention. But, sir, these objections emanate from the wrong side of the House to exert an influence.

They come from those who have said that we have nothing to fear from the agitation of the slavery question, and that the negro has as much right and is as capable of exercising the elective franchise as the foreigner who emigrates to our country. Now, sir, when I hear gentlemen make such assertions as these, I am ready to conclude that the reason of their opposition to the passage of these resolutions, is not because they think the Convention has no right to act upon them, but because they are not sound upon the slavery question. Gentlemen talk as if there was no danger of a dissolution of the Union, and assert that we have nothing to fear from the agitation of this question, and that no one really believes that the Union is in danger, and that the cry of disunion emanates from a set of political demagogues, who take advantage

of the excitement for the purpose of manufacturing political capital. I do not pretend to say that gentlemen are not honest in making these assertions. I will say, this however, that if they believe what they assert, they cannot be conversant with the passing events of the day; they have but poorly noted the signs of the times. It is true, sir, that the Union has been preserved thus far. The old ship of State, though storm tossed and tempests tried, as she has been, rides majestically upon the turbulent waters of the political sea. But, sir, can it be expected that her bulwarks will out-weather the political storms that she is continually encountering? Can it be expected that she will sail safely through the rocks and quick-sands that surround her, and that she will outride the storm. When hoarse and threatening murmurs are already heard in the distance, active and vigilant indeed must be her crew, and wise must be her pilot, if she shall reach her destined haven in safety.

Sir, I have no sympathy in common with those who can look with indifference upon the excited state of the community, and fold their arms, and count the cost of the Union by dollars and cents, and denounce those who have been instrumental in bringing about the late compromise acts of Congress as political demagogues, and that they in the plenitude of their wisdom and authority will trample the laws of the country under foot. Sir, I regard such as ruinous to the best interest of the country, and I believe if the fathers of the Revolution could be resurrected and their spirits appear here, instead of recognizing them as their legitimate descendants, they would denounce them as the greatest traitors the world ever saw. But, says one, I have no objections to the late compromise acts of Congress, except the fugitive slave law, and I cannot support it because I tlemen will take the trouble to examine this monstrous law as they term it, they will find that there is no new principle embodied in it. The law of 1793 does not differ from it in its essential principles. Let it not be said, then, that this act of Congress has trampled upon any established principle. But, sir, it is an easy matter for the fanatics of the North and South, to bolster up objections to the laws of the land, in order that they may be enabled to carry on their unholy crusade against the Union. I had hoped, sir, after the convulsions which the country has passed through upon this exciting question, and after the result of the deliberations of a Congress that has attracted more interest than any other ever assembled in the Nation, had been submitted to the people, that the troubled waters would still, and the country would be relieved from this harrassed excitement. But, sir, I am disappointed in my brightest hopes. The watch-word has passed, and the shout is "agitate, agitate." When we turn our eyes to the North we see the incendia-

ry torch burning more brilliant than usual. Public meetings are held, in which they boldly denounce the Constitution and its compromises, and threaten to trample the compromise acts of Congress under foot.

In the South they have counted the cost of the Union, and some of their Executives have already gone so far as to recommend *secession*. Sir, what can we expect, if this state of affairs continues long? Dissolution must be the inevitable result; though I hope it may not be the case. I trust that He who holds the destiny of nations in His hands may avert the calamity. I am not one of those who believe that the Union is invulnerable; and when I assert that I believe that the Union is in danger, I only assert that which the signs of the times strongly indicate. Man is born to die, and so are nations; and do we expect to escape the universal doom? Do we expect immortality in a world strewn with the mouldering wreck of fallen empires. Our dissolution may be protracted for countless ages, if we, and those who are to follow after us, are true to the principles of the Revolution—the Constitution of our country. Sir, I am no alarmist, prognosticating future calamities. Other nations have crumbled into ruins in the full tide of prosperity, and why not ours? The agitation of the slavery question has already convulsed our country until she stands trembling, as it were, upon the very verge of destruction. Can I, therefore, be blamed for raising a voice of warning, when the clouds of coming events are even now darkening our political horizon? Can it be wrong, I ask, to make an effort to avert the evil day? If the foaming breakers are already distinctly visible, common prudence demands that every precaution should be used which the emergency demands. Then I ask, sir, if it can be difficult to define the duty of this Convention in regard to these resolutions. I think not.

Holding, as we do, the high and enviable position as the great conservative portion of the Union—constituting, as we must ultimately, if we are true to ourselves, the national basis of the Union—national in our locality and resources—with the gates of access to the Atlantic on one hand, and the Pacific on the other—how important is it that the people of the North-West should view this important fact in its proper light. Disunion to us, sir, would be most disastrous; it would strike down the arm of enterprise that is lifting up this great valley to wealth and greatness; her teeming resources would be taxed at every port upon the Atlantic and Pacific, and even upon the Mississippi. No disunion can take place if we are true to ourselves. Then, sir, let ours be the task of guarding, at the peril of our lives, the ark of our political salvation. It is to the North-West that the defenders of the Union must look for aid in shaking down the stronghold of political corruption that is endangering

the peace and harmony of the country. Then, sir, let us adopt these resolutions. Let us say to the factionist of the North, and the disunionist of the South, that we are tired—that we are sick, and heartily sick, of this eternal agitation; we are satisfied that it cannot result in good, but the reverse; and we, in the spirit of brotherly love, as members of the same great national family, appeal to one and all to come up to the altar of your country, and bury your animosities. [Applause.] And if the sentiment be true that is engraved upon the block of marble that is to have a place in our national monument, that “Indiana knows no North or South—nothing but the Union,” let her people, through this Convention, say so in terms not to be mistaken. [Cries of “Consent! Consent!”]

Mr. SMITH of Ripley. I had not the slightest idea of saying a word on this question; but as debate has arisen, and gentlemen are expressing their opinions in regard to it, I feel it to be my duty to make my views known also. I respond most heartily to the sentiment expressed by gentlemen, that this Convention has nothing to do with the subject. I consider that its introduction is uncalled for and inappropriate. I know, sir, that the delegates to this Convention were sent here for the purpose simply of amending the Constitution of this State; and that, anterior to their election, they took the high ground, before the people, that party and political discussions were not to be entered into by this body. Every delegate upon this floor, I have no doubt, during the canvassing for the election of the members of this body, repudiated the idea of introducing propositions of the character of the one under consideration into this body.

I wish to be understood, sir, in regard to these propositions which I am asked to endorse here; and as gentlemen are desirous of getting the opinions of members, for one, sir, I will condense my opinions, without going into detail, by saying they are infamous, and I will not endorse them.

Mr. President, there has been a great deal of talk about political trickstering by the gentleman from Hancock, (Mr. Walpole,) and I have only to say, that, if there is a gentleman upon this floor who understands that game better than he does, I would like to hear from him. [Laughter.]

In regard to these resolutions, I have only to say that their author, the gentleman from Wayne, (Mr. Rariden,) must have known that their introduction was like throwing a fire-brand into the Convention.

Mr. RARIDEN (in his seat). I did not know any such thing.

Mr. SMITH. Well, the gentleman must have understood that this Convention would not endorse all the opinions contained in them.

If there is any division upon this subject in the county from which the gentleman is a

delegate, let him go home and call a public meeting, present his resolutions, discuss them before the people, and set his constituents right; but do not let him introduce them here, for the purpose of creating dissension in this body. The course of action upon this question has been somewhat singular. The proposition, when first introduced, was laid upon the table, after some very pungent and powerful remarks made by the gentleman from Tippecanoe. (Mr. Pettit). A proposition to re-consider is then brought up, and the gentleman from Wayne, having succeeded in getting the question open, proposes to accept an amendment offered by the gentleman from Posey, (Mr. Owen,) in the hope that it will go forth to the world as a democratic measure. Sir, I see through all this manœuvring. The gentleman from Posey endeavored to make his position a plausible one; but any one that is accustomed to political stratagem and trickery, can easily perceive the object of the gentleman from Wayne. He has presented these resolutions, and accepted of the amendment of the gentleman from Posey, in the hope of passing off his resolutions as an expression of democratic sentiment, when their endorsement by democrats would be enough to sink the party. I shall vote against these resolutions, sir, and I shall vote against the motion to re-consider. I care not from whence propositions of this kind may emanate, I am entirely opposed to their introduction in this body. I said to my constituents, before coming here, that I should lend my aid in the suppression of all political or party controversy; and when I see gentlemen endeavoring, through stratagem, to build up political capital for themselves, I feel much more strongly inclined to oppose their efforts. The whole object of these resolutions and of these efforts is to advance some political speculation or purposes which it is not proper here to refer to.

Mr. PETTIT (in his seat). For the purpose of sinking our Senators.

Mr. MURRAY. Mr. President: I look upon those resolutions as far above all party considerations. I look upon them as intimately connected with the peace and prosperity of the Union. I look upon them purely as a rebuke to nullification, and a renewed pledge of unwavering devotion to the laws and the government by which our fathers bound the Union together. I look upon it as our imperious duty, standing in a position that gives weight and influence to our opinions, that we express our abhorrence of the treasonable resolutions which have been sent forth through the public journals, in this and other States, threatening to trample under foot and set at defiance a law emanating from a provision of the Constitution, which was designed as a sacred and imperishable bond to perpetuate freedom to man.

Sir, it is objected that these resolutions are foreign to our duties, and unworthy of our con-

sideration—that they have been proposed by a political doctor, with unworthy designs, and that the Convention should loathe and reject them. For one, I repudiate the aspersion. I believe they were introduced to throw oil upon the troubled waters. I see no “spectres in the air,” nor do I “snuff the tainted breeze.” I believe they were introduced from patriotic motives, and the previous question was demanded only because the mover wished to prevent a waste of time, and avoid debate upon so inflammable a subject. Sir, I will take a political dose, prepared by a doctor from any party, if it be good to cure disease and restore health. I have no squeamishness from whose hand it comes. But it is said it is designed for a party nostrum. Sir, it is strange to me how gentlemen can entertain this opinion, where they see political parties divided upon the subject all over the Hall.

Sir, I am amazed when I look back upon the eight months of unceasing struggle in our late Congress, to harmonize the threatening elements of discord—when I see them smothered, but not subdued—when I see the flames creeping like a serpent through the body politic, ready to burst forth with renewed fury—I say I am amazed that men can stand as unconcerned spectators. Sir, I fear that those who scoff and laugh at the threatened danger of disunion, will see the light burst upon their vision with melancholy truth.

Sir, why all this muttering thunder in the distance? What means this rocking of the earth to and fro? Sir, I sincerely fear the agitated elements will ‘burst forth, severing our fair land into belligerent fragments, unless the echo of “the Union, one and inseparable, forever,” is made to reverberate through all our borders.

Are the threatened discontents of sovereign States to be utterly disregarded, when expressed through the legitimate organs of their Legislatures? Are we so infatuated as to scoff at the fears of those bright and burning lights in our last Congress, who have stood upon the watch-tower with sleepless eyes and aching hearts, using their weapons with giant strength, to preserve the unity of the Union? Have these men been warring with a phantom? Strange, indeed, that such a political blindness should obscure the vision of any.

Sir, I fervently hope that members will withdraw their opposition to these resolutions; that whatever of weight and influence we possess may be thrown into the scales of peace, and have the effect of allaying the passions and prejudices, which have grown into frightful animosities. Sir, is it nothing to Indiana that nullification raises its treasonable crest in her borders? Does it not concern Indiana whether the notes of peace or war shall be heard ringing in her ears? Are the memory of our fathers to be forgotten, and the Union they bound

together and cemented by their blood, be broken asunder as a bowl at the cistern? Are we not here to provide for the peace and welfare of the people? Shall we liken ourselves to some of the captains of fire companies of the cities, who, though they have been elected as guardians for the safety of the city, desert it in a state of conflagration to guard our private funds? I hope not, Mr. President. I hope the voice of Indiana will be heard, and hailed as the harbinger of peace and an offering of harmony. I thank Heaven the spirit of union and patriotism is abroad in the land, encountering the spirit of disunion and a defiance of law and order. I fervently hope that good counsels may prevail, and that discontents and animosities may be hushed into silence. The States of Kentucky, Massachusetts, and Pennsylvania, by immense gatherings of the people, with their well-tried and noble leaders in their midst, have set us a praiseworthy example: Let us follow on, and may our response mingle with theirs like a sweet chorus in the ears of the Union.

Mr. CLARK of Tippecanoe. I do not desire Mr. President, to debate this question, for I think already it has been debated too much. I merely desire to give the reason which led me to vote to lay the resolution on the table.

I voted to lay these resolutions on the table, because I thought it not proper and expedient for this Convention to make any expression on the subject referred to in them. I admit, sir, if there existed a real crisis—if our government were really assailed with any serious purpose to resist, or overthrow it, we might be justified in raising our voice to its support. But I have not, as yet, perceived that such crisis does exist. I do not believe, sir, that there is any disposition in our State to resist the laws of the government, or to dissolve the Union. I was not disposed to vote for the consideration of this question, because I feared that its agitation here instead of allaying excitement would create an impression that there was an excitement, when, in fact, there existed none. I do not think there is any excitement in this State, of that kind, whatever I believe the people of this State have made up their minds to submit to these laws, whether right or wrong, so long as they are laws. I am very far from saying that the people ought not to seek to amend a bad law, or that their mouths ought to be shut, and that they should not have the liberty of questioning the propriety of these laws. And, allow me to say, that, in my judgment, if we are to pass resolutions on these subjects, we ought to do so deliberately and advisedly. I do not think it reasonable in the excitement of debate, to suppose that we can consider with that wise discretion, which becomes us, the amendments that may be offered.

I cannot quite vote for these resolutions, nor can I vote for the substitute offered by the gen-

tleman from Posey (Mr. Owen). I prefer that the subject should be referred to a committee, and that that committee frame such resolutions as every member of this Convention can vote for. If we do not pursue this plan, the adoption of these resolutions, in their present form, by a divided vote, will do more harm than good.

Some gentlemen think that we ought to, by some expression of our opinions, chastise the abolitionists. Now, sir, I do not think this is any part of our duty. They are our fellow-citizens, and I want to convince them if we can, that they are wrong—wrong in attempting to resist or subvert the laws of the country. If we adopt any resolutions at all, they should be of a character to commend themselves to the support of all reasonable and patriotic men. I think, sir, that a committee could frame such a series of resolutions—so that this Convention could give a unanimous vote for them.

I cannot vote for the resolutions of the gentleman from Wayne, sir, because, as my colleague remarked, they are based on improper assumptions. I do not think it becoming in this Convention to charge—as it is proposed to charge in these resolutions—upon any portion of the people of this county that they desire to dissolve this Union. I do not know this, and therefore, I will not say so. We have a right to express our approval of these laws that have lately been passed by Congress; but I do not think we are called upon to vote, to say that the people of the South are traitors, or that any portion of the people of Wayne county are traitors. But, sir, I am willing to vote to maintain the supremacy of the Constitution and laws of the county; beyond that I do not think we should go.

Mr. STEELE. I voted against laying these resolutions on the table, Mr. President, and as gentlemen are assigning their reasons for voting to lay them on the table, I will briefly assign mine for refusing to lay them on the table.

I had occasion to remark the other day, at the time of the controversy between the gentleman from Putnam, (Mr. Badger,) and the gentleman from Posey, (Mr. Owen,) that it appeared to me that I was in a camp meeting; and now I would say that it has appeared to me since the resolutions of the gentleman from Wayne were laid on the table, that I am in a mass meeting of the people, and not in a deliberative Convention. Do I believe, sir, that in voting either to consider these resolutions or to lay them on the table, that I am performing the duty I was directly sent here to perform? No, sir, I cannot think so. I tell you what I think: I am doing just exactly what I would do before a mass meeting, barely expressing an opinion in relation to certain laws recently passed in Congress, that have created some difficulty in the Union—that is, that I am a Union man. When I first came here, a list of the

delegates, with their party creed, profession, age, &c., was prepared, and I put down my political principles on paper, in order, as one of the delegates, to complete that list. I then declared myself independent of all political names, that I legislated for the good of both parties, that I went for the State, and for the Union. In like manner, sir, I shall declare myself when called upon for either of the two series of resolutions here introduced, of which series I greatly prefer the substituted one of the gentleman from Posey (Mr. Owen). These are my sentiments, and why I shall vote to take up these resolutions from the table and vote in favor of sustaining the recent action of Congress; and thus, sir, I express my opinions, as I would before a mass meeting of the people.

Mr. SHOUP called for the previous question, but withdrew his motion at the request of

Mr. FOSTER, who said: When the gentleman from Wayne (Mr. Rariden) introduced his resolutions the other day, sir, a motion was made to suspend the rules and proceed to their immediate consideration; that motion, however, was not sustained by a two-third vote, although there was a majority in favor of it. I anticipated they would come up to-day for consideration, but I confess I have been astonished at the opposition made to their consideration.

The gentleman from Wayne, sir, is one of those independent whigs that I admire; and so far as I could note his action upon this floor he has not been disposed to bow with any great deference to any political clique. I therefore admire him the more because we appear to be somewhat similar in our characters in this respect. [Great laughter and applause.] I am not ashamed to own, sir, also, that although I profess to be a democrat, yet I am not a democrat of yesterday. I always think, sir, that these little fag ends and cliques are seeking to bias public opinion. We have specimens of the character of these efforts when we see gentlemen on this floor eating their own words. Some gentlemen who drew up resolutions for the action of the democratic convention, two years ago, now by their votes here have repudiated them, and you cannot find one who voted for the internal improvement bill fifteen years ago.

I believe, sir, had these resolutions been introduced by another source they would have met with the approbation of some gentlemen who do not approve of them. I voted against their being laid upon the table, and I shall vote in favor of taking them up. I do not altogether approve of the phraseology of the resolutions of the gentleman from Wayne, although there is very little difference as regards their tenor between them and those offered by the gentleman from Posey; all the difference is that those offered by the gentleman from Posey are shorter than the others—in fact are an epitome of the series presented by the gentleman from Wayne. I shall therefore be safe in voting for

either of the series if they come up for our action.

In regard, sir, to the attack made by the gentleman from Wells, (Mr. Bascom,) upon the gentleman from Wayne, it did occur to me that he might have had a little more reverence for a gentleman so much older than himself, and that it would be wise for him to tarry at Jericho until his beard was grown, and then perhaps he would be listened to with more attention when he got up to address a public assemblage.

I have thought, sir, all along, when I saw the course pursued by the delegates from the northern part of the State on this negro question, that I could guess the course they would pursue in case a question like the present one should arise. And it is evident, sir, that some dare not come up to the scratch—that they are abolitionists at heart. There are one or two, the gentleman from Delaware, (Mr. Kilgore,) and others, who have come up to the mark, and have had the manliness to avow their real sentiments. [Laughter.]

Some gentlemen at the present day say that they belong to the young democracy, but I have been a democrat so long that I never expect to grow young in politics again. I adopted, some years ago, the Jeffersonian principles, and I adhere to them still. I am not one of those kind blown about by every wind of doctrine. There seems to me to be a great many of the nondescript class however—mere milk and cider politicians—that are neither "fish, flesh, fowl, nor even good red herring." For such men I have a great abhorrence. It is such men that I desire to show their hands; and if there be any here that are abolitionists or disunionists, I want them to come out and show it by their votes on this occasion. The subject has been introduced and we must give an expression of an opinion in regard to it. Gentlemen argue that it is not a legitimate subject for our consideration, but how often is it, sir, that we have national subjects introduced into our Legislature, and acted upon; and are we not as much the representatives of the people as the Legislature? Aye, sir, and of a higher grade too, than the mere Legislature; and an expression of our views on this subject will have a greater tendency to calm any disquiet that may exist in this State. Gentlemen undertake to say that there is no danger of disunion; but I maintain they are grossly mistaken. Why, sir, twenty years ago, when the Missouri controversy agitated the minds of the people, there was not one-twentieth part of the agitation existing that there is at the present time in the South, and portions of the East. Is not the South in arms, and are not the abolitionists sending forth their incendiary publications by thousands, creating excitement in the people's minds? Do you not find, sir, that large religious bodies have been and are even now dividing into northern and southern divisions? It becomes us, then, as delegates of the

people of Indiana, to express our sentiments on this question. I care not, sir, from what source it has come. Some may object that these resolutions were introduced by a whig—but, sir, the question involved affects the interests alike of whigs and democrats in this Union, and it should receive their united action in this body. I desire, sir, that every man should show his devotion to-day to the Union of the States, by the vote he will give upon the question, whether or not he will stand by the compromise measures that have recently passed Congress.

Mr. KILGORE. If I knew that these resolutions would be under consideration a day or two longer, I would postpone my remarks, but from indications over the way, I suppose the previous question will be called.

I desire, sir, to notice briefly a personal attack upon myself by the gentleman from Hancock (Mr. Walpole). I am only sorry that I was not in the Hall to hear all his arguments, particularly where he lectured me in regard to my political career. I only heard a small portion of his speech. I have only to say to the gentleman, that I am not disposed at any time to try to accommodate my action to his peculiar view of things. Those with whom I have lived and acted politically during the last twenty years, are the persons to whom I am responsible here and elsewhere. To them I expect at all times to be ready to answer for my conduct, and I am sure that I can say, without fear of successful contradiction, that at all times they have known where to find me on political subjects, and I would be glad if my friend from Hancock could say as much.

A word, sir, in relation to the charge that I have been pandering to the abolition party; I ask the gentleman when and where? He, sir, was one of the standard bearers of the whig party, in '48—one who advocated the doctrines laid down by the whig convention, held in this capitol. I went forth, and the gentleman did also in that campaign, and advocated what was understood to be the principles of the whig party. One of these principles was that of the Wilmot Proviso, and I would ask the gentleman if he did not then advocate that as one of the whig doctrines of that period, and if he did not, at the other end of this building, introduce a resolution in regard to the organization of our new territories prohibiting slavery?

Mr. WALPOLE. As the matter has been settled by compromise, I am in favor of standing by that compromise.

Mr. KILGORE. I am in favor of the compromise myself, provided we receive anything in exchange for what we have compromised away—but I am not in favor of compromise all upon one side. Well, sir, as I was remarking, the principles of the whig party, of which one of them was the Wilmot Proviso, were advocated in 1848, by the gentleman from Hancock and myself; and for still holding to that principle

the gentleman appears to consider me as pandering to the abolitionists. I have only to say in reply, that if it becomes necessary for me to change a political principle every year, in order to make a consistent whig, I no doubt shall soon cease to act with that party. If whigs are to be called upon to change their political principles to suit the *dicta* of certain politicians, who profess to belong to that party, I affirm for one, that I am not to be turned in that manner, and if that is to be the course pursued by that party, I shall soon cease to labor with it. If every new doctrine, broached by factious politicians—especially such a doctrine as that which the gentleman from Wayne and the gentleman from Hancock appear willing to endorse—is to be adopted as a portion of the whig creed, I am not a whig.

But, says the gentleman from Hancock, it is necessary that this Convention should act upon this subject, and should express their opinion in regard to it. He seems to concur entirely with the gentleman from Wayne on this matter, who, by the by, is an old politician of the whig school, and who, singularly enough, is found presenting propositions almost synonymous in character and detail, to those immediately afterwards offered by the gentleman from Posey (Mr. Owen). I cannot doubt that this plan was discussed out of this Hall, and that there was a mutual consultation among sundry old democratic and whig politicians maturing it.

Mr. RARIDEN. The gentleman's statement is altogether a supposition; there is not a word of truth in regard to it.

Mr. KILGORE. Well, sir, there has been a very strange coincidence indeed, in regard to these two series of resolutions, that have been presented. The gentleman from Wayne, one of the old leaders of the whig party introduces a series of resolutions, and immediately after their presentation, the gentleman from Posey, an old leader of the democratic party, takes some slight exception, and offers a series of resolutions, as a substitute, which, though shorter, are the same in substance as those offered by the gentleman from Wayne, and that gentleman thereupon accepts them in lieu of those he has offered.

Mr. PETTIT. I desire to interrupt the gentleman from Delaware only for a moment. I think it has been understood that the gentleman from Wayne introduced these resolutions without having consulted any one. Now, sir, a prominent whig politician sitting near me has informed me that these resolutions were read to Jesse D. Bright, one of our Senators, who approved of them and advised their passage. There were other democrats present who also advised their passage. The gentleman I refer to, sir, who furnished me with this information, was Mr. Walpole.

Mr. WALPOLE. I would state, sir, as I have been referred to by way of explanation,

that I was led to make the statement I did to him from the fact that the gentleman from Tippecanoe stated to democratic gentlemen that the adoption of these resolutions would be a condemnation upon our Senators. I stated in reply, that on the morning of the presentation of these resolutions, Mr. Rariden had read them to Jesse D. Bright, Mr. Read, and other democratic gentlemen.

Mr. RARIDEN. I would state, Mr. President, that it was after I had offered these resolutions that I read to Mr. Bright, and I read them to several other democratic gentlemen afterwards, and they all agreed that they should be adopted by the Convention. It was only last week that I read them to Judge Huntington. If gentlemen intend to make this a matter of personal veracity, I shall take other notice of it.

Mr. KILGORE. I am glad, sir, that my remarks have brought out the particulars of this new arrangement. The *dénouement* has proved, sir, that I was a good hand at guessing.

I was not advised, sir, that a consultation had been held with Mr. Bright, our Senator, in regard to these resolutions. I regret exceedingly that he considered it necessary to call upon leading members of the whig party to ascertain how he should act—or to obtain advice as to his subsequent course—in Congress, on this subject. I regret exceedingly that he should want this consolation—that he had not sufficient firmness to keep the position he has already occupied in regard to this subject—that is, of an absentee. [Cries of "consent, consent."] I know, sir, that nothing else could be expected from my friend from Wayne, than that he should be active upon this subject; for it was not more than six months ago, when foreman of the Grand Jury of the United States District Court of this State, that he reported resolutions endorsing, in anticipation of their passage, all the compromise measures, and desired to have them spread upon the record. He could not rest content without acting in the capacity of fore-runner, or leader, if you please, in the approval of those measures.

I rather think, sir, putting all these singular coincidences together, that there is a movement on foot on the part of the gentleman from Wayne and the gentleman from Posey, to break up the old political parties and build up a Union party, to be composed, I suppose, of the conservatives or old hunkers of either organization.

I wish merely, sir, in this Convention, to reiterate what I have said before, that I am no abolitionist. I have disavowed, at all times, concurring in their action. I am willing, sir, that the slaveholders should enjoy their property uninterrupted; I am willing that the principles of the Constitution in regard to them should be fairly carried out; and I am opposed to interference in any way with their rights within

the limits of the States in which they reside. But, sir, while I am opposed to interfering with the rights guarantied under the Constitution, I am also opposed, on the other hand, to any law making it the duty of citizens of the free States to catch their slaves and carry them back again into slavery, and this, too, under severe penalties for its violation.

The gentleman from Huntington (Mr. Murray) says that these resolutions are right, and that we ought to endorse the principle contained in them.

Now, sir, it may be that some gentlemen consider it imperative in regard to all these measures, to endorse the action of Congress, but it is not so with me. If it were, I do not consider this is the proper place for it. We have come here for a different purpose—to revise and amend the Constitution of this State; then let us attend to our appropriate duties. When we have performed these duties, then we can go home and turn politicians if we choose.

I have only to say, sir, in reference to the apprehensions of dissolution of the Union, I have no fears of it. I am for the Union, sir, and not only am I for it, but I am opposed to giving encouragement to any who may favor disunion. I am one of those who would take the position that no other portion of this confederacy should dissolve it. I am not only opposed to dissolution, but I am in favor of preventing others who may desire it from carrying their wishes into effect. To effect this object, terrible as may be the alternative, I am in favor of carrying on a war of desolation into the very heart of the seceding States.

What effect, sir, in conclusion, I would ask, will the passage of these resolutions have upon those madmen in this State who are opposed utterly to these compromise measures? I believe there are very few of them in this State, but what effect will denunciations have upon them? Will it terrify or alarm them? Not at all. [Here Mr. K. was interrupted with cries of "question, question."] As I hear loud cries of question, sir, I will yield the floor.

Mr. NILES. I desire, sir, for only five minutes to occupy—

Cries of "question, question."

The PRESIDENT. Will the Convention second the call for the previous question?

Mr. PETTIT. I move that the Convention adjourn.

Upon this motion a division was called for, and being taken resulted as follows: ayes 52, noes 48.

So, pending the question, the Convention adjourned until Monday morning, 9 o'clock.

MONDAY, Dec. 2, 1850.

The Convention met pursuant to adjournment.

Prayer by the Rev. Mr. CAMP.

The journal of yesterday was read and approved.

The Convention resumed the consideration of the unfinished business, being the motion to re-consider the vote by which the resolutions introduced by Mr. RARIDEN were laid upon the table.

The previous question having been moved by the gentleman from Franklin, (Mr. SHOUP.)

Mr. RARIDEN. Before the question is taken on the motion to re-consider, I do think it is due to me that I should have an opportunity of placing myself right; and I appeal to the House to allow me an opportunity to do so. As some opprobrium has been cast upon me for having introduced these resolutions—

The PRESIDENT. The previous question having been demanded, the Chair will remind the gentleman that debate is out of order.

Mr. RARIDEN. I ask the gentleman from Franklin to do me the favor to withdraw the demand for the previous question.

Mr. SHOUP declined to withdraw the demand.

Mr. PETTIT. I hope the previous question will be voted down.

Mr. SMITH of Ripley inquired of the Chair what would be the effect of the previous question if sustained.

The PRESIDENT replied that it would bring the Convention to a direct vote upon the motion to re-consider the vote by which the resolutions of the gentleman from Wayne were laid upon the table.

The question was then taken on seconding the demand for the previous question; and the demand for the previous question was not sustained.

Mr. RARIDEN. I am very glad, Mr. President, of this opportunity to place myself right before the country upon this subject. I am always willing to be responsible for what I do, and for what I think. But I am not willing, on any occasion, to see gentlemen conceal their own timidity or political tergiversations behind an assumption of my rashness. I intend to place myself correct, and, if in my power, to place them correct, too. ["Consent!"]

Now, it is said that this is an improper place and an improper time for bringing forward these resolutions; and that is the pretext of some gentlemen for making opposition to them. Notwithstanding, they say, they cordially concur in the sentiments put forth in these resolutions; but it is the time, place, and manner that they object to.

Now I ask them first to consider in what consists the strength of the Union of these States? I ask them to consider if it consists in anything else than that common kindred feeling of kindness and attachment towards each other, and that confidence which exists among the several States—that feeling, which

is cherished from one end of the Union to the other, of fidelity, of justice and forbearance toward each other. This is the great bond of Union, and nothing else. And the instant you destroy that spirit of forbearance and mutual concession that should exist, you destroy the Union itself. Well, what are we here for? Gentlemen say to make a Constitution—to establish a fundamental law for the State. Yes, sir; to re-adjust, in the glorious constellation, the State of Indiana; and if there be any difficulty in the way of such adjustment—anything that will not redound to the perpetuity of the Union—to relieve it of the difficulty. This is the object which we have in view. And it is presumed that we bring with us, from each county of the State, a large amount of veneration for, and devotion to, the institutions of our country. It is presumed that we are acquainted with the sentiments of the great mass of the people in regard to their estimation of the Union of the States. Look abroad over the States. You see meetings held in various parts of the country, and much excitement and bitterness of feeling prevailing; you see legislative bodies and Conventions assembling, for the purpose of denouncing the action of the Congress of the United States, and the accord of the free States in the compromise measures they say is hypocritical, and boldly avow that they will not live up to their professions. These are the pretenses that are seized upon by the enemies of the Union in the South to bring up public sentiment to the most desperate acts and measures which have so much agitated the Union, which make it necessary for the free States to speak out and vindicate their faith and allegiance.

We see meetings held in the free States, producing popular commotion, and denouncing a law of Congress in the plainest terms, under pretense of speaking public sentiment. I desire to contradict this false and groundless opinion, so far as Indiana is concerned. Come out and speak candidly about this matter, and tell the world what is to be expected from this quarter in regard to those measures. Let us say that Indiana will or will not stand by the compromises. Speak out and say what is your opinion of public sentiment upon those great and agitating measures, that the sister States may know how to regard us. Some gentlemen say I want to make some capital for myself. Well, sir, that is a laudable ambition. Who here that does not desire to raise himself in public estimation? And let me say, as a member of this House, who is it that has enjoyed more public confidence than I have? I have had more than my share for the last twenty years, and I have introduced those resolutions to maintain that confidence which has ever sustained me; and I thank God I have not yet passed the culminating point, though I am fifty-five. If I should go down, I have reason to congratulate myself that I have had little cause

for grumbling at the treatment that I have received from my fellow-men; and if, for this act, confidence should be withdrawn from me, the space will be left for others to revel in, and they should be the last to find fault with me.

But, says the gentleman, do not let us go for it, because he is an old broken-down politician—hack politician. Well, whether that be true or not, I say nothing. I am still on my feet, at all events, and ready to do service with any gentleman who thinks so. Now, let me pay my respects to the letter in the *Jeffersonian*, read by the little gentleman from Wells, from George W. Julian, I suppose, the representative in Congress from the district where I reside.

It was published in that dirty sheet, and whenever I can draw public attention to and name its correspondent, it is all that is necessary for my security and defense. They already know the paper, and they know the editor, and when I get them to know the correspondent, all danger is over. That is enough for me, and let me add that I do not feel myself called on to notice every whiffet that may be hissed on to my heels, or who may be prompted to bark at me. This is all the notice that I shall take of such tripe.

Well, now, as to the pretense of the rashness and wantonness of this act. I take the whole responsibility on myself. I prepared the resolutions and brought them forward without consultation with any one.

My friend from Tippecanoe, although he concurs with the sentiments embodied in the resolutions, is of the opinion that they come from the wrong quarter. They come, he says, from a broken-down politician.

Mr. PETTIT. I did not say so.

Mr. RARIDEN. Well, they come from a whig, and that does not suit the gentleman. It is true that I am a whig, but I am for the Union. Let me say, for myself, that the conception was put into my head in the first place, by Tom Walpole, here. He named it to me, and I determined on the instant to prepare and present resolutions, and I have done so. I mentioned to several gentlemen that I was going to introduce resolutions, and told them the character of the resolutions, and they concurred with me in the view I took. This is the whole secret about it. Well, I suppose when I said that there was a gentleman over the way from Delaware, who, at the suggestion of my friend here, began to make charges against me that the resolutions were gotten up by a secret conclave.

Mr. KILGORE. I heard no such thing intimated. What I stated was a mere conjecture of my own.

Mr. RARIDEN. Well, the gentleman will remember when I disclaimed it, his friend and mine (Mr. Pettit of Tippecanoe) re-affirmed that they had been shown to Jesse Bright, when

Jesse Bright was named as connected with me I heard over the way rapping and applause, and it was repeated in various parts of the Hall. What did that mean? What, but that the friends of somebody else had got Jesse Bright on the tender hooks with me, and that it might be the means of making Jesse Bright share the fate of the political juggler that he was in colleague with; that was the meaning of the rejoicing.

It has been suggested in various quarters that Jesse Bright was brought into consultation with me on this subject. This is not true; but if he had been, it would have been proper enough, because he was one of the compromise committee of thirteen. Now I do not know any thing about Mr Bright, except as a politician. I approve of his course and I do not care who knows it. [Applause.] He is a man who gives his opinions to the world freely, openly, and above board. He has shown no disposition to shrink from responsibility, and should not have any such charge made against him.

Mr. PETTIT. The committee of thirteen did not report the fugitive slave law.

Mr. RARIDEN. Well, sir, I do not go into that matter; who did or who did not is no concern to me now. It is the act done I have in view.

Mr. PETTIT. I do.

Mr. RARIDEN. But the resolutions came from an old, broken-down hack. Well, sir, after I read them to the House, I happened to go outside of the bar, and I met Jesse Bright. He said: "What have you been doing?" I replied I would show him, and sat down and read the resolutions to him, and he remarked to me, after hearing them that he cordially assented to everything contained in them. Now I will tell you why I refer to this affair. My friend, here, supposing it might have some influence on somebody, whispered about that they were intended as a censure upon our Senators in Congress.

Mr. PETTIT. True, I said so.

Mr. RARIDEN. Well, the gentleman is mistaken. Is there anything in the resolutions that amounts to a censure upon our Senators? Now I acquit the gentleman of having anything against me. But is he in the right position to bring a charge against me of endeavoring to make political capital? Does he expect to meet me as a competitor for a seat in the United States Senate before the Legislature? Not a bit of it. My friend from Delaware says he will meet me in my district before the people. The gentleman will not have an opportunity.

Mr. KILGORE. The gentleman from Randolph (Mr. Hawkins) is responsible for that.

Mr. RARIDEN. But the gentleman from Delaware says he holds me to an accountability for this said work. Well, I only ask him to

show his hand, that's all. The gentleman from Switzerland has talked like a man. There is no skulking or concealment about him. But let me take my friend from Delaware, the man who has been in the bush always, and who never hears the report of a gun, or feels a concussion in the political atmosphere, without retreating into the bush until the elements settle and the sky clears away. When the political atmosphere is disturbed, when difficulty manifests itself, and he does not know how the current will set in his district, he stands aloof and awaits the issue, and is ready then to take the side that is popular. But he supposes that a broken-down politician is at the end of this movement. He ought not to talk about me as a politician, and as having been in Congress. It is his own fault that he has not been there. Does he not know that he has been solicited—that his district has been importuning him for years to suffer himself to be elected! But Cincinnati-like he stands back, and refuses to have honors heaped upon him. But there is at present an undulation in the political atmosphere in his district, and he cannot tell when the elements will settle. When they do settle he will be the first man upon the battle-ground to gather the laurels of the victors.

Now, a single word as to my colleague, who never does anything inopportune or imprudently. His first conception, he says, was, that the time was improper for the introduction of these resolutions, and he therefore regretted their introduction extremely. Now I can illustrate all this by a maxim from the philosophy of the father of the delegate from Posey, (Mr. Owen,) which is, that what a man will do, think, or determine on, depends very much upon the circumstances which surround him at the time. Now here is my friend from my county, (Mr. Beard,) I can account for his course upon this maxim. He is the nominee of the whigs, the democrats, and the free-soil, or abolition party. He has not lived as I have. He has lived in quiet, and I in a whirlpool. He has committed himself. He and I occupy the extremes. He is opposed to the fugitive slave law because he is opposed to slavery; and he is in favor of an underground railway. Well I am opposed to all this, and because I say so, he fancies me rash and imprudent. But my colleague does not wish to offend any party, and to be in favor with all parties. I will say to him, if that course is pursued from political considerations, that he need not apprehend danger from me by my opposing him for Congress. I shall not be found opposing him for any station that he may aspire to, nor do I believe that inaction upon an occasion like this is the popular course in times like these. I know the man in every shade and variety of his character, and I know him to be above all improper influences, and I could not be tempted with any bribe of ambition to set myself up or to set any-

body else up in opposition to him. But when I say this, I am merely doing justice to myself. He is not the spirit to act with rashness or injustice on any occasion. He has always acted prudently and has gained and retains the confidence of all parties.

One other word, sir, and I am done. We are the representatives of the people. The people are in doubt whether we are in earnest about these compromise measures. We are presumed to know the sentiments of the people, and I want to give out what we think in regard to the public sentiment concerning these measures. When I brought the proposition forward, I moved to postpone the orders of the day, for the purpose of introducing the resolutions, which I read at the Clerk's table. The Convention refused to postpone the order of business by a vote of 60 for and 47 against—two-thirds being required—and I then put the resolutions in my pocket, but told everybody that I happened to converse with, that I should, at the proper time, move their adoption. The vote upon postponing the order of the day was, ayes 60, noes 47; showing a decided majority in favor of the resolutions before my friend here put down his foot and shook all the elements of party in this House. I deny that there has been any party spirit in regard to this matter. Although some may have been exhibited collaterally in order to make the impression that the resolutions were intended as auxiliary to some gentleman's ambition, what is it to the country whether these resolutions come from me, or from somebody else? I am not a politician. I am not in the way of any body—not soliciting votes for a seat in the United States Senate, not identified with any party that I can whistle up to sustain me when my views come in conflict with those of other gentlemen. The proposition comes from a man wholly without authority; it comes from the right quarter, from a broken-down politician, as the gentleman from Wells says. What have I to gain by it? What party or personal ends have I to subserve? It comes from the right quarter. It is introduced at the right time, and in the right place, and in the right spirit. Gentlemen must not expect to escape in this way. They must meet the question as it is, and not attempt to screen or hide themselves behind a charge of rashness against me. I did suppose that the resolutions would receive almost an unanimous vote, and I begged gentlemen to excuse me from calling the previous question, but they would not let me off. It was a fair instance that the call for the previous question was made. I relied wholly upon their judgment when I made the call, and it was sustained by a majority of the Convention. Then I am not more to blame for the call than others are for voting for it. The truth is, the only thing unpleasant about the whole proceeding is the danger and inconvenience it subjects politicians to on a

delicate question that has two sides to it in their district; that is all, sir, there is where the pain comes from, and nowhere else—if they will speak candidly, they will say so.

Mr. PETTIT. As I have been considerably complained of for the course that I have taken in relation to these resolutions, I shall ask the indulgence of the Convention for a few moments. I said yesterday that if the gentleman had not moved the previous question, I should not have moved to lay the resolutions upon the table, but would have sought to amend them. I said then, and I repeat, that it is a course that is not justifiable on the part of any gentleman in this Convention to bring in a string of resolutions twice as long as both his arms, and demand the previous question before a word has been said in relation to them. These resolutions present a specious outline, and are such as are calculated, upon the first reading, to lead men away, whilst there may be, as I said, a cat in the meal tub or a snake in the grass, to be discovered upon investigation being made. And I now say to gentlemen of the Convention, that for its own credit and reputation if for nothing else, these resolutions ought to have been referred to a committee of school masters, for the correction of their phraseology.

Mr. President, it is stated here that I have been saying to gentlemen upon this floor that this is an attempt, on the motion of a whig, in a democratic Convention, to censure the democratic Senators of Indiana. I did say so. And I never say anything in an undertone that I am not willing should be heard in a louder tone; and I never retreat or take back anything that I say. I repeat that I so said, and that I now believe that that was the design and intention.

Sir, I did hear it said that Senator Bright desired that these resolutions should pass; that they were shown to him, and that he expressed his approbation of them. How came up this difficulty? The gentleman from Delaware, over the way, was charging that it was the action of the gentleman from Wayne, with two or three others, concocted in secret conclave. The gentleman from Wayne repelled the charge. He said there had been nothing of the kind, no consultation—that it was entirely his own act, his own thought, and that a few moments before, the gentleman from Marshall (Mr. Wheeler) happened to be sitting by my side, and I was using this language to him—that it would result in a censure of our Senators, for they had not, either of them, voted for the slave catching bill, and the gentleman from Hancock was near us and overheard the remark. And he took a piece of paper and wrote upon it these words: "I heard this preamble and these resolutions read to Jesse D. Bright, and he earnestly desired their passage."

Mr. WALPOLE. If the gentleman will allow me to interrupt him, this is what I wrote.

Mr. PETTIT. Well, sir, I believe I have not misstated the language materially. The gentleman from Wayne said there had been no consultation about it. I got up and asked the gentleman from Delaware if he would allow me to make a remark, and he accordingly yielded to me the floor. I then stated that I understood the gentleman from Wayne to say that there had been no consultation. The gentleman from Hancock says that they were read to Senator Bright, and that he had cordially agreed to the sentiments contained in them, and desired their passage. Now if there is any difficulty it is between the gentleman from Hancock and the gentleman from Wayne.

Mr. RARIDEN. From the broad manner in which the gentleman from Tippecanoe made the assertion that he did, I understood him as intending to state that before I had introduced the resolutions, I had consulted with Jesse D. Bright.

Mr. PETTIT. Not at all. That was not what I said.

Now, allusion is made to my being a candidate for a seat in the Senate of the United States. That is all true. I am desirous of a seat in the Senate of the United States. I am desirous of pursuing such a course as to make it the willing offering of the people of Indiana. I am not willing to occupy or attain that position by any underhanded craft or trickery. No; I would spurn that or any other office in the gift of the people, if it could not be obtained in a straight forward and honorable manner. Sir, no action of mine shall lay one straw in the way of either the present incumbent, if he should be a candidate for re-election, or any other candidate. I would be the last man to do an act of injustice to him or to any other gentleman, or to endeavor to place them into an equivocal position. Why do I say that this was an attempt to circumvent the Senators from Indiana—Mr. Bright and Mr. Whitcomb. It was because neither of those gentlemen voted for this bill; nor is it, as the gentleman from Wayne supposes, that Mr. Bright had anything to do with concocting or bringing forward the bill. True, he was a member of Mr. Clay's committee of thirteen, from which the omnibus bill was reported; which bill contained provisions for the admission of California, for the organization of the Territories of Utah and New Mexico, for establishing the boundary line between Texas and New Mexico, for prohibiting the slave trade in the District of Columbia; not one word was there in the bill respecting fugitives from labor, nor had Mr. Bright anything to do with the reporting of that measure or voting for it at all. It was the off-spring of J. M. Mason of Virginia. Gentlemen ought better to inform themselves of the political history of the day. Mr. Mason introduced this bill with a provision that all the post-masters in the country should be commissioners, justices of the

peace, or magistrates, for the purpose of catching and returning runaway slaves. The bill subsequently underwent modification, and the judges of the federal courts were substituted in the place of the post-masters for the discharge of this duty, with the power to appoint commissioners for that purpose. And Mr. Bright had nothing to do with the bill from its inception to its completion. I said, therefore, it was a direct attempt to censure our Senators, upon the motion of a whig in a democratic Convention.

And I was justifiable in saying it. Now we have a new song, the praises of a new party—the Union party. The old platform is good enough for me. How often is it that men are led away by either blandishment or beautiful names? We have heard of the national republican party, the protection party, and the whig party of '76, and now we hear of the Union party; but soon as they get power they will adopt the measures and principles of the old federal party. It will be the same thing with a new name. Such will be your Union party wherever they can get power and strength. Another allusion was made to me, and it was said, that I would be referred to in the South as having been an abolitionist in Congress. To that I give the bold and unequivocal lie. That is plain language. Sir, I say there is neither a vote or a speech of mine, either in Congress or out of it, that tends in that direction. I have uniformly said, in Congress and out of Congress, that it was a blessing to the negro to be a slave, that it was a benefit to him and not an injury. I have said that it was a curse to the white man and not to the negro. No one will find language of mine contrary to this. I have both speeches and letters of mine upon this subject, short extracts from which, with the permission of the Convention, I will read. I have always held that the Congress of the United States has the sole and exclusive power to legislate for the Territories. Congress can prohibit or create slavery in the Territories—this is the language that I have ever used. Congress has power to do either; for Congress may dispose of the Territories as they please. Congress may sell them to a foreign country; Congress may prohibit their settlement, or make any other disposition in relation them that may be considered proper. They may allow them to be settled upon just such terms as they see fit to prescribe. Who denies this proposition? No one. Is there a lawyer in this Convention, or in the State, who will controvert it? Is it not a conceded question, notwithstanding the Nickolson letter, that Congress has this power? But the propriety of exercising it is another thing.

Sir, the negro question has been up before, and it has been said that the argument is exhausted entirely. Gentlemen come here, I will not say in this Hall, but out of it, as ignorant as the asses that they ride at home, and say that the question has been exhausted, and that

they understand it and are ready to vote, when in fact the question has not been touched. The great question of population has not been touched, bound down, as we are, by our half hour rule. Talk to me about discussing the great principles of population, the principles by which any race of men is to be elevated and increased, or depressed and withered from the earth. Tell me that the question of population has been discussed. No, sir, it has not even been touched. Nothing has been said in relation to the negro character that could justify us in coming to a decision, or which could enable us to form an enlightened judgment. Sir, I say, and I repeat, that if it be humanity to perpetuate the negro race, to increase their numbers, to give them long life and happiness, slavery is their true condition, not freedom. I have the statistics here to show that twenty per cent more free negroes die, than slaves. I have statistics here to show that the negro population between 1830 and 1845, a period of fifteen years, (during six or eight years of which time the great slavery or anti-slavery excitement was prevailing in Boston, and throughout the Eastern States generally,) the negro population, not only did not increase, but actually decreased in numbers. Sir, go to the Moyamensing district of Philadelphia, go to the out-skirts of that city, and you will witness more degradation and death in the free negro quarter, a thousand times, than amongst the slaves of the South. I have said, and I repeat, that the quickest way to get rid of the negro population in the United States, is to turn them all free. Do this, and in a century you will scarcely find a negro on the Continent. They will die of sloth, of indolence, of disease, of filth and starvation. If it be philanthropy to continue and extend the race, to give them long life, you will in my judgment, as figures and facts demonstrate, keep them in slavery.

Now, sir, so far as this question is concerned I have been willing—true, the gentleman from Hancock said yesterday that I had a resolution prepared on this subject, so I have, such as do not need the schoolmasters' hand too, such as are directly applicable, such as I am willing to vote for. Sir, I have said heretofore, that I believed slavery was a curse to the white race, and it is admitted to be so even in the South. I have said that Oregon could not complain of me, that I had cursed her with slavery. I have often said, and always in kindness, that I have no sickly sympathy for the negro, that I believe he is better in slavery than out of it; and I have referred to the condition of the free blacks in the North. And I hold that this condition is best for him and his race. I referred in one speech of mine to the manner in which the arts of civilized life were introduced amongst many of the Northern nations of Europe. You can trace it from the past that the Romans carried to Rome thousands of captives,

and made slaves of them. These learning the arts and sciences afterwards carried the knowledge which they had thus acquired into the countries from which they had been originally taken. Thus first sowing the seeds, or planting the germ of similar arts and sciences that flourished soon after, over the whole of Europe, without which Europe, perhaps might have continued to this day in comparative darkness and ignorance, as Africa has. And is not the same process going on in Africa? May not Africa heretofore profit by the seeds thus being sowed by means of the liberated slaves who have acquired intelligence during the period of their servitude. And thus may not our seeming oppression to them be turned to their great advantage. And may not Africa yet bloom from the very curse that was intended to make her sterile.

But, sir, as to these resolutions, here is a resolution that I am willing to vote for, covering the entire ground. Does it not comprehend the whole subject? Now, sir, here is a speech which was made in Congress in which I elaborate the question, as to the power of Congress over the subject of slavery in the territories. But I do not intimate that it ought to be carried out, but the very reverse; this speech was delivered in Congress, June 12, 1848.

"He did not refer to these cases so much to show that this ordinance of itself was valid, as that ordinances of this kind might be valid, and that the action of this Government in reference to any Territory, providing for its settlement under certain conditions and stipulations, if settlers went there, must become at least morally binding upon them. It seemed to him he had said enough to satisfy any reasonable man that the ordinance of 1787, was in force, and consequently that another ordinance of similar character might be put in force. He did not say, nor should he pretend to say, whether slavery ought, as a matter of justice or right, to go North or South; whether it were a "pestiferous question," as the Senator from Missouri, (Mr. Benton,) was pleased to say in the other end of the Capitol a few days since; he would not express any opinion upon that now, as his only object in rising had been to show that the authority existed in Congress to make all laws for the government of these Territories, whether it were for the protection or prohibition of slaves there. He held that the power of Congress over the Territories was ample, plenary, and complete; they might prohibit their settlement; they might leave them to be settled under such conditions as they pleased; they might create or abolish slavery there, as in their judgment it should be best for the interests of the Territories and of the whole Union."

Sir, that is the language I made use of. I repeat, I believe that these resolutions have no business here, and I shall vote, therefore, to

keep them where they are, upon the table. If taken up, I shall vote to curtail them of their verbiage, to refer them to a committee perhaps, or to substitute something that shall express more properly the sense of the Convention. And I repeat again, that I am not willing to take allopathic doses of political medicine, mixed by my political opponents.

Mr. KELSO. This is a question, I am aware, that several gentlemen want to say something about, and perhaps it will be well that they should have some little time to prepare what they have to say. I will move, therefore, that the further consideration of the subject be postponed until next Saturday.

The question being put upon the motion to postpone, it was not agreed to.

[Cries of "question," "question."]

The question being upon re-considering the vote by which the resolutions were laid upon the table.

The yeas and nays were demanded, and they were ordered, and being taken were—yeas 60, nays 56—as follows:

YEAS—Messrs. Allen, Barbour, Berry, Bicknell, Bourne, Bowers, Bracken, Bright, Butler, Carr, Chenowith, Cookerly, Davis of Parke, Davis of Vermillion, Dick, Dunn of Perry, &c., Farrow, Fisher, Foley, Foster, Gibson, Gootie, Graham of Miami, Haddon, Hall, Hamilton, Harbolt, Helmer, Hitt, Holman, Huff, Johnson, Kendall of Wabash, Logan, McLean, Miller of Clinton, Miller of Gibson, Milroy, Moon-ey, Murray, Nofsinger, Owen, Prather, Rariden, Read of Clark, Read of Monroe, Ristine, Schoonover, Sherrod Shoup, Sims, Steele, Tague, Taylor, Terry, Thornton, Walpole, Wolfe, Yocum, and Mr. President—60.

NAYS—Messrs. Alexander, Anthony, Bascom, Beard, Beeson, Blythe, Borden, Brookbank, Bryant, Chandler, Chapman, Clark of Tippecanoe, Coats, Cole, Colfax, Conduit, Crawford, Crumbacker, Duzan, Garvin, Hardin, Hawkins, Howe, Kelso, Kent, Kendall of Warren, Kilgore, Kinley, Maguire, March, Mather, May, McFarland, Miller of Fulton, Milligan, Morrison of Marion, Mowrer, Niles, Pepper of Crawford, Pettit, Robinson, Shannon, Snook, Smith of Ripley, Smith of Scott, Spann, Tannehill, Thomas, Todd, Trimble, Wallace, Watts, Wheeler, Wiley, Work, Wunderlich, and Zenor—56.

So the vote was re-considered.

Mr. KILGORE. (addressing the Chair.) Are the resolutions now open for amendment?

The PRESIDENT. No, sir, the question is upon the motion to lay them upon the table.

Mr. PETTIT. I will withdraw that motion, if I am at liberty to do so.

The PRESIDENT. The gentleman cannot withdraw the motion.

Mr. BORDEN. I would ask if the matter does not necessarily go over until resolution day?

The PRESIDENT. No, sir, it does not necessarily go over, it is unfinished business, and must be disposed of now.

A MEMBER. Why cannot the gentleman withdraw his motion to lay on the table?

The PRESIDENT. It is not in order to withdraw a motion after it has been acted upon by the Convention.

A MEMBER. But this motion stands now, as if it had not been acted upon.

The PRESIDENT. The journal shows that it has been acted upon.

The PRESIDENT. The question now is on seconding the demand for the previous question.

Mr. KELSO. Has not the gentlemen the power to withdraw the demand for the previous question?

The PRESIDENT. It is in the same situation as the other motion, and subject to be rejected, but cannot be withdrawn.

Mr. KELSO. No action has been had upon this motion.

The PRESIDENT. No, sir, but action has been had upon the subject matter to which the motion applied, and upon which it was intended to operate.

Mr. KELSO. It seems to me that the gentleman who made the motion, has a right to withdraw it.

The PRESIDENT. The rule says that when the body has acted upon a motion, it is not in order to withdraw it. The Chair will remark that gentlemen can accomplish all they desire, by voting against laying on the table.

The question being taken upon the motion to lay on the table, it was decided in the negative.

Mr. CLARK of Tippecanoe. I wish to make a point of order. The gentleman demanded the previous question upon his resolutions, before any question was stated by the Chair. It appears to me that he had no right to demand the previous question before any question had been announced to the Convention by the Chair.

Mr. RARIDEN. It was my desire to withdraw the demand for the previous question long ago, if I had been permitted.

Mr. MILLER of Gibson. Is it in order to move to refer the resolutions to a committee.

The PRESIDENT. If by unanimous consent the gentleman from Wayne have leave to withdraw his demand for the previous question, it will then be in order to move that the resolutions be referred to a committee.

Mr. RARIDEN by consent, then withdrew his demand for the previous question.

Mr. MILLER. I now move that the resolutions be referred to a select committee of one from each Congressional district.

Mr. BORDEN. I second the motion.

Mr. KELSO. I move that the committee be instructed to—

The **PRESIDENT**. The gentleman will wait a moment.

Mr. KELSO. Cannot I accompany the motion to commit, with a motion to instruct the committee?

The **PRESIDENT**. The question will be first on the reference, and the gentleman can afterwards move his instructions.

The question being put on the motion to refer,

The yeas and nays were demanded and ordered, and being taken were—yeas, 46; nays, 69;—as follows:

YEAS—Messrs. Barbour, Berry, Borden, Bowers, Butler, Carr, Chandler, Clark of Tippecanoe, Conduit, Crawford, Davis of Parke, Davis of Vermillion, Dunn of Perry, &c, Foley, Garvin, Hall, Hamilton, Hardin, Hawkins, Johnson, Kelso, Kilgore, Kinley, Maguire, March, McFarland, Miller of Clinton, Miller of Gibson, Milroy, Mooney, Morrison of Marion, Murray, Nofsinger, Owen, Pettit, Read of Monroe, Robinson, Schoonover, Shoup, Smith of Ripley, Smith of Scott, Spann, Tague, Work, and Mr. President—46.

NAYS—Messrs. Alexander, Allen, Anthony, Bascom, Beard, Bicknell, Blythe, Bourne, Bracken, Brookbank, Bryant, Chapman, Coats, Cole, Colfax, Cookerly, Crumbacker, Dick, Duzan, Farrow, Fisher, Foster, Gibson, Gootee, Graham of Miami, Haddon, Harbolt, Helmer, Hitt, Holman, Howe, Huff, Kent, Kendall of Wabash, Kendall, Logan, Mather, May, McLean, Miller of Fulton, Milligan, Mowrer, Niles, Pepper of Crawford, Prather, Rariden, Read of Clark, Ristine, Shannon, Sherrod, Sims, Snook, Steele, Tannehill, Taylor, Terry, Thomas, Thornton, Todd, Trimble, Wallace, Walpole, Watts, Wheeler, Wiley, Wolfe, Wundelich, Yocum, and Zenor—69.

So the resolution was not referred.

The question recurred upon the adoption of the resolutions.

Mr. MATHER moved to strike out the preamble and insert the following:

A resolution as is a resolution.

THAT WHEREAS, Abby Kelly Folsom, and Elwood Fisher, George Thompson of England, Wendell Phillips and wife of Boston, General Quattlebum of South Carolina, Gen. Quitman and wife of Mississippi, and others, are designing and traitorous men, and are raising a particular fuss generally, at this particular period of time; therefore, this Constitutional meeting, in Convention assembled, declares:

1. That the Union *am* in danger.
2. That from and after the first day of January next, there shall be a general time of peace and whoever shall attempt to contravene this decree, shall be hung without benefit of clergy.
3. That a copy of these resolutions be sent to the Superintendent of each Asylum for Insane in the United States."

The resolution was received amidst much merriment.

Mr. OWEN. Then I move to strike out the preamble and resolutions, and insert the following:

WHEREAS, The Congress of the United States passed at its last session, a series of acts, commonly called the compromise measures, and including the law for the reclamation of fugitive slaves; and

WHEREAS, Certain misguided individuals in this and other free States, have expressed their determination to resist said fugitive slave law, therefore, be it

Resolved, That in the opinion of this Convention, the common sentiment of the people of Indiana sustains and endorses, in their general features and intention, the said series of compromise measures passed by Congress, and recognizes in the success of these measures, an earnest of security and perpetuity to our glorious Union.

Resolved, That whatever may be the opinions of individuals as to the wisdom or policy of any of the details of the fugitive slave law, it is the duty of all good citizens to conform to its requisitions, and to carry out, in good faith, the conditions of that compromise on the subject of domestic slavery, which is coeval with the Federal Constitution.

Resolved, That a copy of this preamble and resolutions be transmitted to the Governor's of each State and Territory of the United States, and to each of our Senators and Representatives in Congress.

The **PRESIDENT**. The Chair would suggest to the gentleman that the amendment of the gentleman from Elkhart has precedence.

Mr. RADIDEN. I proposed long ago to accept the amendment of the gentleman from Posey.

The **PRESIDENT**. The question is upon the amendment of the gentleman from Elkhart.

Mr. SHOUP. I move that the amendment be laid upon the table.

The motion was agreed to, and the amendment was laid upon the table.

Mr. COATES moved that the subject be indefinitely postponed.

The yeas and nays were demanded, and they were ordered.

Mr. BORDEN. I wish to say a single word. I had intended to ask the house to excuse me from voting upon the proposition for I conceive that we have no more business to act upon such a subject as this, than we have to pass so many votes upon the subject of the moon's being made of green cheese. Sir, I have only this to say, that I do not feel that I have any right to occupy a seat here, day after day, receiving three dollars a day of the public money, engaged in discussing and voting upon a subject of this kind. I am willing to-vote for its indefinite postponement, because we have no business

with it. But I do not ask the body to excuse me from voting. I wish to treat the body with respect, but I think they have no right to compel me to vote upon this subject. Suppose a gentleman should get up and offer a resolution declaring that the Chinese are the only civilized people in the world, would I be compelled to vote upon such a resolution? Was I sent here for such a purpose? I think not. I think the time of this Convention ought not to be occupied in expressing our views upon political questions. Such questions ought not to be entertained here. They serve no purpose but to produce irritation and excitement. I do trust that the House will come to its senses and proceed with its appropriate business. [Cries of "consent!" "consent!"]

Mr. NILES. I endeavored at the adjournment on Saturday afternoon to obtain the floor for the purpose of replying to some remarks which seemed to be personal to myself; but a very little time for reflection only was necessary to induce me cheerfully to waive any such privilege. I trust that I shall never be found occupying the time of this Convention in talking about myself, or my motives or consistency. Upon such subjects I am willing to leave my associates and the public to form their own judgment. I feel no great solicitude as to the result. And I shall occupy just as little time in assailing the motives or attempting to injure the feelings of others. I rise now to say that, unlike the gentleman from Allen, I shall not ask to be excused from voting on these resolutions. I intend to occupy my seat and vote upon every question that is submitted, whatever it may be; while at the same time I insist that these resolutions have no business here, and no member of this body could be compelled to vote upon them. Were I willing to present what might seem like a factious opposition to the will of the majority, which I will never do in any body with which I may be associated, I could defy you to require my vote upon subjects which have been so mischievously introduced here—which can result in no public benefit, and which are only calculated to promote personal aims, and to excite partisan and personal animosities. What are called the compromise measures of the last Congress, unless the fugitive slave bill be classed among them, are final and irrevocable in their nature, and no man in all the North proposes to disturb them. But I have no hesitation in saying that for one of those acts, as for the fugitive slave law in its present form, I never would have been compelled to vote. If gentlemen desire, and think that is a proper way of spending the time of this Convention—to bring in review every one of those acts, and will give me the privilege of discussing them section by section, and clause by clause, I am ready, in the elegant language which has been used in this debate, "to show my hand." But if called upon by a single vote to endorse them all in a lump,

I shall be fully careful not to affirm what may be questionable in any shape. No man would hesitate to vote for resolutions recognizing our attachment to the Union, and the duty of submission to the laws, though such resolutions would be idle and useless, as there is no difference of opinion upon those points throughout the State. When, however, I am irregularly called upon to give a useless vote to bolster up the conduct of any man, or set of men, I shall not be found even by implication approving measures, which had they been originally before me for responsible action, I might have, even in part, condemned.

Mr. OWEN. In reply to the gentleman from Allen, I have this to say: For the valuable time that may be wasted in the discussion of the resolutions before us, let those be responsible who introduced them here.

Mr. RARIDEN (in his seat.) Consent!

Mr. OWEN. They are here now, not by my action, nor yet with my vote. There is a single reason why we should now act upon them—a strong one—that is, that being here, a false inference would be surely drawn from their rejection, an inference pregnant with evil influence, if not with danger, both in the North and in the South.

Mr. HOWE. Allow me to say in reference to these resolutions that I shall not undertake to decide upon their merits, although I regret their introduction as inappropriate, and because they call upon us to express our sentiments on a part, instead of the whole of a very grave and important matter. But while I oppose the resolutions of the gentleman from Wayne, I for one, will not undertake, as some have done, to impugn the motives of that gentleman. I think that his motives were good, though I believe this was not the proper place for their introduction, and the whole moral effect, which of course should be the sole object, is utterly lost in the resolutions of the gentleman from Posey, and in a great measure, in those originally introduced by the gentleman from Wayne, by not embracing the whole merits of the subject.

The resolutions of the gentleman from Wayne did not refer to the treason of the North alone, but gently to the traitors in all but the overt act, south of Masons and Dixon's line; and I insist that if called on to deliver our opinion as to the present position of affairs in this country, we ought to give a general, not a one-sided opinion, as proposed by the gentleman from Posey. His resolutions refer simply to a few fanatics at the North, who have given out that they will oppose a law of the Union. I ask if there are not fanatics also at the South. If we condemn at all, let us condemn in toto. And in that view I sincerely coincide with the gentleman from Wayne, as far as he goes, although he does not go far enough; but assumes to embrace both sides of the question.

Mr. OWEN. In the resolutions introduced by me there is nothing said about traitors, either at the North or at the South.

Mr. HOWE. I am aware of that, sir, it is a term used by myself, and I think it is a correct one. I affirm that there are traitors at the South in everything but the overt act. I say if we express an opinion at all we should express a general opinion. It is unjust and impolitic to take a one-sided view of the case, and if we undertake to set ourselves up as judges, let us judge impartially; let our judgment go to the whole case, and not one side of it. And therefore I think the resolutions of the gentleman from Wayne, lengthy as they are, vastly preferable to those now before us. I say that I would much rather vote for the resolutions of the gentleman from Wayne, than for those of the gentleman from Posey, although I do not intend to vote for either.

We have had some eloquent remarks this morning, by the gentleman from Tippecanoe, (Mr. Pettit,) in relation to subjects that have never been before the Convention. I was not aware that we had under discussion the abolition of slavery until so informed by the gentleman from Tippecanoe. It is entirely new to me.

Mr. PETTIT. We have had the question of admission or exclusion of negroes under discussion.

Mr. HOWE. What has that to do with slavery or the abolition of slavery?

Mr. PETTIT. I did not say it had anything to do with it.

Mr. HOWE. Then the gentleman has been arguing a question that was not before us. He has given us an elaborate argument in relation to the African race, to prove that they are in a better condition when in slavery than when free. He has placed the Convention in a false position.

I have no political aspirations. I have nothing to ask or expect; but my opinions I am ready to express at all times, and upon all subjects; and I say I hope that we shall hear no more of this kind of discussion. It is altogether out of place. If gentlemen here have political aspirations I have no interest in hearing them in this Hall on that topic. I care very little what any gentleman's position is, or what he is aspiring to. I hope that we shall have no more time consumed on such matters.

Mr. CLARK of Tippecanoe. I shall be compelled to vote for the indefinite postponement of these resolutions because, like the gentleman from Lagrange, I think the amendment is worse, perhaps, than the original resolutions. I do not know whether the gentleman from Posey intended to convey the meaning which the wording of his preamble and resolutions evidently conveys.

The preamble reads thus:

"WHEREAS, certain misguided individuals in *this and other free States*, have expressed their determination to resist said fugitive slave law"—Resolved, &c.

Now, this refers exclusively to persons in the free States, who have expressed a determination to resist the operation of the compromise measures. I say I do not wish to charge any body with this treason, but I think if an indication has been expressed anywhere, of a wish to dissolve the Union, it has been in the southern States. There it is rumored that they have met in organized bodies, and have expressed the opinion that the Union should be dissolved. They are supposed to have done this, even in their regularly organized governmental bodies, but have the people made such demonstration in the free States? The only propositions of such a character that have been made in the northern States, have been the expression of unauthorized individuals, not representing the feelings of the free States. And, as a matter of justice, I would not charge our people in the free States with being the exclusive agitators of treason. Sir, I think it is not proper, or becoming in us to do so. Now, sir, the resolutions themselves state that there are certain compromise measures, but I understand by thus describing them, that these compromise measures are not to be regarded as laws, but in the nature of treaties binding us not as individuals, but as States, not to disturb these compromises. Now, I am willing to say that I will be obedient to these laws so long as they remain unrepealed, and I admit that the admission of California and the settlement of the Texas boundary question cannot be properly repealed, but I am not willing to say that they are all in the nature of treaties and irrevocable. I am willing to regard them simply as laws, leaving them to the approbation, or rather to the decision of the people of the U. States. While I will submit to these laws, I am not willing to say that I approve them in all their general features and in all their aspects and details. I do not wish to declare to the people of the south that these are the opinions of the people of Indiana, for I do not believe they are. I believe that the people of Indiana are of opinion that it was right to admit California, notwithstanding her Constitutional provision against slavery. I believe they supposed that this was right, but sir, they also supposed that this fugitive slave law should have been passed, if passed at all, in obedience to the demand of public opinion, and the injunctions of the Constitution, not as a matter of compromise, or offset against the admission of California. There is no compromise about it.

Now, sir, if the motion to postpone does not prevail, I shall vote to refer those resolutions to a committee, and I think the Convention ought to allow them to be referred. If we express an opinion we ought to do it deliberately, clearly and discreetly. As I have said before, nothing

but an extraordinary occasion can justify this Convention in turning aside to notice a matter of this kind. This is a body called together for a great and a grave purpose. It is not a body that meets periodically under the organization of our government, but one that is called together to do an important, and unusual work, and therefore, our opinions will be regarded, if they ought to be regarded at all, by the people, as being entitled to great weight, it is demanded of us, that we exercise great circumspection in giving an opinion, that we may not discredit ourselves. Sir, there is but a step between the sublime and the ridiculous, as the gentleman from Elkhart has shown us by his amendment and we are nearly verging upon the ridiculous in traveling out of our way to notice things that we have nothing to do with, but which, if we notice at all, should be noticed in a solemn and becoming manner. I am willing to attribute to members of the last Congress patriotic motives. I concede, sir, that perhaps, they did the best that it was possible for them to do. They passed measures arising from the necessity of the case, and we are bound to submit to them so long as they continue to be the law of the land. But I am not willing to regard them in any other light than as laws. I am not willing to charge the people of the free States exclusively with being traitors, because I do not believe it is true. And I think that the south have complained of these measures. They have not been satisfied with the fugitive slave law. I do not think they had a right to demand that the people of California should submit to the evils of slavery. The people of that State had a right to demand to be freed from it, and Congress was bound to yield to their demand.

I am sorry that this measure cannot be so shapen that we can all vote for it. But I feel bound to vote for the indefinite postponement of the original proposition as well as the amendments, for I do not foresee any probability of procuring such amendments to these resolutions as that I shall feel authorized to vote for them I cannot admit that there is such an exigency as to compel me to vote for whatever any gentleman may choose to present on this subject, for the action of this body. I feel bound rather to vindicate my own freedom, and that of my constituents, and sir, without the slightest hesitation, I will vote against any proposition of which my judgment disapproves, but with no purpose or intent to resist the laws, or to dissolve the Union.

Mr. BIDDLE. I believe, sir, that the question is upon the indefinite postponement of this subject. And I feel like saying a word or two in relation to it, although I shall not allow myself to be dragged into a controversy in reference to the merits of the measures that were passed by the Congress of the United States at its late session. For I do not think that this Convention has any right to pass judgment upon

those measures. As the gentleman from Delaware has said, it is altogether out of place. So far as concerns those subjects that properly come under our consideration, I am willing to be constantly in my seat and to take the responsibility of voting upon every one of them. That is the very end and design for which this Convention has been constituted. But I have no disposition to vote upon a question which has no relation whatever to the duties for which we are assembled. The expression of our opinion upon such questions will carry no more weight than an expression of opinion on the part of so many private citizens. I am inclined to resort to every legitimate method that will have the effect of putting an end to this controversy. I voted to lay the resolution upon the table; I voted to sustain the previous question, and I shall continue to vote against the resolutions without regard to the merits of the controversy. I deny the power of this Convention to drag measures in here to swell the sails of any politician. In legal phrase the whole matter is *coram non judge*, and I deny the power of this Convention to compel me to vote upon them or to punish me for a refusal to vote. I say this not out of disrespect to the mover of the resolutions or of the amendment; but I will not sit here day after day, and week after week, and participate in a discussion upon matters with which we have no more to do than we have with an inquiry into the authenticity of the Bible, or the doings of the devil.

I am not disposed to complain of the slowness of our progress by any means; I think we have got along remarkably well hitherto; but if we adopt these resolutions we take a step that will materially interfere with our future progress. Adopt these and we shall soon have another set of resolutions brought forward. I think, therefore, we had better postpone these indefinitely, and put an end to a thing that is entirely out of order. I deny that the vote in relation to these resolutions—whichever way it may be given—gives any expression of the views of Delegates.

Sir, if it were legitimate to express an opinion, I would say whatsoever is the law it is the duty of every good citizen to obey it. I shall unquestionably counsel obedience; but, sir, I will go against this Convention taking jurisdiction of matters which are entirely beyond the line of our duty, and undertaking to form a decision, whilst any decision of ours would be of no force or effect whatever. With great deference for the learning of honorable members of this body, I must say that a county meeting would, for the purpose of giving expression to their views and feelings in regard to measures that have been passed by Congress, carry with it quite as much weight and respectability.

Sir, it has been said that this Convention is omnipotent. It is, in a human sense, omnipo-

tent in many things, but in regard to matters of this kind, so far from being omnipotent, it has no jurisdiction over them whatever. I call upon this Convention, then, to lay aside the consideration of this subject. If gentlemen wish to give expression to their views in relation to it, let them call a public meeting. But I think it an abuse of the trust that is confided to us as delegates to come here and squander our time and public money in a matter that is of no utility whatever. Now I wish to show no disrespect to this Convention, nor to the mover of these resolutions. He is a gentleman, always respected for his ability and patriotism, but his patriotism in this instance is ill-timed—let him exhibit it at the proper time, with the influence he possesses, and I am with him. But I shall oppose these resolutions in every shape known to parliamentary rules, and when they come to be voted upon I shall refuse to vote, and I claim to be exempt from voting as a matter of right. I put myself upon that platform as a matter of principle. The Convention cannot take from me the right to withhold my vote. I appeal to the Convention whether it is not more fitting and proper that matters of this kind should be discussed at a public meeting, and not in this Convention of the people which is assembled for a different purpose.

Mr. KELSO. Before taking the vote upon these resolutions, perhaps it may not be amiss to consider what it is that we propose to do in relation to the subject matter before us. It seems from rumor that within the limits of Indiana, and perhaps no further off than Wayne county, a public meeting has been gotten up at which a member of Congress made a speech, in which he denounced the fugitive slave law as a branch or portion of what is understood to be the compromise bill of Congress, and recommended resistance to that law. He declared that men should not hold themselves obliged to obey it, because it run counter to his notions of what is right. It is possible that a majority of that meeting may have coincided with him in that opinion. Although I believe that that is the only meeting which has been held in this State at which the subject was discussed, and thereupon these resolutions were introduced. Now is it supposed that the adoption of these resolutions will shut the mouth of George W. Julian? I imagine not. Will it prevent the people of Wayne county, or of any other county, from calling meetings and from calling upon George W. Julian to make speeches for them; and from applauding him for what he chooses to say; from giving him a general vote of concurrence in the sentiments he utters? I think not. They will still go on. I think there is great danger in taking notice of this public meeting in Wayne county. I think that the proceeding of ours in relation to it will agitate the public mind twenty times as much as the proceedings of that meeting could do. Will it not be an in-

ducement for other counties to get up public meetings, and to produce excitement and ill-feeling that would not have existed had we not noticed it in the manner we propose to notice this matter? I think there is great danger of increasing the excitement instead of allaying it. I think you will find very few persons in the State who would be inclined to disobey the law of the land. I cannot approve of the introduction of such resolutions as these. Yet as they are here, I am in favor of having them amended, for I am opposed to taking any step on the part of the Convention that could possibly be construed as saying that we approve of the fugitive slave law. I repeat I will go against every measure that can possibly have that effect. But while it is the law of the land we are all bound to obey it. But suppose there are a few men in Indiana who are disposed to resist the law, do you believe—does any man here believe—that if we pass the resolutions that have been offered and are now pending, that these men will cease to disobey the law—cease to resist it? I apprehend not. They have their minds made up. They act upon what they consider to be principle, and I ask if they have not as much right to act according to their judgments as we have, so far as that law is concerned? Now I apprehend there are very few gentlemen who differ with me in expression, that the law ought to be amended. A single practical instance that has occurred in Indiana may decide this question. I am informed that an individual from Arkansas came here and claimed certain persons as fugitive slaves. A fair trial was had and the supposed slaves were found to be free negroes, and I am credibly informed that they are indeed white persons. They were afterwards smuggled off into Kentucky for trial. They were got on board of a steamboat, and the officers of the boat compelled the claimant to take them back. He seized them again, and they were held for trial before the courts to ascertain whether they were fugitives or not. In the mean time the cause was continued for testimony, and the attorneys in the cause came here to the United States Court. He then goes to Louisville, in Kentucky—has an *ex parte* examination there—procures testimony without giving any notice whatever—gets an order and obtains a certificate from the proper authority and comes here and demands a surrender of the fugitives. And the judge of the United States Court here feeling himself bound by the proceeding of the court in Louisville surrenders them, and they have been carried to Kentucky. Now if the law will bear such a construction as that, is there a man here or elsewhere who will deny that it needs amendment. Certainly if you are going to give the person claimed as fugitive a trial at all, should he not have a fair trial; and can any trial be called fair where the fugitive is not allowed to hear the evidence? Now I say if we pass these resolutions, w

thereby approve of the law. I ask if we are not saying to our Senators and Representatives in Congress that the law is a good one, and that we are content with it, without amendment. That is the construction that will be put upon our action, and its tendency is to give a wrong impression of our views. They know that the law is not popular here. The principle may be correct, but the law in its details is not correct.

Mr. President, I maintain that the best thing that can be done with these resolutions is to postpone them indefinitely. It will not correct the expression of sentiment that was given at that meeting if we pass them; it will not prevent meetings from being held hereafter. It will not stop the people from talking; but, on the contrary, it is likely to stir up public feeling, and cause other meetings to be held, and induce them to repudiate our action as well as the action of Congress. For these reasons I go for the indefinite postponement of these resolutions.

Mr. WALLACE. I have been voting in a way which, perhaps, the gentleman from Wayne may consider as being in opposition to his resolutions; if so, I cannot help it. I concur fully in the sentiments expressed by the gentleman from Cass, and shall therefore continue to vote in the same way. I shall vote now for the indefinite postponement of the resolutions. I shall do so because I consider them out of place. It is no part of our duty to entertain them. They contain matters that the people never expected should be submitted to us. Why, sir, if the gentleman will only reflect for a moment, he will perceive that the subject of these resolutions belongs exclusively to the Congress of the United States, and, as a matter of course, if it meets or does not meet their approbation, if the laws the resolutions refer to are imperfect, if they are unpopular, if they are not called for by the people, the people, unquestionably, in the exercise of their legitimate power and duties, will act upon the subject constitutionally; and rightfully, through their representatives in Congress.

Mr. President, what would we make ourselves express if we adopt the amendment of the gentleman from Posey? Why, sir, not our individual sentiments or opinions, but we would aver roundly that these opinions and sentiments of ours are the common sentiments and opinions of the people of Indiana. Now, sir, other gentlemen may be better informed than myself upon this subject; although I have had, perhaps, quite as fair opportunities of ascertaining what the common sentiment of the people of my county is upon this subject, as any gentleman on this floor have had of theirs, yet I must confess that I do not know so as to venture to speak, as to what their general sentiment is. Indeed I have heard no expression from them that would justify me in saying here, by my vote, that it is the common sentiment

amongst them that these resolutions, or the law passed at the last session of Congress for the reclamation of fugitive slaves, should be in all things sustained.

I ask gentlemen to look around them and tell me what evidences they have had that will justify them in voting for an affirmative proposition of this kind? Have you had any expression from your people upon the subject? None, unless it be an expression from a portion of the people of Wayne county. That is the only expression that I have heard in regard to the subject. The people have not agitated the matter sufficiently. We do not usually get an expression of popular sentiment regarding any measure until it is put in force, until the people have seen its practical operation; then, and not till then, do you get an expression of the public sentiment.

Mr. President, what are we doing by passing these resolutions? A certain portion of our fellow-citizens see fit to differ in opinion from the gentleman from Wayne. They are disposed to regard a portion of the action of Congress, in reference to the compromise bills, with disfavor. Have they not a right to do it? Most assuredly they have. I ask gentlemen of this Convention, therefore, if they are prepared to take away from them this right, if on the contrary, by entertaining these resolutions they do not give to their opponents a consequence, an importance, a standing which they do not merit? I have no doubt of it.

Mr. President, I hope that the charge of being an abolitionist will not be made against me, because I vote for the postponement of these resolutions. I ought to be above suspicion on this point, for when I had the honor of a seat in Congress, I voted to expel the high priest of abolitionism from that body—Joshua R. Giddings.

A VOICE. You have never atoned for that yet.

Mr. WALLACE. No, sir; nor I suppose I never can, in the estimation of an abolitionist. I voted, however, for that expulsion, and I speak of it now as an act that, under the same circumstances and influenced by the same impressions which then operated on me, I would cheerfully do again. I have no favors to ask. I voted upon that occasion regardless of consequences, honestly believing that the welfare of the country demanded such an example. I say, sir, that I will not now entertain, if I can avoid it, a set of propositions which we have no right to act upon—which it is no part of our duty to consider. I would not send forth from this body a set of resolutions calculated, as these are, to give consequence and character to any party with whom I have no affinity, and especially when that party, according to the representations of gentlemen around me, are in so vast a minority.

For these reasons, sir, I shall vote for the indefinite postponement of these resolutions, and I do hope that a majority of this Convention will come up to the work, and take upon themselves the responsibility of getting rid of a subject which, as we have already seen, has created unnecessary excitement amongst us, and that we may return to the legitimate business of the Convention. The time that has been spent upon these resolutions has been employed uselessly and to no purpose, unless it be to cater to the views and opinions of persons who may be aspirants for office in some shape, manner, or form.

Mr. TAYLOR. I shall not trouble the Convention with a speech upon this occasion. I feel, sir, in common with the citizens of the northern counties of the State upon this subject. I had nothing to do with bringing this matter into the Convention, but I wish to take some little part in getting it out, or in passing upon it favorably, and I trust we may do it in such a manner as will not stir up the already troubled elements of strife. The principle is one upon which I think we should express our opinions as delegates or as citizens. Is it possible that because we are delegates we are disfranchised—that we are divested of the privileges of free citizens—that if there be anything that interrupts the harmony of the country we cannot express our sentiments upon it? Now all gentlemen who are opposed to the compromise measures, or the fugitive slave act in particular, can, by their votes upon these resolutions, show that they are opposed. And those who hold with me, that the measure is a good one—one that is calculated to produce harmony and concord—can express their opinions by their votes. That is all we ask. We do not propose to create dissensions. We propose merely a quiet and peaceable expression of sentiment.

But, sir, the proposition being before the Convention, if it should be voted down, it seems to me it must strike every man's sense that the abolitionists—the enemies of the law in this country everywhere—would look upon it as an indication that we are opposed to the law ourselves. Would not that do harm? I think it would. And it seems to me that if we wish to act as men of sense—as wise men—if we would throw oil upon the troubled waters, we should adopt these resolutions. If they cannot receive the vote of this body in their favor, they ought never to have been brought forward.

I believe that the Legislatures of the several States that are meeting on this day, as well as the National councils, will expect an expression of opinion from this body, not in regard to the fugitive slave law alone, but in regard to all the measures of the Federal Legislature. Is it possible that these measures are of so little consequence as not to deserve an expression of opinion at our hands. When you see such men as Clay and Webster and the lamented Calhoun,

and Douglass, devoting their energies for months to the work of devising and passing a series of measures for the establishment of peace and harmony throughout the country. Is it too small and unimportant a thing, I ask, for the people of Indiana to engage in? No, sir. That is not the true secret of the opposition of gentlemen. Our legislature has been accustomed to bring up such propositions for years past, when anything has interrupted the harmony of the country.

When the question of Texas annexation was propounded, did not the Legislature pass resolutions asking Congress to go against it? Certainly. This body has the same right that the Legislature has to declare its views. And if that question were now before Congress, we would have a perfect right to give expression to our views concerning it. Congress would expect it of us; and we should not be acting in good faith towards our constituents if we did not bring our influence to bear upon it. I believe that if we pass these restrictions we shall receive the approval of our constituents generally; though there may be some who will express great contempt for us, and I have no doubt there are such; I mean those who are agitating, those who set themselves up against the law. I have no fear of the contempt of such as these; I court them contempt. They are themselves in a miserable minority. Whenever they can induce a majority to be of their way of thinking then it will be time enough to give attention to the views they put forth, for we should render unto Cæsar the things that are Cæsar's. And, sir, gentlemen are asking to be excused from voting! I am astonished that any gentleman here should be afraid to give a free vote—to pour oil on the troubled waters.

Mr. BORDEN. I desire to correct the gentleman. I, for one, am not afraid to vote. I am as willing, at the proper time and place, to express my views as the gentleman from Laporte. What I contend for is that this is not the proper place or the proper time for any such expression of opinion.

Mr. TAYLOR. If that were the only cause I think the gentleman would hardly be so solicitous about the matter. He could easily abstain from voting. There must be some cause a little more weighty. I do think that he fears the question from other considerations, and I must be permitted to express what I feel upon this occasion. He has a right to do as he thinks proper about voting, and if —

The PRESIDENT (interrupting), The gentleman has no right to impugn the motives of any delegate.

Mr. TAYLOR. I am not impugning the gentleman's motives; only his explanation. [A laugh.] The gentleman must permit me to say that I think he is traveling a little out of the record. The gentleman may sit here and vote upon the question as I should, or he can

withdraw from the Hall, and not vote at all; and I am sure that no body would complain. The gentleman from Cass (Mr. Biddle) thinks the Convention has no power to make him vote. I differ with the gentleman in that. I think we have the power to require every delegate to vote upon this, or any other question; and if he should prove refractory we could expel him. But the gentleman has asked to be excused from voting, —

Mr. BIDDLE (interrupting). The gentleman is mistaken. I did not ask to be excused. I take it as a right to vote or not to vote, as I please. I am under no obligation to vote. I put it upon the ground of principle—not contumaciously. But I ask it as a right, and shall take it as a right, without any excuse to the Convention. I repeat, it is not of disrespect to the Convention, but I do not choose to sacrifice a principle.

Mr. ROBINSON. As I shall be compelled to vote for the postponement of these resolutions, and the amendments thereto, I feel it to be a duty that I owe to myself to place myself right before the country. And although I never in this Hall, or elsewhere, impugn the motives of gentlemen, like the gentleman from Tippecanoe, (Mr. Pettit,) though I never refer to any member as being ignorant as the ass on which he rides; for I look upon such a reference as an insult to the good people of Indiana. Yet if I were compelled to take one horn of the dilemma, I would be almost as willing to be as ignorant as the animal represented by the gentleman, as to bray like him. [Laughter.] I say I impugn the motives of no gentleman, and I permit no gentlemen to impugn my motives, yet I fear my venerable friend from Wayne (Mr. Rariden) in the introduction of these resolutions, has left the path of rectitude, that he has followed all his life. What good object could be attained by introducing these resolutions? What good purpose is to be accomplished by it? It can only serve to fan the flame of excitement on the subject of slavery already lit up in the Union. What does it amount to that can be productive of good to the community? I might go into a discussion of the fugitive slave law.

I might say, as has been said by the gentleman from Switzerland, who is always bold enough to express his opinions, that it is a very high handed measure, to tell the people of Indiana that they shall, on all occasions, whether it be against their consciences or not, yield implicit obedience to the mandates of the South, and be slave-catchers for them. Yet such is the effect of the law. But it is not necessary to go into that subject at this time, or on this occasion. I shall vote in favor of the indefinite postponement of these resolutions, any way; because they are out of place and have no business here.

It has been well remarked by the gentleman from Cass, that this Convention has no power to compel him to vote upon the resolutions; and I have no doubt, sir, of the correctness of that position, for the good reason that the whole subject, and the action of this Convention on it, is a power usurped, not delegated to us by those that sent us here, and not within the range of our duty. Sir, we are sent here with certain specific and delegated powers, for the purpose of framing a Constitution—of making an organic law for the government of the people of Indiana. Will the gentleman from Wayne, Tippecanoe, or Posey, tell me what part of the organic law these resolutions would form, if adopted? Upon what principle would they be obligatory or binding upon the people of Indiana? Would they be published as a part of the organic law that we, the delegates to this Convention, may adopt and send to the people for their ratification, that we, the representatives or the people of Indiana, may establish?

Sir, pass the resolutions, publish them to the world as a part of the action of this Convention, and who will they bind, what binding influence will they have on our courts of justice? Sir, I look at the whole matter as a farce, all out of place; a fire-brand unnecessarily thrown into this Convention. It has been said in this discussion that those resolutions have been introduced for a political purpose, to subserve political designs. Sir, I oppose them on the ground that they are out of place, and foreign from the business for which we have convened in this Hall. I oppose them because no good can be effected by them. Adopt them and what do they amount to? The mere expression of the opinion of this Convention. But after all, will not men think, act, and judge for themselves, regardless of our notions and opinions? Sir, every man will consult his own conscience; think and act for himself. Sir, let the law stand on its own merits; if it is good it does not need our sanction; if bad, it ought not to have it. It ought to take its own course—stand or fall by its own merits. It ought to be obeyed while in force; but if a bad law, it ought to be repealed.

Gentlemen talk about preserving the Union. The Union, they say, must be preserved. I, sir, am as much devoted to the Union as any gentleman upon this floor. But is there anything that is endangering the Union? It has, I believe, sufficient strength, if let alone, to hold together firm and sure on the foundation erected by our fathers. It is held together by bands which I hope and believe can never be burst. But if there is anything that is calculated to weaken those bonds of Union admired by all, and to undermine the great fabric of liberty, it is this nonsensical, demagogical stuff that has been and still is being thrown before the country. Talk to me of dissolving the Union! Sir,

if any such danger exists, it is pandering to the disunion excitement now being agitated and talked of by some hot-headed politicians. Sir, if we will patiently wait until the time and occasion for putting the law in force in our own State arrives—if we will first test its operation among our own people—see whether they do not yield implicit obedience to its mandates as good citizens, and not be continually talking about union and disunion, and forbear to get up those inflammatory meetings, it would be far better for all parties concerned. This Union, I believe, is destined to stand for ages by its own strength, if that strength is not impaired by improper excitement. That is my opinion. It has been very properly remarked by the gentleman from Marion, that if we adopt these resolutions and send them to the country, it is but giving importance and strength and encouragement to the Southern portion of the Union, to enforce the execution of this law. Sir, when it becomes necessary—if such necessity should ever exist to speak on this subject—let public meetings be held. I do not want them to be either whig or democratic exclusively, and let them express the popular sentiment in regard to this law, without distinction of party or party feeling. And, sir, if there is any word that I despise as contemptible—if there is any sentiment that I despise when thrown out in this body assembled together as we are to form an organic law—it is the damnable words “whig” and “democrat.” I despise the terms on an occasion so sacred as this. And I would rather see the animal of which the gentleman from Tippecanoe has spoken, come stalking into this Hall, than to hear of whiggery and democracy put out here on this occasion when all should agree. [Applause.]

The best thing that we can do is, to declare to those who are inclined to get up public meetings for the purpose of expressing dissatisfaction with the existing state of things, that this Union stands upon too firm a basis to be endangered by any such proceeding. I will go heart and hand with those who are ready to pronounce by a resolution to be adopted here, that I am for the Union now and forever. But when I am called upon here in the capacity of a delegate, to yield obedience to sentiments with which I do not conclude, are advocated in the proper place or on a proper occasion—when I am called on by the vote that I must give, to tell my constituents, a part of whom I know are honest, and have conscientious scruples, that have their own peculiar views and notions on this subject, that you are not to exercise the right of conscience, that you are to be the inmate of a prison unless you tamely yield to the dictation and interests of others, though in such obedience you may have to sacrifice the religious sentiments of your hearts, you are not to exercise the right of conscience—at this point I stop; I pause.

Believing these resolutions out of place and uncalled for, I shall vote to indefinitely postpone them. I do so that we may proceed with the business of the Convention for which we have been sent here. I want to see them indefinitely postponed—driven from this Hall—condemned to eternal oblivion, where they may sleep the sleep of death forever, and their inflammatory effects withdrawn from the deliberations of this body, and restore in these Halls peace and harmony in the discharge of our important duties.

[Mr. Murray here made some remarks, which are withheld for revision.]

The Convention adjourned.

AFTERNOON SESSION.

The Convention resumed the consideration of the motion to indefinitely postpone the consideration of the preamble and resolutions offered by Mr. RARIDEN, and the amendments thereto.

Mr. HOLMAN, being entitled to the floor, addressed the Convention as follows:

If I were actuated, Mr. President, by personal considerations of prudence, it is not likely I would make any remarks on this occasion. This is a question, however, of such a character, as, in my humble judgment, requires that the candid opinion of this Convention should be expressed. It is not a mere question of ordinary politics; it is not a question of secondary importance; but it is a question like this: Is it proper for this Convention, as the immediate delegates of the people of Indiana, to express any opinion on a question involving the integrity of the American Union?

Sir, I am opposed to the indefinite postponement of the question, and I can conceive no impropriety whatever in our now expressing an opinion upon it. The motion under consideration is for its indefinite postponement, and several reasons have been urged in favor of the adoption of that motion. The main reason, however, is this, that the question is one of such a character as ought never to have been brought before us for discussion, and that the motives that brought it here are improper. I care not, Mr. President, what may have been the motives of the gentleman from Wayne (Mr. Rariden) in bringing forward this proposition. I care not whether he was actuated by personal considerations, or by the higher feelings of patriotism. It matters not what the motive may have been, the question is: Is it proper for the Convention to express an opinion upon the subject. For my own part, I regard the gentleman from Wayne, from his long connection with the political history of the State of Indiana—having spent some ten years in her legislative halls, and having been for four years a representative of his district in Congress—as at least familiar with the political history of the country, and his opinions entitled to some con-

sideration. His age, his experience, his long connection with the State, as one of her public servants, and the unabated confidence of his fellow-citizens in his ability and integrity, are all reasons, and strong reasons, too, why his opinions should be entitled to more respect than some gentlemen seem disposed to accord to them. Some gentlemen have gone so far as to say that he was actuated by personal considerations; others have said that this was a mere quarrel between himself and his constituents. The gentleman from Wayne may be influenced by one or all of these considerations, though I do not believe that he is influenced by any of them. I am candidly of opinion that he is influenced by higher and nobler feelings than any such as have been ascribed to him. If the propositions of the gentleman from Wayne are unpopular—and the strenuous opposition with which they have met would indicate that such is the opinion of the gentlemen who oppose them—then, at least, we should accord to that gentleman a high degree of moral courage, if not patriotism, in being willing to sacrifice his favor with the people to a sense of his duty to his country. If, however, gentlemen believe that these propositions will meet the approval of the country, and that the gentleman from Wayne has introduced them to advance his personal popularity, will they oppose what they believe to be the common sentiment of the people?

In matters of mere politics, I differ with the gentleman from Wayne; but every sentiment that he has uttered indicating an attachment to the dearest interests of the country, have met my hearty approval.

The gentleman from Allen (Mr. Borden) tells us that this is a political question, and therefore inappropriate to the deliberations of this body. Sir, what is the question? These resolutions propose to endorse the action of Congress, during the last session, in the general features of those measures which have been regarded as tending to settle the vexed questions which were weakening the ties of affection between the people of the several States of the Union. The gentleman from Allen tells us that this is a political question—a question of party politics. Sir, has it come to this, that a question involving the integrity of the American Union, is a mere political question—a partisan question? that a "Union" party is to be organized, and that it has become necessary, in order to maintain the integrity of this Union, that a party should hoist their standard as a "Union party," and for that purpose to preserve the Union? Sir, the moment that this is to become a party question—a question on which a party is to be organized—from that moment the Union is not worth preserving. [Applause.] Sir, this is not a political question, in the common acceptation of the term. In one sense, it is true, it may be said to be intimately blended

with the politics of the country; for it is the foundation on which all our policy is built. And, sir, there is no body of men convened for so high and holy a purpose, as that an expression on their part, favorable to the integrity of the Union, is out of place or inappropriate.

Sir, from the pulpit—from the altar—in the house dedicated to the service of the Most High—such an expression has not only been regarded as proper, but has, in many instances, been given; while the prayers of thousands of united hearts, worshipping in all the fervor of devotion, have ascended to Heaven, asking the aid of the Almighty for the same great end. A political question! A partisan question! A question involving the organization of a party to maintain the integrity of this Union! Sir, as I remarked before, whenever it comes to this—whenever the Ruler of our destinies shall permit us to become so infatuated—whenever it is understood to be a question of this character, and is brought before the American people, with this party for it and that party against it—from that moment, the tie which binds these States together will have been severed.

But gentlemen say that this is not a proper place for the discussion of this subject. Sir, let me inquire who are we? Of whom are the delegates who are here assembled composed? We are a part of the people of the State of Indiana—the representatives of the views and wishes of that people—a part of that people whose destinies hang upon the "Union of the States"—and we have assembled together for what purpose? Why, primarily for the purpose of adopting measures calculated to advance the happiness and prosperity of the State, and incidentally to advance the happiness and prosperity of the people of the whole Union.

One gentleman remarked that the Legislature would soon be in session, and that the question should be considered before that body. Are the members of the Legislature any more the exponents of the will of the people of the State of Indiana than we are? Are they less influenced by party considerations than we, who are supposed to come here destitute of all party considerations? And what time could be more fitting for an expression of opinion on such a subject than the present? If the object for which we are assembled is too high—too holy—to permit us to contemplate a question involving the perpetuity of our glorious republic, let us at once reject these propositions. But, sir, if this is a question involving our interests infinitely above all others—if it is the watch-word of American freedom—then, sir, no place on earth is too sacred—no engagement of life is too exclusive, to claim exemption from its consideration. I care not what may be the expression of the Convention. What do gentlemen desire? If they adopt the patriotic sentiment of the people of Indiana, "that Indiana knows no North, that she knows no South, that she knows

nothing but the Union," then am I for it. [Applause.] Or if they adopt the expression of a well known American statesman, "My country—may she ever be right; but right or wrong, my country," then am I also with them. [Renewed applause.]

But, Sir, if these resolutions are to meet the object for which it is said they are designed, they should be a little more definite, and I wish to call the attention of the Convention for a few moments to a substitute which has been offered by the gentleman from Posey, (Mr. Owen,) and which the gentleman from Wayne is willing to accept. It has been objected by the gentleman from Tippecanoe, (Mr. Clark,) that the following words constituting a part of the preamble to these resolutions are objectionable.

"Whereas certain misguided individuals in this and in other free States," &c. It would perhaps be proper to strike out the words "in this and other free," and substitute the word "various," [Cries of "consent," "consent,"] so that it would read "whereas certain misguided persons in various States," &c. I understand from the gentleman from Posey that he is not only willing, but designed that this amendment should be made.

What then, sir, is the substance of the preamble and resolutions? It is, that Congress actuated by a spirit of concession has adopted that series of measures known as the "compromise measures"—that certain misguided men in various States of the Union, have signified their intention to resist the carrying of those measures, or at least some of them, into effect—that Indiana retains an unwavering attachment to the "Union" and approves of every reasonable compromise necessary to maintain its integrity and that whatever may be the individual opinions of different citizens of this State as to the wisdom or policy of that series of compromise measures, yet inasmuch as they now constitute a part of the law of the land, they should be enforced in good faith.

And then comes this endorsement:

"Therefore, be it resolved, that in the opinion of this Convention, the common sentiments of the people of Indiana sustain and endorse"—

What?

"The general features and intentions."—

Not the minutia—not the details of the fugitive slave law, but "the general features and intentions" of the compromise measures and recognize in their success an earnest of security and perpetuity to our glorious Union."

What was the design of these measures?

Sir, the country has passed through a severe ordeal, only equalled by that in which the Federal Constitution was adopted. The change has been a remarkable one, the "peculiar institution of slavery," has ever been fraught with danger to the Union; every American citizen knows with what unyielding tenacity the slave-

holding States have clung to that institution, up to the time of the admission of California into the Confederacy, the States interested in negro slavery either constituted the majority in the Senate of the United States, or held an equal power with the free States; sir, would the South see the "scepter depart from Judea," without a struggle. If California was admitted the South forever lost her ascendancy, other elements of disorganization existed, and Southern and Northern fanaticism had attained such an influence over the deliberations of Congress as, in the avowed opinion of some of our ablest and most experienced statesmen, to seriously threaten the permanency of the Union. Was it not a time for compromise? Shall the Union be endangered because we have forgotten the spirit of concession in which our father's cemented together the elements of this glorious Union.

The occasion was an exciting one, every gentleman knows that, whenever in modern times, the institution of slavery has existed not only in the United States, but elsewhere, the subject has been one of embarrassing interest, the admission of a State on the shores of the Pacific into our confederacy, was of itself a remarkable event, and yet disconnected with other questions of national policy, that event could only have been hailed by the American people as a renewed evidence of the high destiny that awaits us; but connected, as the admission of California was, with a question of such delicacy, that whenever, since the origin of our country, the subject has been approached by Congress; the ablest and most prudent statesman have met it with fearful apprehension, and have even sought to secure safety to the Union by compromise and concession; then, sir, the event became one which loudly demanded the policy that had formed, and the moderation and wisdom that have preserved, "the union of the States."

Then, sir, we propose to endorse the "general features and intentions" of these measures of compromise adopted by Congress to allay the elements of sectional discord and disunion.

The gentlemen who oppose the expression of our opinion, object simply to the details of the fugitive slave law, and to the impropriety of occasion. We do not propose to endorse these details. We simply propose to adopt resolutions in which we can all unite and say that inasmuch as these measures were regarded by Congress as being necessary to preserve the integrity of the Union, and were adopted in a spirit of compromise, therefore the State of Indiana, as one of the free States, is disposed to give them her countenance and endorsement. I would say with the gentleman from Ripley, (Mr. Smith,) that I am opposed to the details of the fugitive slave law. I have no doubt whatever, that during the coming session of Congress that law will be modified. But at the same time let me ask, is the fact that an at-

tempt will be made to procure its modification, any reason why we at this time should not express an opinion as to the general character of the whole of these measures, as "measures of compromise and concession."

But the gentleman from Allen, (Mr. Borden,) a gentleman for whom I have the highest respect, and whose course I must say has generally been consistent, proposes that inasmuch as this measure is one which is not proper for the consideration of this Convention, that therefore he be excused from voting, [A laugh,] and the gentleman from Cass, (Mr. Biddle,) regards this as a revolutionary movement. [Renewed laughter.] Now I presume no gentleman will object to the gentleman from Allen, or from Cass, or from Laporte, or from Switzerland, or from Ripley, who seem to regard this measure with such holy indignation, I say I presume that no gentleman on this floor will object to their being excused from voting. Sir, when it comes to a question of union or disunion we could wish no gentleman to express an opinion unless it comes as a free will offering from his heart.

But, sir, it is said that this is an improper subject for us to consider, because we were sent to this Convention for a specific purpose. Let me ask the Convention, is this the first time that resolutions have been introduced here which had no relevancy to the great object for which the Convention was called together? Have gentlemen forgotten that my friend from Wayne, (Mr. Rariden,) a few days ago, introduced resolutions in commemoration of the merits of a great American statesman? And who objected to those resolutions? Did the gentleman from Ripley (Mr. Smith) rise up and say "this is a very improper subject to be introduced here—the Convention have nothing to do with it—we were called here for a very different purpose?" or did he rise upon his feet and deliver an eloquent eulogy upon the life and character of the lamented Richard M. Johnson, of Kentucky? And yet when a question of this vast importance—a question once so dear to the heart of him whose character he eulogized—comes before the Convention, the gentleman from Ripley rises in his place and regards it with such horror that he tells us he will put his VETO upon it—yes, sir, he will put his VETO upon it. Sir, I am opposed to the one man power!

Mr. SMITH, (interposing). Not emphatic. I did not use quite so much emphasis: and if the remark offended the gentleman, I will take it back. ["Hear him, hear him!" and "take it back, then."]

Mr. HOLMAN. But again, sir, the gentleman from Allen regards the question as improper, because it had consumed so much time. Now, I would inquire who is guilty of the consumption of the time of the Convention? Is it that portion of this body who never speak, but are always ready to vote? No, sir. And I

would say that as far as voting has been concerned thus far, we have known no distinction between whig or democrat. The gentleman from Decatur was among the first to discover that this was a political question, and he is the only gentleman who has pronounced the two words "whig and democrat," together upon this subject. I remarked that there has been no partisan feeling manifested; and God grant that that day may never come when upon a subject of this character, any partisan feeling shall be exhibited. The gentleman tells us that this subject has consumed a great deal of time, and I ask who is responsible for the consumption of the time? Is it the gentlemen from Allen, Delaware, Laporte, Switzerland, Tippecanoe, Ripley, Cass, and Decatur, who have each discussed this subject on motions for its indefinite postponement, who are opposed to the consumption of time? Is it for my able friend from Ripley whose motion for the indefinite postponement of the subject is now pending, to talk about unnecessary consumption of time, when in the absence of this opposition, not a moment would have been lost in debate?

There are all around me the honest yeomanry of the country, the working men of the Convention, who, without uttering a word upon the subject in the way of discussion, are anxious and willing to vote upon it now; all that we ask is an opportunity to dispose of the question by a direct vote.

Well, sir, this question is pending, and yet gentlemen insist, that instead of meeting it fairly, we must indefinitely postpone its consideration. And why? Because in the first place, the gentleman from Wayne (Mr. Rariden) introduced it and he is a whig, and in the second place, because this is not the proper place in which to discuss it. Now, sir, suppose we are at home before our constituents, and when asked by them "What is the reason that the Convention did not at once express an opinion on the subject of these compromise measures, when almost every State in the Union in some form or other has expressed an opinion?" "Oh," says my friend from Tippecanoe, "because the question was got up by James Rariden, a whig from Wayne county."

Mr. PETTIT. I didn't say anything of the sort [laughter].

Mr. HOLMAN. I did not say you did, but that you might say to your constituents, "It came from an old whig in Wayne county, and therefore it should not be supported." [Laughter.] Why, sir, the honest yeomanry of the country would reply, "Is this the character of the men at the Capital, who cannot spend six weeks together for one of the most important of all purposes, without becoming wild on questions of a party character?" "No, no," say the gentlemen from Wells (Mr. Bascom) and from Ripley (Mr. Smith); "that was not the reason at all; it was simply because that was

not the proper place in which to do it." "In the name of common sense," replies the honest man, "what place could possibly be more proper in which to express an attachment for the Union, than that body which might fairly be presumed to be above all political considerations?"

We may differ as to the details of the series of measures, the general features of which are proposed to be approved; and the propriety of bringing the question before this Convention, might, before its introduction, have been a subject for careful scrutiny. Yet, inasmuch as the question is now before us, we will undoubtedly better subserve the interest and credit of the State, by meeting it in a manly spirit; if the general features and intentions of those measures meet, in our judgments, the approval of the people, let us express that approval; if otherwise let the resolutions, by a direct vote, be rejected; but, sir, let honest candor and a just regard for the importance of the subject, forbid an indefinite postponement of the resolutions, and thereby a virtual condemnation of the compromise, which the wisdom of the most experienced statesmen of the nation deemed necessary to allay the feverish excitement then agitating the different portions of the Union; to sustain the general principles of that compromise, I am willing and ready to give my vote.

Sir, is there no resolution we can adopt, no sentiment to be expressed by this body on the subject? or is the North and the South, the East and the West, and every portion of the Union to be advised of the fact that a body of the people of the State of Indiana, drawn together from every county within her borders, were unwilling to give their sanction to those acts of Congress, in their general features, or else that we manifested a decided disapprobation of them, by indefinitely postponing a motion for their approval?

Sir, out of pride for Indiana, that can almost claim to be the keystone State of the Union—out of the honest pride for that State whose able Executive has so eloquently said, and said truly—"Indiana knows no North—no South—nothing but the Union;" out of pride for our people—a people whose attachment to the Union has never wavered, and who fully appreciate its value,—I ask every member on this floor, whether we can consistently evade an expression of our views, and whether we can consistently with the often avowed opinions of the people whom we represent, shrink from responsibility by an indefinite postponement, or avow our disapproval of those measures of compromise, by refusing to adopt, in any form, resolutions expressive of our attachment to that policy which, up to this time, has ever influenced the deliberations of the country.

We do not ask the gentlemen from Delaware, Switzerland, Allen, Ripley, or Decatur, to endorse the details of the fugitive slave law. No,

sir; I understand the gentleman who introduced this substitute, (Mr. Owen,) as being opposed to these details; and I also understand the gentleman from Tippecanoe, (Mr. Pettit,) as being opposed to them. But the general features of these compromise measures certainly meet the approval of a large majority of the members of this Convention; and I do believe, when it is remembered that these compromise measures were necessary, or apparently necessary, for the integrity of the Union, that not a solitary member of the Convention can object to endorse them.

But, Mr. President, this subject has been approached, to some extent, in rather an improper spirit. It is the expression of the opinion of the people of a great State, that is asked for. Now are we prepared to have the public sentiment affected with the consideration that this Union is of no moment!—that nothing is to be sacrificed to its integrity?—or shall we as citizens, do everything we can do to guard the sanctity of the Union, by ever approaching the subject in the spirit of its importance? It was remarked by one of our most distinguished scholars, the lamented Grimke of South Carolina, that, although the American statesman may discharge every other duty he owes to his country, with the disinterested fidelity of Robert Morris, and the patriotism of Patrick Henry, yet, if he failed to cultivate in the public sentiment, a deep and abiding interest in the integrity of the Union of the States, he would come far short of discharging his duty. Sir, are we prepared, either by approaching this subject in a spirit of indifference, or in that spirit which shows that, as a people, we lay not to heart the importance of this Union—are we prepared to create such a sentiment amongst us as that the sacred words, "American Union," shall become "as sounding brass, or a tinkling cymbal," instead of their continuing to be the watch-word around which the American people may rally, and to which the public mind will cling as the one absorbing and all engrossing subject, as the anchor of hope and the haven of safety? I hope not. Let us, then, adopt some expression of opinion on the subject, no matter what it is, so that it indicates that the State of Indiana is determined to adhere to the Union. Gentlemen say that there is no danger to the country. I do not myself, conceive that there is; but it seems to be apprehended in various parts of the Republic, that there is danger. The names of Webster, and Clay, and Cass, and the opinions which these statesmen express, are entitled to great consideration. These leading spirits, and others, who have watched the current of public events, have declared that there is danger, though we may not apprehend it. Yet, when the question is before this body of men, and the expression of their opinion can be made, certainly it can be no improper time to make it, if only as if renewed expression of our attachment to our

country. I hope, sir, that the motion to postpone will be voted down; that the question will be met in a becoming spirit, and that when we go home to our constituents, we may not be compelled to resort to any paltry excuses in endeavoring to palliate our conduct, but that we may be able to meet our people with the bold assurance that will always result from the consciousness of having acted with rectitude, and with a constant desire to promote the public welfare. [Applause.]

Mr. GORDON. It is at all times more agreeable to my feelings, Mr. President, to sit still and listen to what may be said by others, than to say anything myself; and this is more especially the case when the question under discussion is of as great importance as the present one. I cannot, however, let this opportunity pass by without attempting to say a word in vindication of the vote that I have given, and of the votes that I may yet give on this question.

I much regret that it was thought to be necessary to introduce this matter into the Convention. It appears to me that it would be better for us to attend only to such business as the people sent us here to transact; leaving every extraneous question to be settled elsewhere. I do hope that hereafter nothing will be introduced into the Convention that has not a direct reference to our legitimate business.

This subject, however, whether a proper or an improper matter for this Convention to act upon, is before us; and being before us, the question that presents itself to me is, how ought I under the circumstances of the case to vote? I wish at all times to vote the sentiments of my constituents, and where I am not fully advised of their sentiment, I shall vote for what I believe to be right, and as I have reason to think the people will approve. Whatever may be the action of this Convention on these resolutions, the citizens of our sister States will infer from it the sentiment of the people of Indiana upon the fugitive slave law. The question then is, shall a false inference go abroad from our action here of the sentiment of our people? If we indefinitely postpone the further consideration of this subject, it will be inferred from that act that we done so because we knew that our constituents did not approve of the sentiments contained in these resolutions. It will give occasion to the disturbers of the public peace to point to our State and say, "Indiana will not submit to a law enacted to aid in carrying out a Constitutional provision." Do we wish such an impression to go abroad? For one, I do not! If the opinions of our constituents are to be inferred from our action here, I wish our action to be in harmony with their opinions.

I hold that in the present agitated state of the public mind, the true position of our State on this question is a matter of some importance.

Then, Mr. President, entertaining these views, I believe it to be the duty of every delegate on this floor, to vote on this question as he believes the sentiments of his constituents to be. It is true that I have not heard an expression of the views of my constituents on this subject, but from my acquaintance with them I have no hesitation in saying that they will at all times be found ready to aid in carrying out any law enacted by Congress in harmony with the Constitution; at least, until it can be altered or repealed in a Constitutional way. And I believe that this is the feeling that prevades the breast of a vast majority of the people of our State. Then, as this matter is now before us, why shall we not at once express what we believe to be the sentiment of our State?

I shall, therefore, vote against the indefinite postponement of these resolutions, and hope the Convention will, without delay, adopt them with suitable amendments.

Mr. FOLEY said he did not purpose to vote for the indefinite postponement of these resolutions, because he did not regard them as endorsing the details of the fugitive slave bill. He had no doubt that they were intended merely as an expression of the opinion of the Convention that the people of the State of Indiana were willing to be a law-abiding people, and to give their voice in favor of sustaining the Union. He could not see that the people were bound to obey the fugitive slave law in every particular; but whether or not, he had no doubt that a strong, and he hoped a successful, effort would be made during the present session of Congress to have it so modified as to render it more agreeable to the people to obey it. His friend from Cass county had said that the voice of this Convention would have no more bearing on this subject than the expression of the opinion of any other body of a hundred and fifty men. Probably it might not in the immediate neighborhood of Indianapolis; but their action on this matter would go abroad through the States, and it would have some effect at a distance, if it had but little at home. It would, at any rate, tend to show the country that the people of Indiana were a law-abiding people, and the example of the people so far might have a beneficial effect in other States of the Union. It would, perhaps, have been better if this question had not been mooted here; but it was now before the Convention, and he would be glad to see those resolutions so modified as to result in a unanimous vote in their favor.

Mr. CRUMBACKER. Like many other gentlemen on this floor, I do not rise for the purpose of making a speech; I merely wish to make one or two remarks in reference to a question which I think has already occupied too much of the time of this Convention; and I would be willing to dispose of it, and that quickly, in any manner which might be thought to be advantageous to the interests of the State,

and to the body of which I am an humble member.

I regret exceedingly that this subject has been introduced here. There have been feelings engendered which I am sorry to see existing in a body of men whose deliberations should be cool, calm, and collected on the most important matters that could possibly convene us together.

Mr. President, whatever may be my final action with regard to the question now immediately before us, it certainly cannot be considered as a representation of the feelings or sentiments of my constituents with regard to it. I alone must assume the responsibility, and I would not wish to have it understood, whatever may be my vote in this Convention, that that vote is to be considered as anything like a representation of the feelings or sentiments of the people whom I have the honor here to represent. The fugitive slave law, although it had passed Congress before I left home, had not elicited much discussion there. We had just heard of its passage; there was no public expression given concerning it, nor have I heard anything with regard to the feelings and sentiments of my people on this subject since I left home. The people whom I represent did not send me here to vote on the fugitive slave law; and I have no hesitation in saying, that were I to canvass the two counties of Lake and Porter, and ask every voter if they expected I should have anything to say upon this subject, they would universally answer "No." They certainly did not send me here to represent them on that subject, and therefore I will not assume the responsibility of doing so.

As I remarked on the outset, I desire that this question should be disposed of as speedily as possible. I am one of those who am not afraid to show my hand, and I am willing to march up to the responsibility. [Applause.] If the Union is in danger I am willing to come up to the subject; but really the idea has been amusing to me, that because a few of the society of Friends in Wayne county—usually a very harmless people—refuse to obey the fugitive slave law, the tocsin of alarm should be sounded that the Union is in danger, and the gentlemen from Wayne and Hancock should rush into the breach, and call upon this Convention to rally round them to sustain the Union flag, lest our whole country, with all its glorious institutions, should go by the board. [Laughter.] It is really amusing to me. If gentlemen want to hold a meeting and have an expression of opinion on this subject, let them hold one to-night after our business is through here, and I am willing to come here and discuss the propriety of saving the Union until midnight—nay, I am willing to spend the whole night in discussing a matter of such importance; but I conceive that it is entirely out of place here while so much important business demands

our attention. Sir, the people are becoming impatient to know what will be our action with respect to all the various sections that have been reported by the committees. They conceive that we are spending our time to little purpose, and spending their money without much prospect of benefiting them; and they are very anxiously looking forward to our action. Sir, it is our proper province to discuss those matters which are of primary importance to the State, and to let all other matters go to the people. Let the people of Indiana pass upon the propriety or the impropriety of the fugitive slave law. It is their province to seek for an amendment of that law if they wish it to be amended, or to endorse it if they please to do so. It is not our business, and therefore I protest against this expenditure of time and money on a subject entirely foreign to the business for which we were sent here.

One word in reference to this matter by way of personal explanation. I understand that from various quarters, honorable gentlemen have, out of this Hall, applied to me the opprobrious epithet of abolitionist. I care very little for out-of-door gossip, and perhaps it is rather condescending too much to notice such a charge. All I can say is, that in the common acceptance of the term, I am not an abolitionist; and I can call on members of this Convention, who will testify, if necessary, that the free soil and the old liberty party, in convention assembled, formally nominated another man, who was my opposing candidate, and I suppose they cast their votes for him.

I perfectly disclaim being an abolitionist in the common acceptance of the term; but if an advocacy of human rights makes one an abolitionist, then I am willing to take the odium; and the prayer of my heart shall be, that other gentlemen may bring the opprobrium upon themselves, if an advocacy of human rights would bring it upon them. I fear not to advocate the cause of human rights, if by doing so I will be called an abolitionist.

Having made this personal explanation with regard to my own views on this subject, I shall never again take any further notice of it should it be reiterated within this Hall, but treat it and its author with silent contempt.

I am now perfectly ready to vote on this subject. I am ready to vote for the indefinite postponement; or if the Convention should decline to postpone, and the resolutions should come up for our action upon them, I am ready to vote against the adoption of them. And my reasons for doing so will be simply these: That I believe this preamble and these resolutions set forth matters as facts which never existed as such. They are founded upon false assumptions; and I cannot and will not endorse that which I do not believe to be correct, either in detail or in principle. Hence I am willing to record my vote either for an indefinite post-

ponement, or to lay the resolutions on the table, or anything else, so as to get them out of the way, that we may proceed with the legitimate business for which they were sent here; or if they do come up, and I must vote against the resolutions, I here declare that I heartily record my vote against them, for the reasons I have already assigned; and further, because it is not our business to take into consideration the matters therein involved.

Mr. HAMILTON said: It was with great reluctance that he rose to say a single word on the question now before the Convention. Indeed it was a matter of difficulty for him to speak at any time; and the Convention would bear him witness that in this respect he had not trespassed much upon their attention. As, however, this exciting question had been broached, and as he would be called upon to give his vote upon it, it appeared to him to be necessary to assign some of the reasons for the vote which he would cast.

He would not stay to inquire how these resolutions came before the Convention. It was enough for him to know that they were here, and he was called upon to vote for or against their indefinite postponement.

That there was a spirit of fanaticism abroad creating great excitement and disquietude in various parts of the Union, was admitted on all hands. Meetings had been held in the South for the avowed and openly expressed object of dissolving the union of these States; and on the other hand meetings had been held in the eastern portion of the United States with the declared intention of resisting the laws recently passed by Congress, especially the fugitive slave law, one of those measures which it had been deemed necessary to pass for the purpose of allaying the irritation existing in a large section of the country. He could not say that he had read this fugitive slave law with that degree of attention which a man ought to give to any subject to enable him to speak upon it; but from what he had heard regarding this law, there were many reasons why he could not agree with its provisions. He had not, however, risen to discuss the merits of any of these compromise measures, but to assign his reasons why he should vote against the indefinite postponement of these resolutions. He thought then that the question first to decide was whether any such agitation had existed as that of which these resolutions spoke, and in the next place, if that agitation had had an existence, whether it was proper for the Convention to give any expression of opinion in regard to it. Now it had been urged by some gentlemen in regard to this latter inquiry, that the Convention was not sent here for any such purpose, and that any expression of opinion which might be given could only be regarded as the opinion of a hundred and fifty private individuals which might be counteracted by the contrary expres-

sion of opinion by any other like number of individuals. He did not, however, agree with gentleman who entertained this view; but even admitting that opinions expressed by this Convention were to be regarded as the opinions only of so many private individuals, that would have its weight and influence abroad. There were gentlemen on that floor who appeared to ridicule the idea of there being any danger to the Union; whether they were in jest, or whether they were in earnest, was not for him to say. For himself he was neither very superstitious nor very excitable; but he could not but think that when the leading spirits of the day had expressed an opinion that there was danger to the Union, they would not have expressed any such opinion unless they had actually believed it. To think otherwise of them would be to imply that they were either very ignorant of the real state of the country whose destinies were placed in their hands, or very dishonest in the expression of their opinions. (Applause.)

Who are these men? I answer as my friend from Huntington (Mr. Murray) has, and perhaps that gentleman will allow me to say that I never use the term without meaning its full import—who are these men that have intimidated their belief that there was danger to the perpetuity of this Union? Sir, such men as Webster, and Clay, and Cass, would not sound the tocsin of alarm unless they saw real danger ahead. Then, sir, as a citizen of this country, as an adopted citizen, as one who owes much gratitude to your laws and institutions which induced him in early life to emigrate from the land of oppression to the land of freedom—being in the language of the gentleman from Delaware, “a foreigner by birth,” but an American by adoption, I will say to that gentleman that while I may concede to him a higher degree of intelligence than I can boast, I will not concede to him more of moral rectitude or patriotism; and I will tell him further that should this country ever be in danger, and call her citizens to the field, I will not be behind that gentleman in defending her rights. [Applause.] And more, sir, I would tell that gentleman that he may trace the history of this country from the first formation of its government to the present day, and he will not find a single foreigner who has ever proved to be a traitor. Foreigners, sir, have always been among the first to enter your armies when the country called, and why cast any opprobrium upon them because of the fact that they have been born in another land?

Mr. KILGORE. I am sorry to interrupt the gentleman from Allen, but I hope he will allow me a word of explanation.

Mr. HAMILTON. Certainly. I shall be glad to hear it.

Mr. KILGORE. I think the gentleman was not in his seat when I made the remark to which

he alludes; and if he was he must have completely misunderstood what I said. In speaking of extending the right of suffrage I most emphatically said that some gentlemen would extend the right of suffrage to foreigners before they had remained long enough in the country to learn to speak the language; that after they had been here but a very short time, knowing nothing either of our institutions or our language, they were considered competent to vote, while the negro who had been here all his life, and had learned no other tongue than ours, was debarred the privilege of voting. At the same time I remarked that while I would vote not to exclude the negro, I would vote to give to the foreigner all the rights which he could enjoy under our government after a very short residence.

Mr. HAMILTON. I thank the gentleman for his explanation, but I take issue with him on his own ground.

What does the gentleman from Delaware say in explanation of his former remarks, which when first delivered were more objectionable than these he now offers in explanation? That he meant foreigners who did not speak our language. Well, sir, who are they to whom he thus alludes. I presume they are principally emigrants from Germany—a country where education is almost universal. How many, sir, from that country, has he or any other gentleman ever known, who have not received the benefit of an education to some considerable extent. To them say in this day of letters, the diffusion of knowledge thrown off by the press, aided by the power of steam, and by that same power diffused throughout the civilized world, that our institutions and the benefits they confer on mankind are unknown, is what I cannot believe. What has caused the countries in the Old World, during the few past years, to be shaken to their very centre, and the thrones of tyrants there to totter. It was the knowledge there possessed of our institutions; their liberality and justness in contrast with their own. And what has experience taught us, and to which I have heretofore incidentally alluded. It is this: The moment a foreigner reaches our shores, whether from France, Germany, or the Green Island, the place of my own nativity, and our country needs his service, does he await to be naturalized, if his adopted country invites him to the field of danger. No, sir, far from it. He at once enters our ranks, rushes to the battle field to fight under the stars and stripes—the flag of the land of his voluntary adoption. Is this not so. Let the plains of Chippewa in the war of 1812, and that of Buena Vista and Mexico, in the recent war, speak. Then, sir, do you not see that the foreign population have much to thank the gentleman from Delaware for, when he places them in the same category with the negro. [Cries of "hear! hear!"] But, sir, this

is not the question. I am glad to find that I was in part mistaken as to the remarks of the gentleman from Delaware, or rather that he retracts the objectionable part of what he said; for I felt hurt by them.

Then, Mr. President, the question with me is, shall I give my voice in favor of sustaining the laws which have been passed in Congress? I will say, yes, no matter what effect it may have upon me, either now or hereafter, for, sir, I am no politician, nor disposed to seek public honor, nor do I expect ever to be called upon to sit in a deliberative body again. But whenever I am called upon to give my voice in regard to the proceedings which have agitated this glorious confederacy, that voice shall denounce in the strongest terms of which it is capable, every man and every measure who seeks to destroy the union of these States. [Applause.]

Mr. FARROW. I did not intend to say anything upon this subject; but as it appears to be the fashion for every gentleman to "set himself right," and state to the Convention why he votes in a particular manner, I may as well, perhaps, follow the fashion. That, however, is less my object than to make a few suggestions to the Convention; and I would say that I hope the remarks I have to offer will be considered rather in the way of suggestion than in the light of complaint or objection to the course which any gentleman may pursue upon this subject.

I will not, for my own part, undertake to impugn the motives of any gentleman, nor shall I murmur in consideration of the reasons they have urged to induce members to vote upon this subject. I consider that we are manufacturing a kind of two-fold opinion here. We may express an opinion here, and justify our action upon the subject, that may satisfy ourselves here, and our constituents. But it is notoriously true, that what we say and do in this Convention will travel abroad much faster than we have any conception of. At the same time that we are forming a private opinion that may satisfy ourselves on the subject, we are forming a public opinion; and it is that public opinion which we are manufacturing and sending abroad that I wish to look to, when I act upon the resolutions under consideration.

Mr. President, I do not believe that there is a member of this Convention but is now ready, and was ready on the first introduction of these resolutions, without hearing a single word of argument, to vote what he verily believed to be the sense of the people he represents in regard to these measures; and for that reason, I presume that all that has been said in reference to this matter will effect but little good. Then, sir, if we were all ready to vote what we believed to be the views of our respective constituencies, why is it necessary that we should criminate and recriminate each other for the consumption of time in considering a matter

that should not have been here at all? I regret much that it should have been broached here; and if there is no way of getting rid of it, except by voting upon it, why is it that gentlemen who are so hostile to this measure will consume the time of the Convention in assigning reasons why they must and will oppose it in every shape?

Sir, the opinion of the Convention of Indiana will be worth just as much abroad as the opinions we receive from Southern meetings and Southern Legislatures, and meetings in different parts of the Union that have been held on this subject; and where is the gentleman on this floor who does not hail with a glad heart every intimation that he receives from any part of the Union that goes to speak favorably of the good opinion of the citizens of the United States upon the subject. Wherever we see that these meetings have been held, and have come to the conclusion that they would stand by the Union, I say that we are altogether disposed to receive such information with cheerfulness and pleasure. And do you not suppose, sir, that there are those who have as great a regard for the Union as we have, who will receive our expression of fidelity to the Union with as much pleasure as we do theirs? Unquestionably they will; and one good effect of such an expression will be to encourage our fellow-citizens abroad to stand fast in the faith in which we believe. I should like to know, then, why gentlemen frame so many excuses for not coming up to this matter? It will be but an expression of the opinion of the people forming the Convention of the State of Indiana, and, to some extent, the opinion of the people of the State; and, for my part, I am ready to express before this Convention, by my vote, what I believe to be the sentiments of the people I represent. [Applause.]

Mr. WATTS. I did not expect to say anything whatever upon this subject, and it is not my intention to say more than a very few words at this time. I voted to lay these resolutions on the table, because I thought that this was an inappropriate place for them. I voted against taking them from the table, and I shall vote for their indefinite postponement. Notwithstanding all that, Mr. President, I profess to be as much attached to the Union of this government as any other gentleman on this floor can be. But, sir, judging of this matter as best I am able, from the little experience I have had in my life, I am far from believing that a few Quakers in the county of Wayne, who, by the way, are usually a very quiet and harmless set of people, will ever dissolve this Union. They are good, and quiet, and peaceable citizens. But, sir, if this Union is dissolved, it will not be a bloodless dissolution, and I believe the Quakers never fight. [Laughter.] In addition to that, Mr. President, I cannot believe that the blood of our Revolutionary fathers has

got so pale and so cold in our veins that this Union is in danger yet. I am quite of opinion, sir, that we may live a few generations longer before it will be in danger.

But it is said that we ought to express an opinion here. Now, I am as willing to express an opinion as any man upon this floor, on any legitimate subject which this Convention can act upon; but if you bring matters before this Convention which do not legitimately belong to the business we came here to transact, then I am not bound to vote for them. That is the position that I occupy. We were sent here for a specific purpose; and I am disposed to vote upon every question appertaining to that purpose; and more than that, sir, I am disposed to hurl everything from this Convention which we ought not to act upon. [Consent! consent!]

These are my sentiments, and I have no fear for the Union—no apprehension whatever that a dissolution is going to take place. I find, sir, that, whenever our country is likely to be in difficulty, or in danger of being invaded, every class of the community, in every region of the country, is ready to rally in support of her standard, and defend her rights and privileges at the peril of their lives, unless it be my friends, the Quakers, who, I believe, are as good, and honest, and patriotic—with the exception that they won't fight, and that belongs to their religious creed—as any of us; and I have no objection to them on that account. Sir, I have no fear whatever that a few Friends or Quakers in Wayne county are going to stir up such a difficulty in this Government as to dissolve the Union. I shall, therefore, vote for the indefinite postponement of these resolutions, so that we may proceed with our regular business. ["Consent! consent!"]

Mr. MATHER. I do not rise to set myself right in this House, as is in the habit of being remarked by many gentlemen, because I do not conceive that on this subject, I have yet been wrong. It is a thing frequently heard from members on this floor, that they stand pledged to do this or that before their constituents, or that they are instructed by their constituents to do some particular thing. Now, if there is any one thing on which I feel instructed by my constituents as to my action in this body, it is that no act or vote of mine shall be given to raise party issues and party strife in this House. This is a subject on which I feel especially pledged. I come here a whig, representing a democratic district. And it is more than probable that had my democratic friends supposed that I was coming here with the view of representing any political views they would not have voted for me; and I do not, therefore, feel at liberty to give a political vote. I cannot look upon this question in any other light than as a political question, and for the reason that I had determined that no act of

mine in this Hall should by any possibility be construed as having any political bearing in it. I have voted to lay the original proposition upon the table, and have voted to keep it there; and I shall now vote for the indefinite postponement of these resolutions.

And, Mr. President, let me here remark, that because I have done this, I wish no man to say that my fidelity to the Union is less than his. Whenever the Union is in real danger from any cause, I shall be as ready as any man upon this floor to exert my feeble efforts to sustain it. But can it be said by any gentleman that by the passage of these resolutions, the Union can be held together one single hour! Where is the utility of passing resolutions of this kind? Is there any gentleman who seriously believes that the Union can be preserved by the passage of these resolutions? No, sir; the Union needs no such support; it rests upon a more secure basis than upon such paltry stuff as this—it rests in the hearts of the masses of the people. An expression of opinion or of feeling from that source might be entitled to some regard; but an expression of opinion from a body of this nature, organized for purposes entirely foreign to this, is entitled to no greater weight in any quarter of the Union, than an expression from any other one hundred and fifty men. I think it is out of place here.

And, sir, I deny that a majority of the members upon this floor have any right to say to me that I shall express my opinion upon this subject, *pro or con*. I coincide fully with the views of the gentleman from Cass. I assert, sir, that they have no right to do it; and should I wish to persist in my rights, and sit quietly in my seat when the vote is taken, no power in this Convention shall say to me that I shall express an opinion on a subject for which my constituents never sent me here, and for the expression of which I would not be responsible to them.

Mr. COATS. I regret very much, Mr. President, that so much time has been spent upon this subject, and I hope that we may now come to a direct vote for the purpose of ascertaining the sense of the Convention.

From the range which this discussion has taken, it appears that we are called upon to say whether the State of Indiana is in favor of the perpetuity of the Union. Sir, it would be no compliment for me to say by my vote that my constituents are in favor of the Union, for I declare that they are all in favor of it, of which many of them have given the most ample demonstrations.

But I have another reason why we ought to put a stop to this discussion and proceed with the business which we were sent here to perform—namely, to revise the Constitution. We have been sent here for a specific purpose. According to the act of the General Assembly, we are sent here to revise the Constitution,

which is to be submitted to the people for their approval when the work is completed. Now, let me ask, is this an appropriate subject with which to spend our time, and incur thereby an enormous expense to the State? I protest against it. Hence I thought it advisable to make the motion which I did, and I hope no gentleman will take offense at the motion I made, for I was influenced by the best of motives to do so. I trust, therefore, if it meets with the approbation of the Convention, that this subject will be indefinitely postponed, in order that we may proceed with the ordinary business for which we are assembled here.

[Loud cries of "question!" "question!" "question!"]

The PRESIDENT. The gentleman from Allen (Mr. Borden) desires to be excused from voting on this subject. Will the Convention excuse the gentleman?

VOICES. "Consent, consent."

Mr. BORDEN. Only on the direct vote. However, when the question on the resolutions comes up, I will attend to that matter for myself.

The PRESIDENT. The Chair would remark, that as there is an imperative rule on this subject, gentlemen will do well to consult it. Although we have such a rule, it appears to me that it is not within the power of the Convention to make a man vote. Indeed, it is difficult to make a man do anything. Gentlemen undoubtedly remember the old saying, the moral of which is good—that it is an easy matter to take a horse to the water; but a very difficult thing to make him drink. [A laugh.] We have a rule which says, "Every member who shall be in the Convention when the question is put, shall give his vote, unless the Convention for special reasons shall excuse him. And should any member present not excused from voting; refuse to vote when his name is called, the President shall direct the Secretary to make an entry on the journal that said member was present and called, but refused to vote."

Mr. COATS moved the previous question, which was sustained.

The yeas and nays were demanded and ordered on the motion to indefinitely postpone the preamble and resolutions, and were taken, with the following result:

YEAS.—Messrs. Anthony, Bascom, Beard, Bicknell, Biddle, Blythe, Borden, Brookbank, Bryant, Chandler, Chapman, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Colfax, Conduit, Crawford, Crumbacker, Dunn of Jefferson, Duzan, Hardin, Hawkins, Howe, Kelso, Kent, Kendall of Warren, Kilgore, Kinley, March, Mather, May, McFarland, Miller of Fulton, Milligan, Morgan, Mower, Newman, Niles, Pettit, Ritchey, Robinson, Snook, Smith of Ripley, Spann, Thomas, Todd, Trimble, Wallace, Watts, Wheeler, Work, and Wunderlich—53.

NAYS.—Messrs. Alexander, Allen, Barbour, Berry, Bourne, Bowers, Bracken, Bright, Butler, Carr, Chenoweth, Cookerly, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Farrow, Frisbie, Foley, Foster, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Haddon, Hall, Hamilton, Harbolt, Helmer, Hendricks, Hitt, Holman, Hovey, Huff, Johnson, Kendall of Wabash, Lockhart, Logan, McLean, Miller of Clinton, Miller of Gibson, Milroy, Mooney, Moore, Morrison of Marion, Murray, Nave, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Prather, Rariden, Read of Clarke, Read of Monroe, Ristine, Schoonover, Shannon, Sherrod, Shoup, Sims, Smith of Scott, Steele, Tague, Tannehill, Taylor, Terry, Thornton, Walpole, Wiley, Wolfe, Yocum, Zenor, and Mr. President—76.

So the motion to postpone the resolutions was not agreed to.

Mr. McFARLAND. It must be apparent to every gentleman on this floor that it would be proper to pass this proposition either in its present form or in some other form. This, sir, is certainly a very important question, and if it be an important question, is it not due to this Convention that it should be put into such a shape as to secure, if possible, something approximating to unanimity in the expression of our sentiments? It must be apparent that there will be a large minority, too, that will vote against these resolutions in their present form. Sir, I fear that the expression of the opinion of the Convention on this subject, instead of being calculated to allay excitement in the East and elsewhere, will tend much to its increase. Is it not then incumbent upon us—

Mr. FOSTER (interposing). I would ask, Mr. President, if the previous question is not in force?

The PRESIDENT. No; it is exhausted.

Mr. McFARLAND. I will say to the friends of the proposition in true faith that if they will bring in a compromise proposition that shall endorse the compromise measures I will be with them. But, at the same time, if these resolutions are passed to a vote I shall record my vote against them with as good an appetite as I ever did anything in my life. I admit the Constitutional obligation upon us as a State to deliver up fugitives from service; but while I admit that, I admit that the present fugitive slave law needs amendment, and that in its present shape I cannot and will not endorse it under any circumstances. Now what I ask of the friends of the proposition is that it should go into the hands of a committee, that it may be arranged in such a way that we may all agree upon it. Can that not be done? Is it not due to ourselves? Is it not due to the question? Is it not due to the other States of the Union that we should act with deliberation on this question? I believe that it is; and believing that it is, and hoping that the Convention will concur

with me in that opinion, I will move that it be referred to a select committee of one from each Congressional District. [Loud cries of "no, no, no, no."]]

Mr. OWEN. The Convention is aware that the motion to commit has already been made. I voted for the motion to commit in the hope that it might go to a committee and no more time be lost here. But the Convention has already refused to do this.

Now at this stage of the proceedings I would inquire of the Chair whether I have control of the motion made by myself to strike out the resolutions of the gentleman from Wayne and substitute those which I read?

Mr. KELSO would ask whether the gentleman from Wayne did not accept them as a substitute.

The PRESIDENT was understood to say that the resolutions were in the hands of the Convention and could not be withdrawn except by unanimous consent.

Mr. OWEN. Then I would say to the Convention that there has happened to me in this case what has usually happened when I have listened to any debate in this Convention—I have learned something from it. An objection was made to the resolutions introduced by me which seemed to be a good objection—that while these resolutions condemn insubordination to the law, they could not, in any sense, be understood to apply to an insubordination equally to be deprecated, which shows itself in the South; that if, in the North, the fugitive slave law was said to be a bad law, in the South there had been some discontent and disorganization in reference to the admission of California.

Now in these resolutions which I would wish to offer as a substitute, there are no elaborate protestations of allegiance, for I consider such protestations at all times as a doubtful matter; very much like a man assuring the world that he is exceedingly honest. They contain no assertion that the Union is in danger—they contain no endorsement of any compromise measures—neither of the fugitive slave law nor of any other—nor is there any special reference to the North or the South—the free or the slave States, and they condemn equally disobedience to the laws of the land, let it come from what quarter it may. Now if the Convention is disposed to pass any series of resolutions, perhaps these would be liable to as few objections as any could be, considering the hasty manner in which they were drawn up.

The PRESIDENT. The Chair would remark to the gentleman from Tippecanoe (Mr. McFarland) that his motion to commit the resolutions is not in order, a motion to that effect having been made and decided upon by the Convention the same day.

Mr. OWEN. I will withdraw my resolutions which were accepted by the gentleman

from Wayne as a substitute for his, and offer these instead:

WHEREAS, the Congress of the United States passed, at its last session, a series of acts, commonly called the compromise measures; and WHEREAS, certain misguided individuals in various States of the Union, have expressed their determination to resist a portion of its laws; therefore, be it

Resolved, That, in the opinion of this Convention, the common sentiment of the people of Indiana sustains and endorses, in their general features and intentions, the said series of compromise measures, as passed by Congress; and recognizes in the success of these measures, an earnest of security and perpetuity to our glorious Union.

Resolved, That whatever may be the opinion of individuals, as to the wisdom or policy of the details of one or any of the acts of Congress above referred to, it is the duty of all good citizens to conform to their requisitions; and to carry out, in good faith, the conditions of that compromise on the subject of domestic slavery, which is coeval with the Federal Constitution.

Resolved, That a copy of this preamble and resolutions be transmitted to the Governor of each State and Territory of the United States, and to each of our Senators and Representatives in Congress.

Mr. WALLACE. The gentleman from Posey cannot withdraw his resolutions, for I believe they were accepted by the gentleman from Wayne (Mr. Rariden).

THE PRESIDENT. The gentleman from Wayne could not accept them. He had no right to do so.

Mr. RARIDEN. I am very glad I did not accept them, for I do not like them half so well as my own.

Mr. KELSO. I have an amendment to offer, which I wish to be appended to the last resolution but one. It is this:

"Provided, however, that nothing in the foregoing preamble and resolutions, shall be considered as instructions to our Senators and Representatives in Congress, to vote in opposition to proper and wholesome amendments to the fugitive slave law."

Mr. NAVE. I very much doubt the propriety of that amendment, and therefore I move to lay it upon the table.

Mr. KELSO. And I as sincerely doubt the gentleman's judgment in the matter.

The yeas and nays being ordered and taken, on the motion to lay the amendment on the table, resulted as follows—yeas 57, nays 68:

YEAS.—Messrs. Alexander, Barbour, Blythe, Bourne, Bracken, Butler, Carr, Chandler, Chenoweth, Cookerly, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, &c., Farrow, Fisher, Foster, Gibson, Gootee, Gordon, Haddon, Hall, Hendricks, Hitt, Holman,

Hovey, Huff, Kent, Kendall of Warren, Lockhart, Logan, Miller of Gibson, Milroy, Mooney, Moore, Nave, Nofsinger, Pepper of Crawford, Rariden, Read of Clark, Read of Monroe, Schoonover, Shannon, Sherrod, Shoup, Sims, Snook, Smith of Scott, Spann, Taylor, Terry, Walpole, Wolfe, Yocum, Zenor, and Mr. President—57.

NAYS.—Messrs. Allen, Anthony, Bascom, Beard, Berry, Biddle, Bowers, Bright, Brookbank, Bryant, Chapman, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Colfax, Conduit, Crawford, Dunn of Jefferson, Duzan, Foley, Garvin, Graham of Miami, Hamilton, Harbolt, Hardin, Hawkins, Helmer, Howe, Johnson, Kelso, Kendall of Wabash, Kilgore, Kinley, Maguire, March, Mather, May, McFarland, McLean, Miller of Clinton, Miller of Fulton, Milligan, Morgan, Morrison of Marion, Mowrer, Murray, Newman, Niles, Owen, Pepper of Ohio, Pettit, Ristine, Ritchey, Robinson, Smith of Ripley, Steele, Tague, Tannehill, Thomas, Thornton, Todd, Trimble, Wallace, Watts, Wheeler, Wiley, Work, and Wunderlich—68.

So the amendment was not laid on the table.

The question was then taken on the amendment offered to Mr. Owen's resolution by Mr. Kelso, and it was rejected.

Mr. COLFAX remarked, that like many other members who had spoken, he considered these resolutions as out of place in this body. We were sent here for a distinct and specific purpose, and specially warned by our constituents to avoid all discussions which might engender any party feeling. We have certainly not any too much time for the duties which appropriately devolve on us, to justify us in turning aside to discuss or to settle National questions. But if the Convention are determined to consider and adopt resolutions on the subject of the alleged opposition of misguided persons to the laws of the Nation, and expressive of their opinion as to Congressional laws, he had a few amendatory resolutions which he desired to propose. There has been a great deal said, and a great deal of indignation leveled at certain Northern agitators, which the resolutions as originally introduced, were specially intended to denounce. But there has been very little said about Southern agitators, whose action imperils the Union, if its continuance is at all in danger. The Union, sir, is in no danger; but if its preservation is threatened, the treason which perils it, is not in this State, or in this portion of the Union. The North always submits to, if she does not endorse or approve, the legislation of Congress, even when it is most repulsive to her. And instead of nullifying, the North seeks only to rid herself of the operations of unjust and oppressive laws, by constitutional and legal means.

It is therefore to draw the attention of the Convention to this fact, and to enable them, if

they desire to rebuke treason, to rebuke it where it is really rife, that I offer the following resolutions as an amendment to the amendment :

Resolved, That notwithstanding personal opinions as to the propriety or impropriety of the recent measures of Congress, they should be submitted to, as long as they exist as laws, as the supremacy of the laws is the only means of preserving our Government from anarchy and destruction; and that we disapprove of any attempts, by force or violence, to resist the execution of the laws.

Resolved, That this Convention most decidedly disapprove of the treasonable threats and acts of the State of Texas during the last year, in its defiance of the powers of the General Government, and its declaration that it would defy the authority of that Government even to arms.

Resolved, That we do as sternly disapprove of the conduct of South Carolina, after she had imprisoned citizens of other States of this Union, in expelling with obloquy and contempt an agent of a sovereign State, who only asked, in peace and quietness, the privilege of testing before her own courts, the question whether such laws are or are not in accordance with the Constitution of the United States.

Resolved, That we do even more sternly disapprove of the factious course of Southern agitators, who, not content with passing resolutions in town or county meetings, have, within a month past, held a Southern Convention, composed of delegates from sovereign States, at which the most treasonable intentions were avowed—and the authority of the Union openly sneered at and defied.

Mr. FOSTER moved that the amendment be laid on the table;

And the yeas and nays being demanded, and ordered,

The motion was decided in the affirmative, as follows:

YEAS.—Messrs. Alexander, Allen, Barbour, Bascom, Blythe, Bourne, Bowers, Bracken, Bright, Butler, Carr, Chandler, Chenoweth, Clark of Tippecanoe, Coats, Cookerly, Davis of Parke, Dick, Dobson, Dunn of Perry, Farrow, Fisher, Foley, Foster, Gibson, Gootee, Gordon, Graham of Miami, Haddon, Hall, Hamilton, Harbott, Hardin, Helmer, Hendricks, Hitt, Holman, Hovey, Huff, Johnson, Kent, Kendall of Wabash, Lockhart, Logan, Maguire, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Moore, Morrison of Marion, Murray, Nave, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Read of Clark, Read of Monroe, Ristine, Schoonover, Shannon, Sherrod, Shoup, Sims, Snook, Smith of Scott, Spann, Steele, Tague, Tannehill, Taylor, Terry, Thornton, Walpole, Wheeler, Wiley, Wolfe, Wunderlich, Yocum, Zenor, and Mr. President—87.

NAYS.—Messrs. Anthony, Beard, Biddle, Borden, Brookbank, Bryant, Chapman, Clark of Hamilton, Cole, Colfax, Conduit, Crawford, Crumbacker, Davis of Vermillion, Dunn of Jefferson, Duzan, Garvin, Hawkins, Howe, Kelso, Kilgore, Kinley, March, Mather, May, McFarland, Milligan, Morgan, Mowrer, Newman, Niles, Ritchey, Smith of Ripley, Todd, Trimble, Wallace, Watts, and Work—39.

Mr. HOLMAN offered the following amendment to the resolutions offered by Mr. Owen :

“Provided, that there is intended in this expression of opinion, no instructions whatever, to our present Senators and Representatives in Congress.

Mr. SMITH of Ripley. I hope I may be indulged with a single remark; I will not exceed a minute. In the first place I would remark upon the manner in which the gentleman from Posey introduced his resolutions. He took about five minutes to explain to the Convention that they meant nothing at all. I understood that they were intended as a rebuke to some of the rebellious people in the State of Indiana, or in some of the Northern or Southern States; but I could not locate them. But, from voting, and very recent voting, too, I have come to the conclusion that although they are not intended to rebuke treason, even though it walked in mid-day among us—

The PRESIDENT. The Chair would remind the gentleman from Ripley that the question is on the amendment of the gentleman from Dearborn (Mr. Holman). [Cries of “hear him,” “hear him.”]

Mr. SMITH. I would like to know what the amendment is then, [laughter,] for I thought I was speaking to it.

The amendment was again read by the Secretary.

Mr. SMITH. I take it that any member speaking, is entitled to express his views in the best way that he can [“hear, hear”]. If I cannot come directly to the point, it is just because there is no definite point in my head, [laughter,] and in that respect I am just like the resolution. I require, therefore, a kind of locomotion to get it out, so that I may strike out a point, as there might be a point in the resolutions after a while. But I am sure they were introduced by a speech to show that there was no point in them, and if they were intended to rebuke treason, as I infer from the wording of them, the gentleman makes it appear that there is no treason. By a solemn vote the Convention has said that there is no treason except in Indiana. They may, perhaps, come to locate the treason in Wayne county after a while. They will find, perhaps, that there are a few persons there in a lone school house, or a meeting house, or in an outhouse, or in a barn, or, perhaps, in the woods, who have spoken some hard things against the fugitive slave law. Now, Mr. Presi-

dent, I submit that that does not amount to treason by any means. I think, sir, that as this is not intended as an instruction to any person as any evidence of the vote of this Convention, as intended to do or mean anything, it is altogether proper and important that it should be put in such a shape as to have some meaning in it. Finding that these resolutions mean nothing, and that there is no treason, I now move that the whole matter be indefinitely postponed, and I ask for the yeas and nays on the motion.

Mr. BORDEN. The motion is for an indefinite postponement, and I think the Convention had better do this, and go to work with the business before them. I wish my friend from Posey to tell me what I am voting for. He has drawn up these resolutions, and introduced them here, and I wish to vote understandingly. I want to ask him this question, whether he means to say by his resolutions, that one foot of the territory on the upper Rio Grande ever belonged to the State of Texas?

[Cries of "question, question,—order, order,—hear him, hear him," and much confusion, during which the President declared the Convention to be adjourned until to-morrow morning at nine o'clock.]

SPEECHES OF MESSRS. RITCHEY AND OWEN,
On "*Banks and Internal Improvements*," delivered,
Thursday morning, Nov. 21, 1850.

Mr. RITCHEY said, it appeared to him that some gentlemen had a strange idea of the question before them. It was contended by some, that the Convention had no right to say that the people hereafter, should not have the power to vote themselves in debt. If that doctrine were true it would imply that there was no necessity for holding the Convention at all. It was proposed, in framing a new Constitution, to make many restrictions, but these restrictions were not imposed by the Convention, but by the people themselves. Did any one suppose that the Constitution which they were now framing, if adopted by the people, would last only a few years? I admit, sir, continued Mr. R., that if the Convention does its business in a bungling manner, it probably will not. But I think it should be the desire of every member, to frame such a Constitution as will be acceptable to the people of the State, and will last forever.

The Constitution embodies the restrictions which the people impose upon themselves and the Legislature, which is only the executor of their will. And this Constitution, when adopted, with all its restrictions is but the act of the people themselves. For, although this body is dignified with the name of Constitutional Convention, yet they are to be looked upon in no other light than a great committee, raised by the people, to prepare and submit propositions for their approval in their sovereign capacity.

And if the people, after bringing themselves under these restrictions, shall wish to contract a debt, for any purpose not specified, they can do so by calling another Convention, or by amending the Constitution in any other mode which may be prescribed.

Since 1841, a majority of the people have been of the opinion that the Legislature should not have the power to involve the State in debt, and this feeling, since that period, has been constantly increasing, as we have felt more and more the intolerable burthens of the debt which is now hanging over us.

And if this Convention shall determine that any debt can hereafter be contracted, such action will be a retrograde movement; for no question has ever been more distinctly decided by the people; and yet, gentlemen propose to insert in the Constitution a proposition, by which we may again be involved in debt.

We are told by gentlemen, that if the proposition reported by the committee, of which he is a member, and which, in his absence, had made their report, had been in force in 1836, the people would never have been involved in the debt, which now hangs over them. Sir, I take a different view of the subject. I have never heard any man charged with being concerned in the introduction of the iniquitous system of internal improvements, who did not attempt to throw off the responsibility from his own shoulders, and place it upon the people. As the gentleman from Ripley (Mr. Smith) had stated, the survey bill was the commencement of this great system.

There had been great misrepresentation as to the cost of the works proposed, and the people had been deceived both as to the cost of the works, and as to their ability to complete the system without taxation. Under these false impressions in deciding at the ballot-box in favor of the advocates of the system, and the simultaneous prosecution of the works, they indorsed the proceeding, and took upon themselves the responsibility. The people were deceived by the politicians of that day—and did any gentleman suppose that, by such statements and misrepresentations, they might not be again deceived? He had no doubt they might be again misled, and for that very reason no Legislature should have the Constitutional power to involve the people in any such difficulties and embarrassment hereafter. The question should be settled at once. He hoped the naked question would be put, whether we shall submit this proposition to the people of Indiana—*Are you willing to invest any future Legislature with the power of involving the State in a debt*, for any other purpose than those enumerated in the preceding section?

He desired to have a direct vote upon this important proposition.

Mr. OWEN. I rise for the purpose of bearing witness to the truth of what has been said

by the gentleman from Johnson, (Mr. Ritchey,) and what was previously stated by the gentleman from Ripley, (Mr. Smith,) in regard to the Internal Improvement system, of 1836. I claim to know something about this matter; for, though not in the Legislature the year the internal improvement bill passed, I was a member for three years immediately succeeding its passage.

I differ in opinion with my young colleague from Posey, (Mr. Hovey,) who, at that time—it is some fourteen years ago—was not of an age to give much attention to political affairs, or to participate in the discussion of this particular matter.

It is my settled conviction, sir, that, at that period, if the Legislature, after deciding to engage in a system of internal improvement, after all the stirring speeches made in its favor; after the various appeals through the newspapers; after all the reports made by engineers—and most wild and unreliable reports they were—if, I say, after all these stimulants, the question had been submitted to the judgment of the people, I am satisfied that a majority of them would have decided wrong. Moved by the excitement of the day, and misled by fallacious estimates, they would have involved the State in the very same debt with which she is now burdened.

The proof of this assertion is to be found in the fact that those members of the Legislature who voted for the “mammoth bill,” almost without an exception, obtained a re-election. Their proceedings were thus approved, their course endorsed by the people.

If there be a wholesome Constitutional restriction, this bar to the increase of a public debt in the future, surely is one. To the argument that all such restrictions are but an imposing of chains on the people, the gentleman from Tippecanoe, (Mr. Pettit,) has already replied. He has well said, that, if we are to strike from the Constitution all provisions that are restrictive, there will remain hardly anything, but a single section, declaring that there shall be a Legislature; and to that Legislature everything will be left.

The same gentleman just touched the point, that, if such were our action, we should be following the example of England. That is undoubtedly true. Great Britain has no written Constitution. She has certain great principles of government, venerable for their antiquity and made permanent by a settled public opinion; but there is no organic law in which these are embodied. Parliament may be said to be omnipotent. No law passed by parliament can be rescinded by the courts, as unconstitutional. Such great guards to liberty as the right of trial by jury, the writ of *habeas corpus*, and others, have no permanency, except that which public sentiment gives them. They might legally be stricken from England's statutes by the action of Parliament.

This is one great point of difference between our political system and that of most European nations. We restrict ourselves by an enduring Constitution. We say, that, contrary to the restrictive provisions of that Constitution, no laws shall be passed. England and other monarchies vest in their national legislatures unlimited power.

In this, I think our system is much better than theirs. And, perhaps, in our case—wherever there is popular and not kingly sovereignty—a written Constitution is more necessary than it is in a monarchy. The chief evil in an old monarchy, is non-progressive conservatism. The chief danger, in a popular government, is from hasty impulse. A written Constitution is a check on this hasty impulse. It affords time for the action of that “sober second thought,” which, among a free people, almost always decides right.

But, if we agree to have a written Constitution at all, I know of no more safe or necessary restriction that can find place on its pages, than this, prohibitory of a vast public debt.

TUESDAY, DEC. 3, 1850.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. GOODE.

The journal of yesterday was read and approved.

The Convention resumed the consideration of the resolutions in relation to the compromise measures of the last session of Congress.

The pending question being upon the proviso moved by the gentleman from Dearborn,

Mr. RARIDEN rose and addressed the Chair.

Mr. BORDEN (also rising). I have the floor, I believe, this morning.

Mr. RARIDEN. If the gentleman will give way for a moment, I have a proposition to make regarding the journal, and I think the gentleman from Elkhart, over the way, will agree to it, because I think that when the excitement of the moment has passed away, he will look with regret at the motion that he made yesterday. I move to erase from the journal, the amendment which the gentleman offered to my resolutions, and everything that pertains to it.

Mr. COLFAX. That would be mutilating the record.

Mr. BORDEN. I yield for the motion of the gentleman, but do not surrender my right to the floor.

The question was taken upon the motion of the gentleman from Wayne, to expunge the amendment from the journal, and it was not agreed to.

[Mr. BORDEN here made some remarks, which he has out for revision.]

Mr. READ of Monroe.—

MR. PRESIDENT: I will read a certain paper which I have drawn up, as expressing the sentiments on this subject, which I would gladly see adopted by the Convention, and should it be evident that it expresses the feelings of nine-tenths of this body, I will, if an occasion arises in the course of our proceedings, when it will be consistent with parliamentary order, offer it for adoption.

WHEREAS, The Congress of the United States, at its late session, passed a series of acts designed to allay the dissensions and angry feelings which threatened the harmony, if not the destruction of our glorious Union; and whereas, certain misguided persons in various States, have expressed a determination to resist the laws, and keep up the agitations which have wrought so much mischief in our country;

The Constitutional Convention of this State, now in session, in behalf of the people whom they represent in the highest act of their sovereignty, deem it not unworthy the solemnity of the occasion on which they are assembled, to **DECLARE,**

1. That the people of Indiana are a law-abiding people, and that whatever may be the opinion of individuals as to the justice or policy, in all their details, of any one or more of the acts referred to; as a people they will maintain, in all good faith, the supremacy of the law, and discountenance and put down factious opposition thereto.

2. That Indiana, from her geographical position, her commercial relations, her population, commingled from all the States of the confederacy, is, in sentiment and interest, bound in ties indissoluble, equally to the States North and South. In feelings of brotherhood, Indiana knows no North—no South—nothing but the Union.

3. That, not only is the common sentiment of the people of Indiana for the Union, but equally for that compromise contained in the federal Constitution, upon which the Union itself is based; and that in the compromises and concessions which, at every period of difficulty in our past history, have been brought about by the great and good of our statesmen, they see the earnest of security and perpetuity to our free and happy institutions.

MR. KENT. Mr. President, it is not my purpose to make a speech, nor, in the language of many gentlemen, to “set myself right before my people,” but to express my disapprobation of the introduction, into this Convention, of the preamble and resolutions under discussion.

As a pretext why this body should entertain this question, we have been told by gentlemen that the Union is in danger—that already a portion of the South have expressed their determination to dismember the Union of these States, and that an expression of our attachment to the perpetuity of this glorious Republic, will nerve the hearts of the Union men of the

South, and have a powerful tendency to calm the raging political tempest produced by the two extreme factionists of the country.

Now, sir, I do not believe the integrity of the Union is in danger. It cannot be that one hundred thousand slaveholders, (and that is the estimated number in the United States,) if united, could, with the co-operation of the abolitionists of the North, dissolve the Union. But, it is not the slave holders, as a body, nor the honest, but misguided abolitionists, who are disturbing the peace of this great nation. No. But it is those among these classes, whose love of office is greater than their devotion to the Union; and who, in consequence of this treasonable desire for distinction, have lost their influence in the great political parties of the country. To these impious aspirants for fame, should the curse of this and future generations be awarded, for the evils and dangers alluded to by gentlemen, but which, in my estimation, are generally exaggerated.

In the heat of debate gentlemen have imagined that the days of the Republic were numbered, and that the pillars of this mighty political fabric, were already crumbling to pieces. The gentleman from Orange (Mr. Sherrod) seemed to feel the appalling pressure of a dismemberment of the States weighing heavily upon him; and hence his earnest and eloquent appeals to save the Union. Several other gentlemen were equally impressed with the near approach of the final termination of this wide spread confederacy, in blood and carnage. And, as if by a special interposition of Providence on behalf of those who are greatly troubled in spirit at the impending calamity of dissolution, and to relieve them from these fearful apprehensions, the cheering news, with lightning speed, reaches us that the Union ticket in Georgia, has succeeded by over **THIRTY THOUSAND** majority.

Now, Mr. President, would it not be well for gentlemen to inquire, for a moment, the object of this Convention? If my memory is not at fault the Legislature at its session of 1848 and 1849, passed an act to provide for taking the sense of the qualified voters of the State, on the propriety of calling a Convention to alter, amend, or revise the Constitution of Indiana; and that, at the succeeding August election, a large majority of all the votes given, was in favor of calling said Convention. And, it will be recollected, at least by those who are not apprehensive of the immediate dissolution of the Union, that the Legislature of last year, provided for carrying this expressed public will of the people into effect; and that in pursuance of this last noticed act, the electors of Indiana, at the last general election, selected one hundred and fifty Delegates to alter, amend, or revise the Constitution of the State.

Now, sir, I would suggest, that the further consideration of the subject of the Union of these States, be postponed until the 8th of January next; and that the Delegates of this Convention, as citizens of the State of Indiana, recommend a meeting in this Hall on the 8th day of January, 1851, for the purpose of expressing their sentiments upon the compromise measures of the last session of Congress, and, if you please, of their great devotion to the perpetuity of this glorious confederacy of sovereign States.

Mr. FOSTER. I would not myself have introduced these resolutions, but, inasmuch as they are introduced, I am willing to meet responsibility so far as to give my vote decidedly in favor of them. Gentlemen on all sides appear to have resolutions prepared which they intend to submit at the proper time. I apprehend, sir, that time will never arrive. Some gentlemen have intimated that they think the Convention has nothing to do with this matter—that it is interfering with a matter that does not belong to us. Sir, the Legislature has been constantly in the habit of interfering, as gentlemen will have it, in national affairs, and why should not this Convention, which is a more immediate emanation from the people? Why should we not be permitted to express our opinion in our collective capacity as a Convention, occupying, as we do, a position a great deal higher than that of any other deliberative body that has ever met in this State? Why we should not express our opinion, I am really at a loss to know. Other deliberative bodies have done so, and I feel convinced that an expression of the opinion of this Convention will carry with it more force than an expression of opinion on the part of any public meeting of the people of any one county to be assembled, as has been proposed by a gentleman, on the 8th of January next. And, by-the-by, I am inclined to think that that day, a day ever memorable in the annals of this country, has been prostituted most outrageously by other purposes than those of patriotism. It seems to be the prevailing idea that the day will cover all defects. But I am not one to be influenced by such considerations.

These resolutions, Mr. President, are here, and I intend to vote for them. I shall not enter upon an examination of the subject of the settlement of the boundary of Texas. It is not german to our purpose. But I am prepared to show that Texas had a claim to all the territory laying on this side of the Rio Grande, including Santa Fe. We find it so recognized, not only in the treaty with Santa Anna and in the act of the Congress of Texas, but in the proclamation of Gen. Bravo, declaring certain pains and penalties against all Mexicans who continued on this side of the Rio Grande, and declaring that they should be considered traitors. That is, in my estimation,

a sufficient answer to the remarks of the gentleman from Allen, regarding the claim of Texas.

One gentleman, the other day, not quite so well posted up as he thought he was, intimated that gentlemen here were as ignorant as the asses they rode to get here. Some people had better take the beam out of their own eyes before they attempt to remove the mote from ours, and then they will be better enabled to see what they are doing. Sir, I am tired of this assumption of gentlemen on this floor to thrust down our throats and compel us to swallow everything they choose to give us. For my part, I have always thought for myself, and intend to do so on this occasion. Some gentlemen over the way, I do not intend to impugn their motives, but they all sing the same song, declare that this is not the proper time for the introduction of these resolutions. They are for holding a public meeting at the Court House, or in the Supreme Court Room in this Capitol, and adopting resolutions as private citizens, and not in our character as delegates to this Convention. Well, sir, there is but little responsibility attaching to any one in a public meeting composed of four or five hundred persons. Perhaps you will see the names of the chairman and secretary announced, but who votes for the propositions that may be adopted at such meeting nobody knows. But when we come here as delegates for the people, and when we solemnly—I use the word “solemnly,” because the occasion is solemn—when we solemnly declare our adherence to the Union, and frown indignantly on fanatics, when we declare that Indiana, in language that has been used here, “knows no North, no South—nothing but the Union,” it will have a good effect, not only on the people of this State, but throughout the Union.

Sir, Indiana is not now what she was some years ago. Thirty years ago she was a territory; now she contains a million of inhabitants—a State of the fifth rank in resources, in population, and in wealth.

A VOICE. In population, not in wealth.

Mr. FOSTER. Well, let that be as it may, it is the fourth or fifth State in the Union. Shall it be said that the voice of Indiana shall not be heard in respect to matters that concern the whole Union?

From the uniform and moderate course which Indiana has heretofore pursued, her voice will be heard and regarded, and I hope that every gentleman on this occasion, whatever his political views may be, whatever his views in relation to this matter may be, however he may differ with other gentlemen in regard to these laws, yet as they were formed as compromise measures for the benefit of the Union, I trust he will support them. Is it to be supposed, sir, that when such men as Clay, and Cass, and Webster, and Foote, and Dickenson, have united their energies for the purpose of producing

such measures as were calculated to promote the best interests of the country, is it to be supposed, I say, that there was no need of compromises? Yet gentlemen say there has been no danger of disunion. Why, sir, these very compromise measures were under consideration for nine months, and until recently we never heard the word treason uttered; but now people assembled in public meetings make declarations with impunity which a few years ago would have been scouted and trampled under foot. Why, sir, they out-Herod Herod. They boldly avow doctrines such as characterized the Hartford Convention. Gentlemen are mistaken; they may sing the syren song of peace, peace—but there is no peace. I tell you that danger is lowering, and that it will burst upon us with tremendous force by and by, if we do not take the proper course to allay excitement. I believe that the adoption of these resolutions will have considerable effect to allay excitement, and I shall vote for them under almost any shape that they can assume.

Mr. BASCOM. I would not rise to make a remark at this time, were it not that I wish to make a personal correction, more than anything else, regarding a sentiment that fell from the lips of the gentleman from Monroe (Mr. Foster). He said he was tired of the assumptions of some gentlemen upon this floor. I suppose the gentleman has forgotten that he assumed to read me a lesson on Saturday—that he assumed to dictate to me the course that I should pursue on this floor. And now, once for all, I allude to the circumstance. I am but a young man, and none but he who is heartless—who is lost to all the feelings of humanity—would rise in his place and attempt to smother a young man who is endeavoring to discharge his duty. I came to Indiana, sir, a poor and friendless boy. I have won for myself a place in the affections of the people; they have elected me to this Convention; and for the first time, I have learned from a man who is here, I suppose, to represent the talent and learning of the State, that I have not an equal voice with him upon this floor, because, forsooth, I have not so long a beard? Sir, if beard is an evidence or test of the qualification that the people require in their representative, I think the people of Monroe county would be equally well represented if they had sent a goat here. [Laughter.] I always endeavor to treat gentlemen with due courtesy. I listen at all times to those who are older than myself with reverence and respect; but I care not how old a man may be who introduces a measure here; I care not if the frosts of a hundred winters have passed over his head; if he does that which I think he should not do, I have a right to raise my voice against it. I did, perhaps, allude somewhat harshly to the gentleman from Wayne, the other day, and I think I had reason to do so. That gentleman on one occasion rose up, in

the course of a debate, and directed against me a personal insult. I undertake to say, sir, that I have never occupied more than fifteen minutes of the time of this Convention upon any one occasion, with, perhaps, one exception; and in this I differ from the gentleman from Monroe. I was sent here, sir, to express the views of the people whom I represent; and none, save a few heartless demagogues, who find their way here by some means or other, would take exception to the expression of the views of the people of my county by their representative. This, then, will be my course; if the Convention determine to act without debate, I will hold my peace; but if there is to be an expression of the sentiments of the people, I feel it my duty to express the sentiments of those whom I represent, independently of the dictation of any gentleman.

Mr. DOBSON rose and addressed the Chair.

Mr. FOSTER. Will the gentleman allow me a moment?

Mr. DOBSON (yielding the floor). Certainly.

Mr. FOSTER. I am sorry to see that the gentleman is a little under the influence of irritation. I certainly had no disposition to irritate him much the other day in the casual remark that I made. But the gentleman will recollect, or if he will refer to statistics on the subject, he will find that he has occupied as much time, perhaps, as any other gentleman.

Mr. BASCOM. I challenge the gentleman to produce the statistics that show any such thing.

Mr. FOSTER. I do not controvert the right of the gentleman to speak; he has an equal right with myself or any other delegate. But I thought that the course which he pursued was not altogether as courteous as it might be. And when he made a personal attack upon the gentleman from Wayne, who is old enough to be his father—I say it was a personal attack, for he read a dirty, scurrilous article from a newspaper, which had no relevancy to the question under consideration, and none to the subject that was before the Convention—I told him he ought to tarry at Jericho until his beard was grown. By that, I meant that it did not become one so young to attack an aged man—that he ought to have some respect for age—that is all. I did not wish to dictate to the gentleman; very far from it.

Sir, I have not risen for the purpose of castigating the gentleman in the slightest degree, but merely to express the views by which I was actuated when I made the remark, which seems to have given him so much offense, the other day. I will not say that the gentleman has been troublesome; but one thing is certain: if the gentleman has not occupied the floor long at a time, he has occupied it as often as any other delegate. In this I challenge contradiction. But I have no intention to reply to the gentleman's remarks. It would give him too

much consequence; therefore, I have not another word to say.

Mr. DOBSON. I have been patiently listening to this discussion for some time past, and I must say that I regret very much the course the debate has taken. I was not here at the introduction of the resolutions, and as to the propriety or impropriety of this introduction, I have not a word to say at present. It is not always what men do, so much as it is the manner in which they do it, that produces good or ill effects. And the manner in which we are disposing of this subject it seems to me is calculated to do more harm than the final result can do good. We have been voting on all manner of propositions embracing all manner of subjects. We have been traveling from Maine to Texas. I will not say whether the Convention is right or wrong in so doing; but it does seem to me, if I look at this thing right, that we all could vote conscientiously and fairly for the proposition of the gentleman from Posey, with a very slight variation. What is it that we are asked to do? We are merely asked to say whether we, as delegates of this Convention, and as citizens of the confederacy of States, and citizens of Indiana, are willing to sustain the Constitution of the United States, and the laws of the country, as we have sworn here, and as we are bound by our allegiance generally to do. Now, sir, from the first inception of the Constitution of the United States to the present time, those who have obeyed the laws, and those who have not, have generally paid the penalty which their resistance deserved—I do not make the remark for the purpose of forcing over a vote here—but I say that those who have disobeyed the laws have always received their reward, sooner or later. The first serious opposition to the law, as far as I know, was what is called Shay's rebellion. Is any man prepared to say that those who were engaged in that movement, did right? Is any man prepared to say that in any stage of the proceedings that the law was not an iniquitous law, or that it was wrong in principle, or that those who undertook to resist it was doing right? Washington did not think they were in the right; nor did any right minded man think they were doing right. The next instance was the nullification proceedings in South Carolina. They were put down, and no man here will pretend to say those who resisted the law on that occasion did right. I apprehend that every gentleman will agree with me, that the General Government was perfectly justifiable in using force to put down those who resisted the law. The supremacy of the law should be maintained, and we are merely required here to say whether we will sustain the laws of the United States or not. I had hoped—I had long since hoped, that the time would never come when any man would deliberately undertake to calculate the value of the Union; when a man

would sit down and consider whether he should obey the law or not. But we seem to have reached that time.

Let us return to these resolutions. The gentleman from Allen says that he will go for sustaining the laws of the country, although he finds fault with the law. He says that we should sustain them whether we like them or not, until we can repeal them in a Constitutional manner. Then why not say so—by his vote he says he will not sustain them. These resolutions, sir, do not propose that we shall endorse all these laws, in every particular, but their main features only. It is not important for us to stop to inquire, whether we are pleased with all the details of these laws. What we have to inquire is, merely, whether we approve of them in the main and whether we disapprove of the proceedings of the agitators of the North and at the South, and of their resistance to the law. Now what will be the consequence of the adoption of these resolutions? Gentlemen may say that it is of little importance that we should make these declarations. I admit, sir, that one step is but a small matter. This house was built by placing one brick upon another. An individual has no intention of going to the devil, when he makes the first step, but he takes one step after another, in that direction, until finally he smells brimstone in right down earnest. There are one hundred and fifty of us, besides the officers of this Convention; does any one of us believe that he will be disturbed in the quiet possession of his house in his absence, knowing that the laws of the country surround him and protect him in his rights, and that no one dares to disturb his family in his absence. No man can disturb him with impunity. Where is the impropriety then of declaring that we are for maintaining the supremacy of the law. I was sorry to hear one gentleman, Mr. Mather, say, that our opinion is not worth much. I think that he would take that back if he had the remark to make over again. I believe that our opinions are worth a good deal; that they will have influence not only in this State, but throughout the Union; and I believe that occupying the position we do, we should be careful that we do not set a bad example. When large timber falls it is a bad time for the saplings in the neighborhood. It is an easy thing to acquire the habit of placing one's self in opposition to the laws, and of resisting them. And when that course is once commenced where is it to end? I care not what the law is. If it be a law passed in a Constitutional manner, we are all bound by it. We are bound to yield obedience to all the laws of Government. The Government has cost us a good deal, but it has been a good bargain, for I believe it is a better Government than any other on the face of the earth. We want it perpetuated, and the way to have it, is to live up to it, in letter and in

spirit. When you go to fell a large oak, you do not expect to do it with a single blow; but even a boy, by persevering efforts, can bring it to the ground. So if we accustom ourselves by small gradations to resist the law, after a while we shall have nothing but discord and confusion, and the strong will trample upon the rights of the weak.

Now I should be disposed even to vote for the resolutions of the gentleman from St. Joseph, because I repudiate this doctrine of resistance to the law, as well at the South as at the North. But I think we have in the other resolutions, as much as it is necessary for us to say; and I hope the House will now come to a vote and adopt the resolutions, and that we shall then proceed to the business that properly belongs to us.

Mr. RITCHEY. I am sorry, sir, that this matter has been introduced into the Convention. I look upon it, sir, as altogether foreign to the business that belongs to us. I regretted the effort that was made by the gentleman from Wayne to introduce these resolutions something like a week ago, and I voted against suspending the order of business to allow him to introduce them, and I did it for the same reason that I have since voted to oppose them in every shape. I believe, sir, that they were altogether out of place and unnecessary. I came here, sir, and swore at your desk to discharge a duty as Delegate from the county of Johnson, to attempt to amend or remodel our Constitution, and to do nothing else. And so far as I was concerned, I expected to have nothing to do with extrinsic matters. Well, sir, I care not whether the proposition be right, in itself, or not. I was not sent here to vote for everything that was right, whether it be a law that has passed Congress or anything else. The question whether the proposition of the gentleman from Wayne, or that of the gentleman from Posey, is right, is a question that I am not bound to answer, and I shall not hesitate to vote against measures that may be clearly right in themselves if they do not come within the duties that I am sent here to perform. But some gentlemen say that as the resolutions are before us we are bound to vote for them. I have heard, sir, since I came back to the Convention yesterday—for I have been at home for a little time, and perhaps it would be better for some other gentlemen to go home, perhaps it would improve their knowledge of the wishes of the people—sentiments that I have regretted to hear. I am inclined to believe, from conversations which I have had with the people of my county, that if the members of the Convention were to go home for a few weeks or until after the adjournment of the Legislature, they would come back much better qualified to express the sentiments of the people than they are now or are likely to be, and especially if such fire-brands are to be thrown in here to incapacitate us for

the discharge of our duties. I have heard a number of gentlemen in this Hall say that it was wrong to introduce these resolutions into the Convention, but that since they are here they are bound to vote for them. Sir, that is a course of action that I do not understand. It is a system of practice that I have not been accustomed to be governed by. If it was wrong to introduce them I hold that it is right to get them out of the way as soon as practicable, and by every means direct and indirect. If I believe a measure to be wrong and that it ought not to be introduced, I am not to be driven to vote for it, even though I believe it to be right. But what is the argument that is urged here for this Convention to step out of its way and take up this extrinsic matter and to spend two or three days in the discussion of a subject that is altogether foreign to the business which we were sent here to transact? Why it is said that the Union is in danger. Well now does any man believe that the Union is in danger?

A VOICE. "Yes. I do."

Mr. RITCHEY. Well, then, gentlemen do believe it. But if they do, they must believe it upon very slight evidence, indeed. I am one of those who have not felt during the agitations of last summer that the Union was in danger. I know there has been a great deal of talk on the subject of the danger of disunion for several years, but I have never seen anything that has lead me to believe that the Union has been in danger for the ten years past. We have seen petitions presented to the Legislature in language quite as strong as that of the petition which set the gentleman from Wayne on fire—which fired his breast with so much patriotism. I recollect that nearly ten years ago a petition came from Wayne county, asking that the negroes should be allowed the right of suffrage, trial by jury, and all the rights that appertain to the white citizen of Indiana. And to the best of my recollection they have continued to petition annually. And there has been no excitement in Indiana more dangerous than that for the last ten years. And I cannot, for my life, see why it is that gentlemen should go into spasms lest the Union should speedily be dissolved. But admitting that the Union is in danger, I ask you if any man is weak enough to suppose that the passage of these resolutions will save it? I am as much attached to the Union as any man on this floor, and if I believed that the Union was in danger I should look forward with as painful forebodings as any gentleman; but I cannot believe it is in danger, nor do I believe that if it be, the passage of these resolutions will contribute one iota to its perpetuation. Why, sir, even if it were a proper remedy at the outset we have spoiled it, and it is too late now to talk about it. If it could have had any efficacy in prolonging the existence of the Union, the remedy has been spoiled by mixing up too many drafts in it. I am in favor

of the motion now before the Convention for the indefinite postponement of these resolutions. If it had gone abroad and the people were of the opinion that the Union was in danger, and they had confidence in the measures proposed by the proper tribunal, it might then have some effect; but at present I think it had better be laid aside than to pass it with a meagre vote. Sir, at the commencement of this Convention, according to my belief, the State Printer of Indiana had a right to demand the printing of this Convention.

A VOICE. "What has that to do with the matter before us."

Mr. RITCHEY. I will tell you what it has to do with it. When I so stated I did it with the conviction that I was right. But when the Convention decided that he was not entitled to the printing, I refused to vote for the appointment of any other printer, although the Convention decided that he was not the printer to the Convention. I was not convinced by their decision. I had my own opinion still, and when the election was had I refused to vote. I say that I believe that this matter is altogether foreign to our business here, and that I shall have nothing to do with it. I shall do upon this occasion as I did upon the occasion of electing a printer to this Convention. I believe that it is improper that we should have anything to do with it, and by no vote of mine shall it be endorsed. I have voted heretofore to get clear of it, and I shall now vote for its indefinite postponement. I hold that the Convention has no right to know whether I approve of the compromise measures of Congress or not. I will not say whether the proposition of the gentleman from Posey is right or whether it is wrong. I object to making any expression in regard to it, and I hope to see in this case, as in any other, a protest entered upon the journals discountenancing the introduction of such resolutions. I had not expected to see incendiary declarations such as these now before us, and I hope now that the Convention will proceed to take the vote upon the indefinite postponement, and that we shall then proceed to attend to our proper business; for even if the Union were in danger it would do more harm to adopt these resolutions than to get clear of them by indefinite postponement. You have effectually spoiled the remedy which otherwise might have had some efficacy.

Mr. BROOKBANK. Since so much time has been occupied in the discussion of this subject, I do hope, as a matter of courtesy, if nothing else, that I may be permitted to say a few words in reference to it. ["Consent."]

It is with sincere and heartfelt regret, sir, that I rise to occupy one moment of the time of this House, in relation to a subject which I regard as foreign from our proper duties. But in view of the shape that this business has assumed, and with my determination to keep my

seat in this Hall during all controversies and all votes, it must necessarily follow that an opinion or expression must come from every member who keeps his seat here while the vote is taken, unless he refuse to vote at all, which I do not choose to do upon this or any other occasion. With this determination on my part, I feel, sir, that it is due to myself, and to the constituents whom, in part, I have the honor to represent, to define my position and the reasons for the vote I shall give.

I need not say that I, too, regret this subject having been introduced into this body; nay, sir, I have not language to express my surprise that either the father or stepfather of this project should have seen fit to have introduced it upon this body.

But with all deference to their better judgment and experience, and with the high personal regard which I entertain for them, I cannot dispel my doubts of the propriety of such a step.

But, Mr. President, it is too late for regrets; it is before us, and must be met.

It is with equal surprise, sir, that I have listened to the various subterfuges resorted to by its advocates to compel members to sustain it.

A continual cry is heard about *disunion*, and many attempts are made to force upon men a conviction that it is their bounden duty in view of their obligations to this "sacred Union," to assert their patriotism and fidelity to the Union, in this Hall of Delegates convened to alter, revise, or amend the Constitution of Indiana!

And how, sir, is this proposed to be done? Why, by endorsing the compromise measures of the late Congress. Against such means I most solemnly and seriously protest. And my vote shall accord with this sentiment.

But I cannot and will not sit passively here, after more than two days and over twelve hundred dollars have been spent, or uselessly thrown away, in discussing matters foreign and irrelevant to our business, without giving an expression in addition to my vote, wherein my position and opinion may be seen.

Whenever the good people of Union county see fit to appoint or elect me to constitute one of a committee of criticism upon the acts of Congress, I shall then feel under obligation to discharge that duty to the best of my ability, but not while a member of this Convention.

Next, the oath that we have here taken has been alluded to by the gentleman from Owen, (Mr. Dobson,) as making it compulsory upon us to express an opinion in regard to the merits or constitutionality of the measures of Congress. To this I also object.

Mr. DOBSON. I said that we were sworn to support the Constitution of the United States, and in consequence of the allegiance which we owe to the General Government, as well as in consequence of that oath, we are bound to sustain the laws of the land.

Mr. BROOKBANK. I think, Mr. President, that the oath which has been administered here has been understood by us all; and I think that gentlemen will agree that I have at least had an opportunity of understanding it, since it has been twice administered to me in this Convention. ["Consent."]

That part of our oath which refers to the Constitution of the United States, simply requires that what we may enact here, shall not conflict with any of its provisions.

The next and most essential part of our obligation is that we shall well and faithfully discharge our duties here as members of this Convention, in altering and amending the Constitution of Indiana.

For that purpose alone came we here, and I here declare that I will give no vote upon this floor, that can possibly be construed to endorse or sustain any subject foreign to that, if I know it.

And I forewarn gentlemen that if they introduce a proposition, although it be a precise transcript of my own sentiments, if it have no relevancy to our legitimate province, I shall vote against it.

And I forewarn gentlemen of another thing, that they need not construe that vote to be an expression of my sentiments upon the subject in itself—I shall vote against such propositions on all occasions, upon the principle that they have no connection with our special duties—regardless of their cries of disunion, treason, or abolitionism.

As I said before, I sincerely regret that these resolutions were introduced here, for they have only served to produce ill feeling, by eliciting a discussion that has aroused a partisan spirit, which should by all means have been avoided in this Convention.

I came here almost entirely inexperienced in matters of legislation, but I had hoped, that, at least, good feeling would prevail amongst the delegates of the Convention, during the progress of our labors—but I have been sorely disappointed.

The time has already elapsed, in which the people of Indiana expected that the labors which we were sent here to perform, would have been completed.

We are to-day, not one-third done the amount which is placed before us; and yet gentlemen here are willing to spend day after day, in discussing any and every extraneous matter which may be presented; especially if there is a probability of its affording a little political capital.

It is not my purpose to bring any charge against members of delaying business intentionally, or of a wilful neglect of duty; on the contrary, I think, that as a general thing, they have been industrious and prompt to duty.

But I do think that if gentlemen would deliberately reflect for a moment upon the state

of our progress; and, as has been intimated by the gentleman from Johnson, (Mr. Ritchey,) if they had an opportunity of hearing the remarks that are made abroad concerning this Convention, they would be admonished to desist from these speculative discussions, and proceed to the consideration of those topics which appertain to the special object for which they are convened.

Why, sir, it has been said by some persons out of this Hall, that this Convention, at times, presents more the appearance of a mob, than that of a deliberative body.

I should not be surprised, if these resolutions or any others of a similar character, pass this body, indignation meetings should be held, and a voice of reproof come up from the yeomanry and the press of all parties, saying: "Come down from a place which you are no longer worthy to fill."

But, Mr. President, in all candor, this and other improvident and inappropriate squanderings of the people's money, will have a great tendency to prejudice the public mind against the Convention and anything it may do; thereby endangering the adoption of our Constitution when submitted for ratification.

It would be my delight, sir, to contemplate the perfection of such a one as would meet with universal approbation, and one that might be held up to the gaze of an admiring world, and to our sister States, as a "model Constitution."

But if this gratifying result is ever to be realized, we must cease our bickering and strife about things which do not directly concern us, and proceed as quickly as possible with those that more immediately pertain to our duty.

With regard to the question of attachment to the Union, I have but this to say: My constituents are a law-abiding, order-loving people, and I entertain no fears of an organized resistance to the laws of the land in that quarter, while they remain on the statute book of the Union.

And to give any vote here that would be intended, or could possibly be construed, to have reference to their measure of attachment to the Union, would be an insult to their good sense and patriotism. And not only so, it would be a work of supererogation, since their fidelity and patriotism have never been questioned.

In respect to myself, I am willing that others may judge.

As a general rule, when individuals are eager to assert their innocence, before a charge has been preferred, the presumption is, that there is some ground for suspicion: in other words, "a guilty conscience needs no accuser."

Hence these high-sounding protestations of "love of country," and "attachment to the Union," can have no other effect, in my opinion, than to give an intimation that we at least, suspect ourselves, or some of our fellow-citizens.

Now, God forbid, that I should participate in any such imputations, by vote or otherwise. It ought to bring contempt and disgrace upon any man that would speak or vote such a sentiment. It should condemn, and politically ruin him forever. ["Consent."]

I have said, Mr. President, that I did not wish to occupy the time of the Convention. I have not done so heretofore, and will not further now. But I felt it due to myself and to those whom I represent, to make the statements that I have made.

Mr. DOBSON. I wish to say a single word in explanation of a remark of mine, which the gentleman seems to have misapprehended. I stated that we had sworn to support the Constitution of the United States; that we were bound, by the oath we have taken, as well as by the allegiance that we owe to the Government of the United States, to support the laws of the United States. I maintain that every individual is bound to support the laws of the country, whether he approves of them or not, even to the surrendering up of the last particle of property that he possesses; aye, even to the surrendering up of his life. The Government has a right to demand this of every citizen—and why? Because the Government protects him in the enjoyment of his life, liberty, and property—in the enjoyment of all the rights of the citizen—this obligation is binding upon every citizen. He is bound to discharge any duty that is imposed upon him by the Government, to aid in the suppression of riot, tumult, and disorder, or any other service. If the muttering thunders of war are heard in the distance, the Government has a right to say to him, We want your property or your services, and, whether willing or not, he is bound to obey.

The Constitution that we have sworn to support, I take it, is as strong and as binding upon us as the fugitive slave law; viz.: no person held to service or labor in one State, under the laws thereof, escaping into another shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor is due. The fugitive slave law, as it is called, only carries out the provisions of this clause of the Constitution of the United States, which I have just read—at least that is its object. It may be wrong in some of its details, but we are not endorsing the details—but its main features, and declaring that we will sustain the law, while it remains upon our statute book.

Mr. OWEN. As one of the sets of resolutions now proposed to be postponed, was introduced by myself, and as, in the course of the debate, various inquiries have been directed to me, it may be proper that I occupy a few moments in reply. One thing is quite certain, that these resolutions of mine cannot be liable alike to the objections made to them by the gentleman from

Ripley, and to those made by the gentleman from Allen. These gentlemen cannot both be correct. Yesterday the gentleman from Ripley told us that it was not worth while to vote for these resolutions, since they contained little or nothing; while the gentleman from Allen told us, this morning, that they contain altogether too much. I imagine that the truth may be found to lie between them. What do they contain? Three very plain, distinct points, expressed in simple language. The first is: That in the opinion of this Convention, the common sentiment of the people of Indiana, sustains and endorses, in their general features and intention, the compromise measures, as passed by Congress.

That is the first point. The second is: That we recognize, in the success of these measures, an earnest of security and perpetuity to our glorious Union.

And the third is: That, whatever may be the opinions of individuals, as to the wisdom or policy of the details contained in the acts of Congress above referred to, it is the duty of all good citizens to conform to their requisitions.

These are the three points embraced in the resolutions submitted by me as an amendment. Gentlemen may disagree respecting them, but certainly they are definite, and they are easily comprehended.

The gentleman from Allen argues that we ought not to endorse the general features of the compromise measures, because they work injustice to the North. He objects to the measure respecting the boundaries of Texas, and puts to me the question whether Texas ever did legally own the territory lying between the Puerco and the upper Rio Grande. In my judgment she never did. And my opinion on this point is of record; given at the time when the question of boundary was, not between Texas and the United States, but between Texas and Mexico. If I may be excused for doing, in this instance, what is very rarely my habit, I will furnish the gentleman proof of this, from a speech of mine, delivered in Congress, in January, 1847:

"Texas, never recognized as an independent nation by Mexico, had, and could have, no western boundary fixed by treaty. She claimed to the Rio Bravo. On the lower portion of that stream her original claim, by conquest and possession, to the line of the river, could hardly be considered as invalidated by a half deserted village or two, and a few scattering huts tenanted by Mexicans, on its eastern bank. The case above the mouth of the Puerco was different. Several small Mexican towns, besides Santa Fe, with her ten thousand inhabitants, were scattered over the valley east of the upper river. Upon the whole, then, the exact line of boundary might, not unfairly, be considered a debatable question, and proper subject for negotiation."

Here was the opinion expressed, that the western boundary of Texas was a "proper subject of negotiation," as between Texas and Mexico. Far more, then, ought it to be regarded as a fit subject for compromise now, as between Texas and the federal Government.

And now, if the gentleman from Allen asks me whether the line as fixed in the boundary bill, runs exactly where it should—no fraction of a degree too far North or too far South—and whether ten millions is the exact sum which, in fairness, ought to have been granted to Texas, in order to effect the compromise of this boundary question, my reply is, that that is a matter we are not called upon to decide. I but say, generally, that it were infinitely better that five or ten millions of money should be cast into the depths of the ocean, than that there should be risk of disunion, or of civil war between the General Government and one of the States.

The gentleman has alluded to the Missouri Compromise line, and intimated that its extension to the Pacific is indirectly sanctioned in one of the Territorial bills. There is nothing of the kind. In no one of the bills is the extension of that line incorporated, directly or indirectly, by express provision, or by inference. I may add that, as regards the deputation in Congress from this State, generally, they never endorsed the extension of that line. Exceptions I admit there were; but, for myself, I always voted against it. There is nothing of that character here to be endorsed. Nor is there, in the bills in question, the slightest word which may be construed into a recognition of slavery, directly or indirectly, into any portion of our new Territory.

Again, sir, it is an acknowledged principle of international law, and I may remark, by the way, that that principle was publicly asserted by me upwards of three years ago, at a time when it was not received and recognized as at this day it is; but it is now an admitted rule of international law, that territory conquered or acquired by treaty shall remain subject to the existing laws, until these laws are changed by the Government thus acquiring possession. It is also admitted, that in none of these Territories did slavery exist when we acquired them. It follows that it can be introduced then, only by positive enactment. Such enactment never can be had. No law introducing slavery into any of these territories ever can be passed. As soon might this solid dome above our heads crumble to atoms, and crush us in the ruins of its fall.

Then in endorsing these measures generally, we do not endorse, directly or indirectly, by implication or otherwise, the principle of slavery extension.

In conclusion I express the hope that, since the Convention has decided by a deliberate vote, that these resolutions shall not remain on the

table, nor yet be referred to a committee—a motion for which I voted, in hope of saving time—that they may be acted upon now, boldly and at once. I think we may very properly declare, for I believe it to be the truth, absolutely the truth, emphatically the truth, that the common sentiment of the people of Indiana, of a large and overwhelming majority of them, approves and endorses in their general purport and intent, the compromise measures of last session.

Mr. MORRISON of Marion said: I have listened for three days to the extended discussions upon these resolutions, without even a desire to prolong the debate by any remarks of mine. Too much has already been said. I regretted the introduction of the resolutions, for the reason that they were calculated to provoke discussion, by opening a fruitful field for the propagation of the discordant sentiments of the various members. The subjects were of an exciting character, and it might have well been inferred that they would still continue to excite wherever they were to be debated. I shall not attempt to discuss the merits of the several measures of which they speak, or to investigate the arguments on either side, but shall content myself with five minutes' time, to make plain the votes which I have given, and which I shall give, upon the case in hand.

In the first place, I voted to lay the subject upon the table, to save time and to save the expense incident to the making and printing long speeches on a matter which I considered beyond the rightful jurisdiction of this body. I afterwards voted against a re-consideration of that vote, because I apprehended a renewed and continued debate, which had already extended itself into all the great questions which had been acted upon by the last Congress—matters purely political, and calculated to distract the public mind, and to embarrass the business legitimately pertaining to this Convention.

The arguments already adduced are voluminous. They are, in many respects, calculated to divide the people, and to furnish fuel for an inflammatory state of the public mind—the details of the compromise measures, the policy of the Government in the admission of States and territories, and the effect of these measures upon the Northern and Southern sections of the Union. The opponents of those measures have reiterated much of the sentiment of those who are known as abolitionists; every idea which they have hitherto urged, has been newly dressed and again presented to the people of Indiana, sanctioned by the influence of their authors, as members of the Constitutional Convention. Under such circumstances, I no longer feel willing to permit the impression to go abroad, that our feelings and sentiments in any way or manner harmonized with those who condemned the compromise of these great national questions. We should now send the an-

tidote along with the poison. No man should be permitted to infer that Indiana is even in a doubtful attitude in reference to the great principles of these resolutions. Although I have condemned the propriety of introducing the subjects, and voted against the expediency of entertaining them, yet as they have been forced upon us, let us dispose of them in such a way as to convince the people of our sister States that we are supporters of the Constitution of the Union, of the Union in all its parts, that we defend the sovereignty of the laws, and are ready to uphold their proper administration.

No act of this Convention should show that these abolition speeches, made in this Hall, or elsewhere, have weakened our faith in the union and stability of our Government, or in the full support of those who are required to execute its laws. Let our vote be so full, so unanimous, that it will silence the surmise that we are in any wise tinctured with a want of patriotic devotion to our common country.

I care not who may be the author of a true sentiment. I recognize, in the main, a true principle in the resolutions of the gentleman from Wayne, and also in those of the gentleman from Posey. They both utter a true, an elevated, and a patriotic feeling, such as will be responded to by a very large majority of the people. Therefore let us no longer discuss them, but give a decisive vote in their favor, pass them, clear the way, and go on with our labors. I do hope that the vote may be large, that it may be conclusive, and that we will take the vote and make our decision without further loss of time. Indiana is for the Union, and who dare say to the contrary?

Mr. READ of Clark. I have not, as yet, taken part in the debate upon this question and I must, therefore, be permitted to occupy the time of the Convention for a few moments. I am opposed, sir, to the indefinite postponement of the subject that is before us. I think it is our duty to dispose of it in the way in which such a question should be disposed of by a direct vote. If gentlemen are not prepared to vote for the resolutions proposed by the gentleman from Wayne, nor for those of the gentleman from Posey, let us refer them to a select committee, that they may be modified by the committee, if need be, and reported back to us in the shape in which they ought to be adopted by the Convention. The Government of the United States itself, is based upon the principles of concession and compromise, and the very subjects about which we are speaking, have been subjects of compromise. For instance there is the fugitive slave law. Take that solitary and alone, and I am opposed to it; but upon the principle of compromise I have adopted it, and I believe it to be our duty to carry it out in good faith. I do not believe there is so much danger of the dissolution of the General Government, as is anticipated by some

gentlemen. To be sure Congress, last winter, slept upon them so long and dreamed upon it, until they took fire, and, as a matter of course, came to the conclusion, that the whole Government was on fire also.

Sir, I do not believe there is that danger that is anticipated by many. It is said we have nothing to do with this matter. Let gentlemen calmly reflect upon it. Did not the Grand Jury of the United States District Court, now setting in the same building we occupy, the other day, exercise the power of making a report upon the subject? And you know that the Legislatures of the several States, do assume a power to give an expression of opinion in regard to public matters which affect the Union. This is the first Convention that has met since the compromise measures have been passed by Congress. But you will find that all bodies of this description, that will meet, will give an expression of their opinion. Now, sir, we must reflect that however gentlemen may condemn the South, all of the South is not against us. There are parties there, sir, as well as here—there are parties there who are deprecating the conduct of the fanatics of the North and South as much as we are. Why, do we not see that lately, the State of Georgia, and other States, have succeeded in establishing a Union party. One thing that brings conviction to my mind very forcibly, is that I read a letter the other day from a distinguished gentleman of Tennessee, in which the writer says, Can you not give an expression of the Convention upon the subject of the compromise and the Union, that will come to us with all the healing properties of balm of Gilead, like oil poured upon the troubled waters; for we have a great deal to contend against. The agitators are seizing upon everything that can possibly tend to excite the minds of the people. Is not this a subject worthy of our attention? I do not believe there is a man here in Indiana, that is opposed to the Union. I believe that our citizens generally love their country and their Government, as well as I do. Talk of disunion to us! Impossible. I will not believe that there is an American patriot who desires to outlive the Union of the States—our eagle cannot be divided, she will not pursue the star of a particular State, she ever will remain the American eagle. Ambitious and designing men may form their plans, the fury of faction may, for a while, threaten our Union, but there is a redeeming spirit in the intelligence and patriotism of the people. As long as the people have knowledge and virtue, everything is safe; our political bark will continue to move smoothly on, unfolding its splendor to an astonishing world, gathering new vigor from every breeze, and smiling at the folly of the waves that beat and burst harmless around it.

Sir, I have no fears that any faction can ever arise in this Union sufficiently strong to dissolve this Government. I again repeat, let us keep

the people virtuous and intelligent, and the country is safe. I have no fears about disunion, and I trust that we shall compromise this matter by referring the resolutions to a committee, and that they will be put in such a form that they will receive, not only a majority of the votes, but an unanimous vote of this Convention.

Mr. JOHNSON. In order that we may get at the business that we have been sent here to do, I move the previous question.

Mr. HOLMAN. Will the gentleman withdraw his call for the previous question for a moment? I wish to withdraw my amendment.

Mr. JOHNSON. Certainly.

Mr. HOLMAN then withdrew his amendment.

The demand for the previous question was renewed.

The PRESIDENT. The question is on seconding the demand for the previous question.

The yeas and nays were demanded, and they were ordered.

Mr. DUNN of Jefferson inquired of the Chair what would be the effect of the previous question?

The PRESIDENT replied, that it would bring the Convention to a vote upon the pending amendment, cutting off the motion for indefinite postponement.

The yeas and nays were then taken, and resulted as follows—yeas 100, nays 26:

YEAS.—Messrs. Alexander, Allen, Anthony, Badger, Barbour, Bicknell, Biddle, Blythe, Bourne, Bowers, Bright, Bryant, Butler, Carr, Chandler, Chenowith, Clark of Hamilton, Coats, Colfax, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, &c., Duzan, Farrow, Fisher, Foley, Foster, Garvin, Gibson, Gootee, Haddon, Hall, Hamilton, Hardin, Helmer, Hendricks, Hitt, Hogin, Holman, Hovey, Howe, Huff, Johnson, Kent, Kendall of Wabash, Kendall of Warren, Lockhart, Logan, Mather, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Murray, Nave, Niles, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Rariden, Read of Clark, Read of Monroe, Ristine, Ritchey, Schoonover, Shannon, Sherrod, Shoup, Sims, Snook, Smith of Ripley, Smith of Scott, Spann, Stevenson, Tague, Tannehill, Taylor, Thomas, Thornton, Todd, Trimble, Walpole, Watts, Wiley, Wolfe, Yocum, Zenor, and Mr. President—100.

NAYS.—Messrs. Bascom, Beard, Brookbank, Chapman, Clark of Tippecanoe, Cole, Conduit, Cookerly, Crawford, Crumbacker, Dunn of Jefferson, Graham of Miami, Kelso, Kilgore, Kinley, Maguire, March, May, Mower, Newman, Robinson, Steele, Wallace, Wheeler, Work, and Wunderlich—26.

So the previous question was demanded.

The main question was ordered to be now put.

The main question being first on the amendment of the gentleman from Posey, (Mr. Owen.)

The yeas and nays were demanded, and they were ordered, and being taken, were—yeas 99, nays 23, as follows:

YEAS.—Messrs. Alexander, Allen, Badger, Barbour, Berry, Blythe, Bright, Butler, Carr, Chandler, Chapman, Chenowith, Coats, Conduit, Cookerly, Crawford, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, &c., Duzan, Farrow, Fisher, Foley, Foster, Garvin, Gibson, Gootee, Graham of Miami, Haddon, Hall, Hamilton, Hardin, Helmer, Hendricks, Hitt, Holman, Hovey, Huff, Johnson, Kelso, Kent, Kendall of Wabash, Kinley, Lockhart, Logan, Maguire, March, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milligan, Milroy, Mooney, Morgan, Morrison of Marion, Mower, Murray, Nave, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Read of Clark, Read of Monroe, Ristine, Ritchey, Schoonover, Shannon, Sherrod, Shoup, Sims, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Stevenson, Tague, Tannehill, Taylor, Thomas, Thornton, Todd, Trimble, Wallace, Watts, Wheeler, Wiley, Wolfe, Yocum, Zenor, and Mr. President—99.

NAYS.—Messrs. Bascom, Beard, Bicknell, Bourne, Bowers, Brookbank, Bryant, Cole, Crumbacker, Dunn of Jefferson, Hogin, Howe, Kilgore, May, Moore, Newman, Niles, Rariden, Robinson, Walpole, Work, and Wunderlich—23.

So the amendment was adopted.

The question then recurred upon the adoption of the resolutions as amended, and upon this question the yeas and nays were ordered, and were taken with the following result, yeas 90, nays 26:

Those who voted in the affirmative were,

Messrs. Alexander, Allen, Badger, Barbour, Berry, Blythe, Bourne, Bowers, Bright, Butler, Carr, Chandler, Chapman, Chenowith, Coats, Cookerly, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, &c., Farrow, Fisher, Foley, Foster, Garvin, Gibson, Gootee, Graham of Miami, Haddon, Hall, Hamilton, Hardin, Helmer, Hendricks, Hitt, Holman, Hovey, Huff, Johnson, Kent, Kendall of Wabash, Lockhart, Logan, Maguire, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Moore, Morrison of Marion, Murray, Nave, Nofsinger, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Rariden, Read of Clark, Read of Monroe, Ristine, Schoonover, Shannon, Sherrod, Shoup, Sims, Snook, Smith of Scott, Spann, Steele, Stevenson, Tague, Tannehill, Taylor, Thomas, Thornton, Todd, Trimble, Wallace, Walpole, Wheeler,

Wiley, Wolfe, Yocum, Zenor, and Mr. President—90.

Those who voted in the negative were, Messrs. Bascom, Beard, Brookbank, Clark of Hamilton, Clark of Tippecanoe, Cole, Conduit, Crawford, Crumbacker, Davis of Madison, Dunn of Jefferson, Duzan, Hogin, Howe, Kelso, Kilgore, Kinley, Milligan, Morgan, Newman, Niles, Robinson, Smith of Ripley, Watts, and Wunderlich—25.

So the resolutions as amended were adopted.

The names of the following gentlemen being called by the Secretary, they severally rose, and addressing the Chair, respectfully declined voting upon the resolutions:

Messrs. Anthony, Biddle, Colfax, Mather, and Ritchey.

Mr. COOKERLY. I give notice that I will to-morrow move a re-consideration of the vote just taken.

The PRESIDENT. It is not necessary that notice should be given of a motion to re-consider.

Mr. COOKERLY. Well then, sir, I make the motion, and move that it be laid over until to-morrow.

ORDERS OF THE DAY.

The PRESIDENT announced the first business in order to be the consideration of the first section of the fifth report for the third reading.

The section is as follows:

SECTION 1. There shall be elected in each county by the qualified electors thereof, a Sheriff, Soroner, Recorder, County Auditor, County Treasurer, and a Clerk of the Circuit Court, at the time and places of holding elections for members of the General Assembly. The Clerk, Auditor, and Recorder, shall each continue in office four years and until their successors shall be chosen and qualified. But no person shall be eligible to the office of Clerk, Recorder, or Auditor, more than eight years in any term of twelve years. The Sheriff, Coroner, and Treasurer, shall each continue in office two years and until their successors shall be chosen and qualified: *Provided*, That no person shall be eligible to the office of Sheriff or Treasurer, more than four years in any term of six years.

The question being, Shall the section pass? the yeas and nays were taken, under the rule, and resulted—yeas 105, nays 14—as follows:

YEAS.—Messrs. Alexander, Allen, Anthony, Badger, Barbour, Bascom, Beard, Berry, Blythe, Bourne, Bowers, Brookbank, Butler, Chandler, Chapman, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Colfax, Cookerly, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Perry, Farrow, Fisher, Foley, Foster, Garvin, Gibson, Gootee, Graham of Miami, Haddon, Hall, Hamilton, Hardin, Helmer, Hendricks, Hitt, Hogin, Holman, Hovey, Huff, Johnson,

Kelso, Kent, Kendall of Wabash, Kinley, Lockhart, Maguire, March, Mather, May, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Moore, Morrison of Marion, Mowrer, Murray, Nave, Niles, Nofsinger, Owen, Pepper of Crawford, Prather, Rariden, Read of Clark, Read of Monroe, Ristine, Ritchey, Robinson, Schoonover, Shannon, Sherrod, Shoup, Sims, Snook, Smith of Ripley, Smith of Scott, Spann, Stevenson, Tague, Tannehill, Taylor, Thomas, Thornton, Todd, Trimble, Wallace, Walpole, Wiley, Work, Wunderlich, Yocum, Zenor, and Mr. President—105.

NAYS.—Messrs. Bright, Bryant, Carr, Conduit, Crawford, Dunn of Jefferson, Howe, Kilgore, Morgan, Newman, Pettit, Steele, Watts, and Wolfe—14.

So the section was passed and referred to the committee on revision, arrangement, and phraseology.

Section 4 of Report No. 5 was then taken up upon its final passage, and read as follows:

“A competent number of Justices of the Peace shall be elected by the qualified electors in each township in the several counties, and shall continue in office four years if they shall so long behave well, whose powers and duties shall be prescribed by law.”

The yeas and nays were taken and resulted—yeas 115, nay 1—as follows:

YEAS.—Messrs. Alexander, Allen, Anthony, Badger, Barbour, Bascom, Beard, Berry, Blythe, Bowers, Bright, Brookbank, Bryant, Butler, Carr, Chandler, Chapman, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Colfax, Conduit, Crawford, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, Farrow, Fisher, Foley, Foster, Garvin, Gibson, Gootee, Graham of Miami, Haddon, Hall, Hamilton, Hardin, Helmer, Hendricks, Hitt, Hogin, Holman, Hovey, Howe, Huff, Johnson, Kelso, Kent, Kendall of Wabash, Kinley, Lockhart, Logan, Maguire, March, Mather, May, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Mowrer, Murray, Nave, Newman, Niles, Nofsinger, Owen, Pepper of Crawford, Prather, Rariden, Read of Clark, Read of Monroe, Ritchey, Robinson, Schoonover, Shannon, Sherrod, Shoup, Sims, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Stevenson, Tague, Tannehill, Taylor, Thomas, Thornton, Todd, Trimble, Wallace, Walpole, Watts, Wiley, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President—114.

NAY.—Mr. Kilgore—1.

So the section passed and was referred to the committee on revision, arrangement, and phraseology.

On motion, the Convention adjourned.

AFTERNOON SESSION.

The Convention proceeded to the consideration of the regular orders of the day, and the several sections of reports No.'s 6 and 7, were read a third time and passed, with the exception of the last section of No. 6, relating to the residence of county and township officers, and the last section of No. 7, relating to the size and boundaries of counties.

THE CLARKESVILLE TRUST.

Mr. READ of Clark offered an amendment to the last section of report No. 6, which he presumed would be unanimously assented to by the Convention. He would read it, and, if it were not agreed to by unanimous consent, he would have to move it as a substantive section. He supposed the omission—for he regarded it merely as an omission—had been accidental. By the old Constitution it was provided that all district, county, or town officers, should reside within their respective districts, counties, or towns—the trustees of the town of Clarkesville excepted, and that they should keep their respective offices at such places therein as may be directed by law. He would state to the Convention that there was a tract of land donated by the State of Virginia, for the purpose of erecting a town. The donor constituted the trustees, with power to fill vacancies, and the matter had so continued to this day. These trustees resided in different States; and from this land a considerable fund had been realized, which had been loaned out, besides which there were several important suits pending, in which the trustees were plaintiffs; and if this exception was not made in the new Constitution, this fund could not be collected, nor the suits pending be brought to a close. This exception was made in the old Constitution, and he hoped there would be no objection to making it in the new one. He presumed it had been overlooked by the committee reporting the section.

Mr. THORNTON. In looking at this matter, it will be perceived that the trustees of the town of Clarkesville are a body possessing peculiar powers, and wholly different from that of any other of like character within this State.

It will be recollected that a thousand acres were appropriated by the Legislature of Virginia, upon which the town of Clarkesville was laid out, and that certain trustees were appointed to execute the trust. It seems by a decision of the Supreme Court of the United States, to be found in 6 Peter's Reports, p. 369, that as vacancies in the trusteeship could only be filled by the surviving or remaining trustees, it assumed something of the character of an inheritance, and passes, not to the successors, but to the heirs and legal representatives of the original trustees. Now, I would call the attention of the Convention to the matter, and suggest that something ought to be done, on this subject. These trustees all live, and have ever lived, in

the town of Jeffersonville. Not a single individual of them reside in the town of Clarkesville; and I believe never have resided therein—and these funds have been held, disposed of, and enjoyed, by trustees living in Jeffersonville for years, and not a cent has been appropriated for the benefit of the town of Clarkesville.

Now, it seems to me that this corporation is so far above all law, that something ought to be done in this matter by this Convention. They hold themselves not responsible to any authority, except to the State of Virginia. They hold the funds, and I am authorized to say that they use them personally.—That they have appropriated them to their own use, and not a solitary cent has ever been appropriated to the town of Clarkesville. They even refused, or failed, when requested by the citizens of Clarkesville, to appropriate a dollar for the digging of a well there. Now, if it is intended to perpetuate this abominable and most aristocratic system of corporation, I shall vote against it. I trust that my friend over the way (Mr. Read) will not do anything that will tend to perpetuate this thing. I do not know that we have the power to do anything to correct the evil, but God knows we ought to have; for, if there be one thing under heaven that I would disapprove of more than another, it is a corporation which is not responsible to any authority whatever. If the Convention will investigate this matter, they will find that these trustees have held this fund for a long series of years; and, I believe, upwards of a half a century; and that they have applied thousands of dollars to their own private emolument, and not a cent has been appropriated to the public good. I shall, therefore, protest against any proposition by which it may be sought to perpetuate this corporation under its present form, so as to keep the funds in the hands of these individuals.

Mr. READ. I cannot subscribe to all that the gentleman has said to the Convention in reference to this corporation, so far as regards the appropriation of the funds by the trustees to their own private purposes. This is not correct. The present board I know to be composed of high-minded, honorable men.

This fund, however, unquestionably has been used, and, so far as I am aware, the citizens of the town of Clarkesville have received no benefit whatever from its proceeds; at least, I know of none. If any provision can be made whereby they can receive the benefit, I am willing to go for it. But it will be recollected—and the gentleman from Floyd knows it very well—that there is a considerable fund—some three or four thousand dollars, perhaps; I do not know the amount; and I am told that if we dissolve this board of trustees, that money cannot be collected. And not only that, but I am told, also, that there are suits pending, which would be dismissed, and then there certainly would not accrue to the town of Clarkesville, any benefit

from them I have this on the authority of Mr. Crawford. I shall be in favor of any provision by which the citizens of Clarkesville can be benefited, as was doubtless the original design of the trust; but I am not willing to do anything which would squander away the whole fund. If any gentleman will offer a proposition by which the citizens of Clarkesville can have the benefit of this fund, I am ready to give it my support.

Mr. THORNTON. I was referred to by my friend over the way, (Mr. Read,) as a friend of the citizens of Clarkesville, and so far as a desire to see this fund properly applied, I am so. It appears to me that the provision which he proposed to insert in the section, will not affect that object. It only leaves it where it is. I understand that, although these trustees may be said to be municipal officers, attached originally to a municipal corporation, it seems to me that this is to all intents and purposes, a private corporation. Whether the consequences my friend suggests as being likely to result from any action of ours tending to change the nature of that corporation, I do not know; but it must be obvious to every one, that some effort ought to be made whereby this fund may be applied to the purposes for which it was designed by the donor.

Mr. READ. With the view of having this matter more fully investigated, I will move to re-commit this section to a select committee of three, with instructions similar to those I have read.

Mr. WATTS. I would merely suggest to the gentlemen from Clark and from Floyd, that it would be better not to interrupt the passage of this section now. Another section might be framed, which would cover all the ground, and it could be fixed by the committee on arrangement and phraseology, to come in in its proper place. I can see no objection to passing the section as it is.

Mr. NAVE. I now begin to understand this proposition. I must say, Mr. President, that I am in favor of passing the section as it is. The difficulties which have been suggested by the gentleman from Clarke (Mr. Read) I apprehend are only imaginary, and have no real existence. If they wish the town of Clarkesville to be benefited by the money thus donated, the only way to reach it is by passing the present section, thereby removing those gentlemen who are the trustees of that fund, and who have been controlling it improperly in a different town.

I am willing to admit that I place great confidence in the legal opinions of the gentleman referred to by the gentleman from Clark—I mean the opinions of Mr. Crawford; yet, sir, there never was a wrong without a remedy, and if we pass this section as it is, and remove the trustees who live in a different town, then the citizens of Clarkesville have their remedy

against these individuals, and can recover their money. They can prosecute a suit by making themselves parties to the actions now pending in the courts, so that there is no difficulty to be apprehended whatever in reference to the action of the Convention in regard to this section. The law is clear. It is known to the very Hornbooks of the profession that there never was a wrong without a remedy; and if these trustees have money which belongs to the citizens of Clarkesville at Jeffersonville, as a matter of course the citizens of Clarkesville have their action against those persons in whose hands this money is, to be found, and against those who have had the money in times past and converted it to their own use. There is no need, therefore, to incorporate such a provision in the Constitution.

The Convention, I hold, have no right to make that attainable in law in reference to the past which was not attainable by the laws then existing. We have no power to create a right to recover in a matter that has heretofore taken place. We can only declare in reference to the future and not in reference to the past, and therefore, in my opinion, such a section would be unavailing and amount to nothing.

Mr. READ. I only wish to save the fund. There appears to be a difference of opinion among lawyers on the subject. I have it from a high legal authority that if any alteration is made in the section of the old Constitution, so far as this matter is concerned, the suits now pending cannot be brought to a close, and that there will be great danger of the fund being wholly lost, so far as the original intention was concerned.

The question was then taken on the motion to re-commit the section with instructions, and it was decided in the negative.

The question then recurred on the final passage of the section, and it was agreed to by a unanimous vote.

DIMENSIONS OF COUNTIES.

The next question considered by the Convention was the last section of Report No. 7, which makes provision in relation to the dimensions of counties.

The question was, Shall the section be read a third time?

Mr. HUFF. Mr. President, it is with extreme reluctance that I again attempt to trouble this Convention with any amendments or further remarks on this subject, but I feel that I am not doing my duty to myself or my constituents to let it thus pass without making some effort. I still feel persuaded that I can offer something that will not be objectionable to the Convention, and at the same time be a great accommodation to some counties. It is true that it must be an extreme case where a county could be formed under such a provision, but there are cases in which such a provision would answer

the purpose; and the county that I have the honor in part to represent, and the adjoining county, are cases of this kind. The two counties front about one hundred miles on the Ohio river, and there are some five or six considerable sized streams emptying into the Ohio from the extreme upper part of one and lower part of the other, and their respective county seats, which makes it very inconvenient for the citizens of those portions of said counties to get to and from their county seats. In fact, it is sometimes almost impossible without going to the river and boarding a boat; or, if they cannot get a boat without waiting too long, they sometimes throw a couple of logs in and fasten them together and board them. This kind of a conveyance will do very well if they wish to go down stream, but it will not do so well for traveling up stream, and consequently they have to depend entirely on a boat; and if no boat comes in time, they cannot go at all.

It is true, if our counties were well provided with good roads and bridges, it would not be so bad as at present; but there are times that, even with good roads and bridges, it is impossible to get along near the river, in consequence of its overflowing its banks, and also the banks of the smaller streams, by backing the water up them. Some of those small streams run nearly across the county. The great expense in attending courts under such a condition of things, is more than those people are willing to bear, if they could help themselves. Just think of the hardship of a witness having to attend court under such circumstances. If he is required to be there on Monday he is obliged to start the day before. Well, sir, our circuit courts generally continue in session from five to six days, and if the witness is detained there during the whole time he is from home seven days—five in attendance on the court, and two in going and returning. Well, if a man's services at home are worth anything, it is placing a very low estimate to say his services and the use of his horse are worth one dollar per day, and his expenses while in attendance are about one dollar per day; therefore, if the court is five days in session his time and expenses are twelve dollars, while his wages will amount to two dollars and fifty cents, which, in two cases out of three, he never gets. But if he is so fortunate as to get it, it leaves him minus only nine dollars and fifty cents. Some members may say that it is a tolerable hard case on witnesses, even when they live close by. I admit that it is, but not so hard as with any one living at such a distance, because they can return home every night, and be at little expense, and at the same time attend some to their own business.

These people feel well satisfied that they cannot get a large county if it is to be left to a majority of the voters of the counties out of which it is to be taken; but they think that the

time is coming, and not very far distant, when even this privilege, that they could get a county that they had rather put up with, than to be subjected to the inconvenience to which they now are.

Mr. President, I have drawn up this amendment in such a way as to try to obviate the objections that were urged by some gentlemen, and at the same time not entirely tie up the hands of those that are not so pleasantly situated.

Some of those objections were, that it would cause litigation, and the Legislature would be troubled with petitions at great expense to the State. Well, sir, the principle cause of litigation under the present Constitution has been in attempting to take from one county and attach to another; and this amendment will only apply when the voters of the counties out of which such new county is to be taken, mutually agree to make a new county; it also makes it necessary that the boundaries shall be described so that they vote understandingly, and does not apply to taking from one county and attaching to another.

Mr. President, just see the situation that you place counties in that have a small surplus, say one hundred square miles; that is, two adjoining counties contain five hundred square miles each, and it becomes necessary in course of time to accommodate a portion of their citizens by laying off a new county; well, let the natural division of those counties be as it may, and the citizens be ever so favorable to doing justice to the new county, they cannot do it, owing to the Constitutional restriction; they cannot get one foot over the two hundred square miles. Whereas, if it was left to the voters of the two counties themselves, they might do justice to the third county, and might accommodate all parties much better, on account of natural divisions, such as water courses, &c.

Mr. President, if there was any one subject fully discussed in my county, and the adjoining county, it was this subject; and I believe that it was almost universally admitted that the present Constitution is too stringent; for, say they, if every person, man, woman and child, in the county, were in favor of forming a new county, they could not do it. They think this is too stringent.

And permit me now to make the prediction, that if this clause is left as stringent as it now is, and there is an open clause left in the Constitution for the Legislature to amend on certain conditions, that there will be a great deal more time and money spent in discussing petitions that will pour in to have this clause modified, than there possibly could be to leave it a little more liberal.

If my amendment should be adopted, the counties will have to settle the whole matter before they send it up to the Legislature.

I would say in conclusion, Mr. President, to those that are in favor of tying down those people, in the language of the fable of the boys and the frogs, though this may be sport to you it is death to us. I therefore propose to re-commit with the following instructions. I will read the section and then the instructions which I propose to add. The section, as it now stands amended, is:

"The General Assembly shall reduce no county to a less extent than four hundred square miles; nor shall any county with a less area than four hundred square miles be reduced below its present size."

And I propose to re-commit it, and instruct the committee to add:

"Except in the following case, to-wit: where the voters of two or more counties are desirous of forming a new county, and after laying off the same by metes and bounds, and giving their approbation to it by a vote of a clear majority of the votes of each county separately, in favor of it, at some general election."

Mr. WATTS. I should like to see my friend from Spencer accommodated, if it could be done without too great expense to the people of the State. He speaks of the long turn in the river, and the great distance which the people sometimes have to travel to reach the county seat. That is true to some extent, when the traveling is done by water; yet the land travel does not exceed the land travel of other counties in the State. He lives in what is called the "Ox-bow"—a singular turn of that resemblance; and you may travel all day on the water, and at evening not be more than three miles distant from the point from which you started in the morning, and we could not regulate matters so as to make the county seat more convenient. I think that some means might be devised by which we could settle this constant litigation in regard to county boundaries, which we have had almost ever since the old Constitution was framed. That Constitution has been violated under a peculiar rule of construction, and new counties have been formed where there was not any new territory to form them out of. I do hope that the Convention will put this matter in such a shape as to prevent this constant litigation.

Mr. KELSO. When this matter was before the Convention the other day, I was not present. The proposition, if I understand it, is to re-commit the section with instructions so to amend it that the people may have the power of determining upon this matter for themselves.

Now I had liked to have remarked that I did not blame my friend from Dearborn (Mr. Watts) for the course he has pursued, but that would be saying more than is due to him. I think he is to blame. It is true, as he says, there has been much trouble and litigation in the State of Indiana in reference to county boundaries; and perhaps in no county in the State more

than from Dearborn county; and it was once so located as to make it extremely difficult and inconvenient to get from different portions of the county to any one point for a county seat. They changed the county seat, and they lawed and squabbled about it; and finally it seemed as if nothing would cure the difficulty but a division of the county. I suppose when the gentleman talks about a violation of the Constitution, he has reference to that more than to anything else. It is quite possible that in affecting that division they may have squeezed the Constitution pretty hard [a laugh]; and let me remark here that if you send back again to them a Constitution with this provision in it, they will commence squeezing it again; and they will squeeze it every time the necessity of the case is as pressing as it was in that instance. Yes, sir, whenever there is a barrier to the will of the people they will keep pressing against it; and devising some means to break it down. Then why should we put this barrier there? The language of the present Constitution says that no county shall be reduced below an area of four hundred square miles in the formation of a new county. And now, in the revised Constitution, you want to make it still stronger, and say that no county shall be in any case less than four hundred square miles. Sir, there are more instances than one in the State where circumstances render it absolutely necessary to make a division in the territory of counties, or to change their boundaries for the sake of convenience. Sir, the territory of a county belongs to the people of such county; it is a matter which they themselves have a right to control; and if there be two or three counties all interested in the same change, and if an arrangement can be made among themselves for taking a piece of this county and putting it on to that, or a piece from the second and adding it to the third, I maintain that in a matter of that kind there is no authority so legitimate as that of the people of such counties themselves to settle it. Now, sir, I can point to the very door of the gentleman from Dearborn, (Mr. Watts,) and show that it is absolutely necessary for the convenience of the people that a portion of Dearborn county should be added to Ohio, even if you take off a piece of Ohio county and add it to Dearborn by way of a swap. It is for this reason: the line between them being a water boundary, is for two-thirds of the year not navigable; the section lines cross it; and after you have passed up the stream some three or four miles, by its meanderings, there is not a quarter section of land on that creek that is not divided by it to some extent. There is not a farm bordering upon Laughery creek, above Hartford, that is not divided by it; and for some twenty or thirty miles along the county boundaries, following the meanders of the creek, every farm is divided by the county line, and

so divided by that creek as to make the quantity of land in either county entirely uncertain and indeterminate without a regular survey. A man who has a farm thus divided does not know how much land he pays taxes for in either county. Now the very nature of the case makes it necessary that a change of territory should at some day be made, and the sooner the better. If we put this imperative clause in the Constitution and send it back to the people, they will be compelled to vote against it in self-defense. Now the gentleman from Dearborn (Mr. Watts) will not deny that such is the position of the people on that county line. He may indeed say that they had no business ever to have had Ohio county, and then the difficulty would not have existed.

There was great excitement on that subject; they surveyed Dearborn county perhaps more than once, and I think no two of these surveys agreed; and they finally appealed to the record of the original survey, whereby they claimed a small surplus.

They claimed to have seventeen square miles over the four hundred; and at any rate they organized Ohio county with seventeen square miles. In fact I am not certain whether it was not less than that; but I am certain it was not more. And that little county took upon itself the expense of erecting public buildings, and then, afterwards, they were given from Dearborn, by a sort of compromise, (for it was thought the constitutional provision did not interfere after the county was organized,) what was south of Laughery creek, which left the people in a worse condition than they were in before. Now the condition of things is such that there is an absolute necessity for a change. This provision it seems to me can be productive of no great good. It is just equivalent to coming to this conclusion, that the people are not to be trusted at all with the regulation of those matters in which they are most directly interested. The Convention has already refused to permit them to become creditors at their own special instance; and it seems to me that there is no one thing that the Convention is disposed to leave the people to decide. I do think that when the people of a county have a portion of their territory that they can dispose of, and their adjoining neighbors of another county have also a portion of their territory that they can spare, and the people of both counties are willing to make the exchange for their mutual accommodation, or if out of the two counties a third can be created without prejudice to the interests of either, it may be safely left to the people of these counties themselves to arrange with the aid of the Legislature. Why should we by a stringent provision in our organic law prevent them from doing so? Surely the people themselves are the best judges of what they want in this respect. Can there be any harm in this? Is it possible that the people are not

to be trusted? Are they so foolish and profligate that they would derange all the organization of the State—that they would break up everything like order and arrangement, and make matters worse than they are? Certainly if we make that clause imperative we leave matters in a very bad position, and I for one am not afraid to trust the people, for it would be impossible that they could make them worse. If I have aught at stake it is the probability that two miles of my county might be taken off to Ohio. Sir, whenever the people of the two counties make that arrangement I am not prepared to say that they shall not do it. It would not surprise me if they did. For the preservation of the county, as it now exists, it is necessary to make some change. Ohio needs it; it almost belongs to her. It is bounded by the congressional township line, leaving two miles of the township in Switzerland, and four miles of it in Ohio county. There is every year a division of the school funds, and there will be eternal difficulties about which shall have a certain portion of it, or about the fairness of that division.

Now all these things can be obviated; and it does seem to me that we ought to have confidence enough in the people to leave them some discretion on these matters, and not take upon ourselves to decide local matters which the people in the several localities are perfectly able to decide for themselves, and that in a manner much more satisfactorily to all the parties concerned than we can do.

MR. WATTS. I would like to say one or two words in reply to the gentleman from Switzerland. He refers to Laughery creek, and the small quantity of water which he says is in it for two-thirds of the year, and from that infers that there is no difficulty in crossing it. At the time that they were trying to organize this new county Laughery creek afforded a great deal of water almost all the time, so that it was almost impossible that the people living on the one side could get across to attend court on the other side. Since the new county was organized, however, Laughery creek affords but little water, and there is no difficulty now in crossing it. This county was organized out of about seventeen square miles, at a time when the county of Dearborn had not four hundred square miles in all her territory. After it was organized it was said that it was no violation of the Constitution to take a part of the territory from one county which was already formed to add it to another county. They did in two acts what any man would have incurred the guilt of perjury for doing in one. That was the way in which Ohio county was formed; and it is to prevent this evasion of constitutional provisions that I want to have the thing fixed by a provision in our organic law that shall be positive and certain. I do not want to see the boundaries of counties changed for the benefit

of particular towns. I do not want to see the Constitution evaded and the people misled for any such purpose. I want to have it so fixed that hereafter the people will know where their county boundaries are, and that those boundaries shall be unalterable. That is my object.

Mr. GOOTEE. It seems to me that all the arguments that gentlemen have advanced on this floor are far from being satisfactory, and do not appear to touch the question at issue. My friend from Dearborn, last up, (Mr. Watts,) argues, as an objection to this amendment, that we have already had trouble enough on this subject, and that the expense to the State has been great in litigating these matters. Now all this may be true; but I would like to know from the gentleman if it follows as a matter of legitimate inference, that, because there has been a good deal of trouble between one or two counties, and because others have got organized just as they wish to be, there shall, therefore, never be organized another county? Why, sir, the argument is absurd. You might as well say, that, because a man has had a great deal of trouble in building him a house, or in clearing him a farm, nobody else shall ever build another house or clear another farm in the State of Indiana. [Laughter, and cries of "Hear! hear him!"] The argument is just as good in the one case as in the other. If the gentleman from Dearborn has got his county just as he wants it, why should he object to the people in another part of the State organizing a new county, if it suits their convenience to do so? Surely, Mr. President, this is a most arbitrary usurpation of power. The whole State, forthwith, must forever be prohibited from making new counties below certain dimensions, because the county of Dearborn has got her organization and her territory just as she wants it. Yes, sir, Dearborn takes the lead, and every other county must follow in her wake! Why, sir, it is just like this: A man is building him a house in the woods, and he gets his logs together, and gets them all up, and he immediately decides against "log rolling." [Laughter.] Now, sir, it ought to be borne in mind that the counties belong to the people who inhabit them. And I would like to know by what authority any man, or body of men, shall say the people of a county, or counties, shall not have power to change their boundaries, if they think proper to do so. Sir, to attempt to prevent this, appears to me to be a most unreasonable thing, on several grounds. We all know, that, in a young and flourishing State like ours, time and circumstances—and a very short time, too—produce wonderful changes. And suppose, that, after a county has been organized, and the population increased, and the people are all satisfied that a great improvement might be effected by changing the boundaries of their county, and they want to do so; here is a constitutional provision which says it shall not be done.

Now, I have thought a great deal about this matter, and the only fair and impartial conclusion that I can come to is, that that section has no business in the Constitution at all. [Applause.] But let that be as it may, I do insist that it is unfair to tie up the hands of the people in that way that they never can organize their counties to suit themselves.

Mr. KELSO. I wish to make one single remark in reply to what fell from my friend from Dearborn. It is quite true, in all probability, as remarked by him, that, when it was sought to organize the county of Ohio, there was some considerable objection made in regard to the high waters of Laughery Creek. During the spring, the back water flows up that creek for a long distance, and I believe it is very troublesome. But, sir, all that taken together does not change its true character. A portion of the year it is low; and the reason I made the remark which I did in regard to its navigableness, was to show that it divided the lands of the county, and that section lines did not terminate at the creek. Now, sir, much stress is laid upon the trouble which we have had in times past on the subject of county boundaries. Admitting all that to be true, I hold that it is a matter which properly appertains to the people and the Legislature; and I say again that we ought to leave it in their hands for them to decide for themselves.

Now, I agree with the remark of my friend, that that section has no business in the Constitution at all. There is no necessity for one word of it. But if it is to be there, let it be so modified that the people, under circumstances that may be necessary, shall have the power to arrange this business to suit their own convenience.

Mr. ROBINSON. When this question was under consideration the other day, I moved to strike out the section entirely, observing at the time that I looked upon it as neither more nor less than an attempt, not merely to abridge, but in a manner almost entirely to take away one of the most sacred popular rights. I mean the right of petition. I endeavored on that occasion to point out the inequality and injustice which the adoption of that section would forever hereafter produce. I say now, as I said then, that I regard it as a palpable violation of the rights of the people, because one of the rights of the people, by the Constitution, is the right to correct former wrongs and remedy former grievances by legislative enactments; and let me say, sir, that, by the bill of rights, it is provided that the people shall have the right of petitioning the Legislature for the redress of their grievances. That these grievances exist in many parts of the State, and that they always will exist under the adoption of that clause of the Constitution, is a matter that must be conceded. Then the question presents itself—and it is one worthy of the consideration of this

Convention—is it right, by a provision of the organic law, for us to take from the people the right to petition the Legislature for a redress of their grievances, because some of them, or of this body, may have peculiar notions of their own? Now, the case referred to by the gentleman who submitted this amendment is one, and that involved in a petition which I presented here some time since, accompanied by a diagram, is another. Such cases exist in many parts of the State of Indiana. Why, sir, by this section we virtually say to the people: “You shall help to sustain the government; you shall pay your State and county revenue; but you shall be gagged; your wants may amount to grievances; your locality and situation may be such that you are not on an equal footing in many rights with other citizens of the State, yet your mouths shall be shut, and you shall not have a right to come here in your sovereign capacity and petition for a redress of your grievances.” This, sir, is unjust, and strikes at the right of petition. Sir, this section is arbitrary in its character; it is unjust in its operation; it is contrary to the spirit and genius of our government, and to the rights and privileges of freemen; and it ought not to exist as a part of our organic law. This is one of those questions which can be safely entrusted to the people, and one on which no general law ought to prevail, because the local situation of the people, and these local grievances in regard to county bounds, is of such a character that legislation can only afford them proper relief.

This, sir, is a domestic question. It is one which involves the rights of every individual; and although I have listened to every gentleman who has had anything to say in favor of this section, I have not yet heard one plausible reason why this power should be taken from the people—not one. I know that my friend from Dearborn (Mr. Watts) is against it, and that he has strong prejudices, perhaps, from the fact that there has been much litigation on the subject between two or three counties; and perhaps he told the truth when he said that perjury had been committed in regard to some of the surveys involved in the controversy about Dearborn county bounds. But, because perjury has been committed—if it has been the case—is that any reason why a law should be passed to prevent other men, in future, from enjoying their natural rights and privileges? I think not.

But, sir, there is another view of the question, which gentlemen appear to have overlooked, and that is that when the administration of the law does not operate upon the people equally, they are very apt to take the law into their own hands, and they will be heard over the Constitution and everything else.

Sir, they will enforce these rights; they will have justice; they will not submit to wrong. Can any of the old counties complain? I see

no ground of complaint that can possibly originate in any of the old counties. If it is true that the old county of Dearborn lost a part of her territory for the creation of a new county, and thereby lost a part of her revenues, it should be remembered that it was done to suit the convenience of a part of the people of that county, who were very much inconvenienced by the then existing arrangements. If a new county is formed to suit the convenience of citizens, and to redress the grievances and inconveniences under which they are laboring, it should be borne in mind that the burdens have to be borne by the people who ask for it. And shall we tell them that although you are willing to put a burden upon yourselves, and to bear all the expense which will be entailed upon you by such an arrangement, yet we, the Constitutional Convention of the State of Indiana, have formed a determination that in all future time we will place a gag in your mouths, and you shall not be heard on any such subjects? Sir, would this be right?

As I remarked the other day, in the few observations I then made, I was satisfied from the tone of feeling manifested by the Convention, that my attempt to have the section stricken out would be unsuccessful. With the gentleman from Switzerland, (Mr. Kelso,) I am fully of opinion that if the Convention is determined not to strike it out and leave it an open question for the people themselves, with the aid of the Legislature to decide upon, it ought at least to be subject to reasonable modification; and in order to make the relief more general and not out of any enmity to the proposition of the gentleman from Spencer, (Mr. Huff,) I will submit the following as an amendment to the instructions:

“That the General Assembly in the formation of a new county shall not reduce the county or counties out of which said new county shall be taken to a less extent than three hundred square miles; nor shall any new county containing a less area than two hundred square miles be formed, nor unless a petition of a majority of the legal voters residing in the territory of which it is proposed to form such new county.”

In submitting this amendment, Mr. President, allow me to say that I think it is one which embraces what I believe to be nothing more than a principle of justice and equity. It leaves to every section of the State the right to complain upon just grounds, and it leaves, also, the people in the possession of the right to govern themselves, and to petition their representatives for a redress of their grievances.—A right, sir, which should be held sacred and inviolate—a right dear to every freeman—a right that should never be abridged—the most valuable right secured by a republican government—a right purchased by our forefathers, and which should never be taken away from the people—these are my notions, my feelings,

my sentiments; I submit them for what they are worth, with an honest conviction that they are correct in principle.

Mr. BUTLER said, he fully concurred in the remarks which had been made both by the gentleman from Decatur and the gentleman from Switzerland, and in illustration of their argument he wished to present the position of his county to the Convention. The county which he represented contained four hundred and eighty-one square miles. The White River ran through the centre. The people both of the eastern and western part of the county were equally anxious to have it divided for their mutual convenience. But if that section were adopted it would for ever put it out of their power to have the county divided. Many persons had to go a distance of twenty-seven or twenty-eight miles to reach their county seat, whereas, if the county were divided, it would bring the county seat within a reasonable distance of each inhabitant. Unless the section, therefore, was materially amended, he would be under the necessity of voting against it.

Mr. KENT moved that the section and pending amendments be laid upon the table.

The question being taken, the motion was not agreed to.

Mr. GIBSON moved the previous question, but the call was not sustained.

Mr. SMITH of Ripley. I would like to say a very few words on this subject, and I assure the Convention that had I not been on the committee which reported this section, I would not trespass upon their time for a moment. Being Chairman of that committee, it may be supposed that I was in favor of that section. To set myself right, I will say that I was not in favor of the report as I made it myself, but that I was in favor of the original provision of the old Constitution; and that provides that no old county shall be reduced to a less extent than four hundred square miles in the formation of a new one. I think that that provision would answer all the purposes for which such a provision was originally intended, and I would leave the question open for the people and the Legislature to settle among themselves any alteration beyond what is therein provided, that may hereafter be proposed.

Now in regard to what fell from the gentlemen from Dearborn and Switzerland, (Messrs. Watts and Kelso,) in relation to the dividing line between the counties of Ohio and Dearborn, leaving entirely out of the question the manner in which the county of Ohio was organized, there can be no doubt that the present line is exceedingly inconvenient, and if it was allowed to the Legislature to settle the county boundaries, I have no doubt that they would be arranged to the mutual satisfaction of both parties.

Then, sir, I will conclude by saying, that for myself I am in favor of the old constitutional

provision, and if any gentleman will move to refer the section back again to the committee with instructions to report the provision of the old Constitution on the subject, I will vote with him for that end; but I am opposed to leaving the question entirely open, so that the boundaries of all our counties would be subject to continual disarrangement by the votes and petitions of the people.

Mr. HALL. I am in favor of the original instructions offered by the gentleman from Spencer, and against the amendment. The present provision of the Constitution secures to all the old counties an area of four hundred square miles. Now the county that I reside in contains more than four hundred square miles; but the first proposition introduced by the gentleman from Spencer is, that where two or more counties wish to create a third county, and the majority of the voters in the counties from which the territory is to be taken are in favor of it, they shall have the privilege of creating a new county. Now that appears to me to be a proposition so reasonable that no man can object to it. I think this is a privilege which ought, in such case, to be extended to them. I think the section as reported by the committee is altogether too strong. I cannot vote for the amendment of the gentleman from Dearborn, but I think the amendment offered by the gentleman from Spencer is so reasonable that no gentleman ought to object to it.

The question was then taken on the amendment to the amendment offered by Mr. Robinson, and it was rejected.

Mr. HOLMAN. I wish to offer an amendment to the instructions that have been offered by the gentleman from Spencer. "That the committee on county and township organization report a section providing that no county shall hereafter be reduced in territory for any purposes whatever, unless in the pursuance of the determination of a majority of the legal voters of such county at a general election, expressing the extent and purposes of such reduction."

The county of Dearborn is one of those counties in which difficulties resulting from the provision of the old Constitution have arisen. Now, sir, allow me to say that if we were making a Constitution that is to last for ten, or fifteen, or twenty years only, it might be proper to adopt a provision that the boundaries of counties as they now are should remain permanent. But when it is remembered that we are making a Constitution, the effects of which may last for centuries, and which itself may last for half a century, it is important that we should look to the future and endeavor to see what time may develop in regard to the necessary changes. The object of the section as reported by the committee is evidently to limit the exercise of power. Now I may have no objection to limit the legislative, the judicial, or executive depart-

ments of the Government. The greater degree of limitation here, if consistent with the due exercise of the public will, the better the interests of the people will be guarded; but where it is proper for the people, in their character as sovereigns, to express an opinion, the limitation is unwise and impolitic. It is not proposed by the instruction I have read to empower the Legislature to do a certain act, but it is a proposition securing to the people of a county the right to determine, by a direct vote, whether their county shall be reduced in territory or not. The question then is, is it improper to entrust this power in the hands of the people. A majority of the people of a county would in all cases be influenced only by a desire to act as to produce the greatest convenience to the greatest number of the citizens. I think, therefore, that it is not improper to confer this right upon the people, or rather to secure to them a right which is unquestionably their's. When it comes to a question of limiting the legislative power, then I will fully concur in every proper restriction consistent with the due expression of the public will; but when it comes to a question of limiting the people in the exercise of their primary power of expressing their will in any instance in which that power may be safely exercised, let me ask gentlemen what arguments they have to offer? Take, for instance, the majority of the people of the county of Jefferson; if the people, by a direct vote, determine that it is politic to attach a portion of their county to another and adjoining county, will any man say that they have no right to do so? I think not.

It was correctly remarked by the gentleman from Switzerland that the territory of a county belongs to the people of a county, and it is a well recognized principle that the majority must rule, and ordinarily do rule, without injury to the interests of the minority. In fifteen or twenty years from this time the county which I have in part the honor to represent, will, in all probability, contain a population furnishing from ten to twelve thousand voters. At the present time it would be extremely unwise to divide that county, and I presume that were such a proposition now made to the people not a hundred men in the whole county would be found in favor of it. But when that county may be so increased in population as to give us ten or twelve thousand voters within its limits, then the propriety of a division may be a very different thing, as facilities for transacting business may not increase with the increase of population. The time of the people and the money of the people also can be saved if the population be sufficient to sustain a county without improper burdens of taxation, if the free ingress to the county seat be such as to facilitate their business and suit their convenience. When a county becomes densely populated its division may result greatly to the advantage of the people, and greatly to the diminution of their burdens in discharge

of the various duties which devolve upon the citizens in their respective counties.

I think we should look to this question as one, the effects of which, are to be seen more in the future than in the present. I hope no gentleman will desire to make a Constitution which shall not last as long as that which we have assembled here to revise. What effect would such a restriction as this have in twenty-five years, when our counties have attained an immense increase of population. In ten or fifteen years hence it is more than probable that a reduction in the size of many of your counties will be extremely desirable; and in connection with this desirableness, if this power can be so vested as not to operate injuriously to the interests of the people, it should be so vested. I ask is there any impropriety in vesting the power in the hands of the people who are alone to be effected by it? ["Consent," "consent."]

Sir, if there is any gentleman on this floor who can advance a single argument in favor of limiting the power of the people where it is to be exercised in a matter that only affects themselves, then I admit that such argument should have full weight and effect; but unless there is such an argument, and unless such argument shows clearly the necessity of restriction, then I think we ought to leave this matter in the hands of the people. I am opposed to the instructions which have been offered by the gentleman from Spencer, and for this reason only; that I think they will produce only a partial rule—a principle incorporated in a Constitution should be general. Those which I have offered will, I think, meet every case.

MR. LOCKHART. MR. PRESIDENT, I have no local interests to subserve by advocating or opposing the reference proposed by my friend from Spencer (Mr. Huff). While I say this I cannot say that I am indifferent to the results of the vote about to be taken. My feelings are all with the mover of the reference. The division of counties, it is true ought, not to be encouraged, nor ought we unnecessarily to prevent it where a clear majority of the people are in its favor. I regard this, sir, as a question, over which the people themselves in the local jurisdictions ought to have control. I therefore trust that the proposition will receive the favorable action of this Convention, and that the section will be amended as proposed.

The question was then taken on the amendment offered by Mr. Holman, and a division being called for there were, for the amendment, ayes 37, noes 45.

So the amendment was not agreed to.

MR. OWEN. I know that there is an indisposition on the part of this Convention, to alter the section as it now stands; but I would ask gentlemen to consider for a moment whether this is to be regarded as a proper section now, even though it might be perfectly proper when the old Constitution was formed. We

had then but few inhabitants in the State, and it was not desirable that the counties should be small. We have already had a large increase of population, and in all probability shall have a still greater increase during the next half century. And can we feel assured that during that half century no county ought to be reduced below an area of four hundred square miles? What is the proposition of the gentleman from Spencer (Mr. Huff)? It is that if the people of two or more counties, wish to make an alteration in their boundaries, and they are willing and agreed to do so, they should not be prevented by any Constitutional restriction. And shall the Convention say that the people of the two or more counties in such case, attending to their own business, doing that which can injure no one in the world but themselves—even if it should operate an injury to them—shall the Convention say that they shall not be allowed to do it? I hope not, sir.

It is known to the Convention, that on several occasions where a matter of principle was involved I have voted to take the responsibility. But this is no matter of principle; it is nothing more than a matter of convenience—a change of things. In regard to principles, you can make stringent rules; but in regard to convenience you cannot. Why, then, not leave this matter with the people and the Legislature? If it be desirable for the present to say that no county shall be reduced below the dimensions of four hundred square miles, cannot the Legislature pass an act to that effect, which shall remain in force until circumstances shall arise to render it necessary that it should be repealed? Most certainly. It may be right now, and may continue to be right for ten or twenty years to come, that no reduction should take place in our counties below the area named; but at the expiration of that time it may be necessary, and if this provision is adopted into the Constitution, the change cannot be made except by a very tedious process. I think if the Convention will take the matter into serious consideration, they will come to the conclusion that the proposition made by the gentleman from Spencer, is an exceedingly proper one, and perhaps better calculated, than any yet offered, to meet the views of the people on this subject.

Mr. NILES. I am aware, Sir, that my feelings do not coincide with those of the gentlemen who advocate the plan of leaving the subject of county boundaries an open question. It happens that many of those who oppose the section as it now stands, have local interests to subserve, and are looking to the probable division of certain counties, with a view to the benefits likely to result to particular towns or localities. I represent no such interests; and I desire for the sake of the public peace, no less than for the general good, in every respect, to see a stop put at once and forever, to all the an-

gry controversies which have arisen in reference to the division of counties.

It is an unquestionable fact that many of our counties are already too small, while none of them are too large. They are hardly of half the size as in many of the older States. It was not unnatural, in the early settlement of the State, when the roads were nearly impassable and when a dozen miles was a considerable journey, that the people should have desired to be within a small distance of the county seat, and that the counties should have been prescribed within narrow limits. But I feel confident that in making them so small as they are, the Legislature did not wisely consult the permanent interests of the people. Why then should our small counties be divided merely to subserve temporary convenience, at the expense of permanent and substantial interests, and only to double the public burthens? It was suggested by the gentleman from Dearborn, (Mr. Holman,) that his county would by-and-by contain ten or twelve thousand voters and might with propriety, at no distant day, be sub-divided. Sir, the City of New York will by-and-by contain ten or twelve hundred thousand people; but what argument will that fact afford in favor of dividing the City into two? As our counties increase in the number of inhabitants, the facilities for intercommunication between the distant portions and the centre will increase in an equal or greater ratio. Even the present hardships and inconveniences complained of by the gentleman from Spencer, will soon be obviated. We have had for the last thirty years, no more fruitful source of unprofitable and angry controversy, than this question of county boundaries. The contest which resulted in cutting off from the county of Dearborn, the little county of Ohio, did undoubtedly, as suggested by my friend upon my right, (Mr. Watts,) cost the State one hundred thousand dollars; and although the interests of a small town and neighborhood may be temporarily advanced, I hazard nothing in the opinion that it would have been better for the substantial and permanent interests of all concerned, and especially of succeeding generations, that the limits of the original county should never have been disturbed.

No one regards it as an evil that the State boundary is fixed. The limits of the State being established, we know where to fix the capital, where to erect the public buildings. The people know where to concentrate railroads and other improvements, and where to build a city which will be an ornament to the State. Make your county boundaries permanent and the same will be true, on a similar scale, in regard to the county towns.

It will not be denied that most of the controversies in regard to county boundaries have originated in the hope of private gain. Let this question be left open, and in half the coun-

ties of the State a few interested men may be found, who, by perpetual agitation, will either induce the extremes of covntry to combine against each other or against the centre or contiguous portions of adjoining counties, to combine against other points. If they fail in their scheme one year, they will agitate the subject the next, and so on indefinitely. It will give rise to angry controversies which will swallow up all other questions. The county towns will maintain only a precarious existence. Nothing will be settled. Let us not then inflict a permanent injury upon successive generations for the sake of some temporary convenience or for purposes of pecuniary gain.

I can speak with perfect confidence for every county in the North, when I say any such agitation would be a misfortune. Efforts have been made several times to divide one of our best counties—Kosciusko. But any one who knows anything of the subject, is aware that the scheme originated in hopes of private speculation, and that a division of the county would have been a serious evil.

But it is said, why not trust this matter to the people: I am willing, sir, to trust them fully in what is peculiarly within their own province in conducting the government of the State, but I would not hold out to them motives to disregard the public interest for the sake of private gain.

I trust then that no such apple of discord will be thrown among the counties. I should regard it as a great calamity.

Mr. HALL. I must correct the gentleman from Laporte (Mr. Niles) in relation to those who defend this amendment making this a local question. The county which I represent is right upon this matter; and, although it contains some four hundred square miles, yet if any proposition were now made for a division of that county, I do not believe that it would receive ten votes in the county. The people in that county are right; but they being satisfied with their own situation are not disposed to tie up the hands of those who are not satisfied in relation to questions of this kind, but are willing to deal out justice to them. Now it appears to me that there are some counties on the Ohio river so situated that any one looking on the map, would be apt to suppose that a majority of the people of these counties would be favorable to a change in their boundaries. And if their situation be such as to render such change desirable for their own convenience the people certainly ought to have the privilege of making it, and that is all that is proposed by the gentleman from Spencer. The old counties are all secure, and if a majority of the people of one or more counties are in favor of any alteration let them have it. They have a right to have it. If a majority of the people of my county desired an alteration, I would say at once let them have it. ["Consent, consent."]

The PRESIDENT. The question is on the motion to re-commit, with the instructions offered by the gentleman from Spencer.

Mr. KELSO. I do not want to make any more speeches, but to offer the following amendment as additional instructions:

"That the committee be further instructed to report a section instead of the present one, in substance like that contained in the present Constitution on the same subject, with leave to report the said section in the present Constitution in terms."

Mr. PRATHER moved to lay the instructions just offered by the gentleman from Switzerland, on the table;

Which was agreed to.

The question then recurred on the motion of the gentleman from Spencer, to re-commit the section with the instructions above inserted, and the yeas and nays being demanded, and ordered, were taken with the following result:

YEAS.—Messrs. Alexander, Bascom, Blythe, Borden, Bowers, Bright, Brookbank, Bryant, Butler, Carr, Chandler, Chenoweth, Clark of Hamilton, Cole, Conduit, Cookerly, Davis of Madison, Davis of Parke, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, Farrow, Foster, Gootee, Hall, Hamilton, Helm, Hitt, Hovey, Huff, Kelso, Kent, Kendall of White, Kinley, Lockhart, May, McClelland, Miller of Clinton, Miller of Fulton, Milroy, Mowrer, Owen, Pepper of Ohio, Pepper of Crawford, Prather, Ristine, Robinson, Shannon, Shoup, Sims, Smiley, Smith of Scott, Spana, Stevenson, Tague, Thomas, Thornton, Todd, Trimby, Walpole, Wolfe, Work, Wunderlich, Yocum, and Mr. President—67.

NAYS.—Messrs. Anthony, Badger, Beard, Berry, Chapman, Clark of Tippecanoe, Coats, Colfax, Crawford, Crumbacker, Davis of Vermillion, Fisher, Foley, Garvin, Gibson, Graham of Miami, Haddon, Harbolt, Hardin, Helmer, Hendricks, Hogin, Holman, Howe, Kilgore, Logan, Maguire, McLean, Miller of Gibson, Moore, Morgan, Morrison of Marion, Nave, Newman, Niles, Read of Clark, Read of Monroe, Schoonover, Sherrod, Snook, Smith of Ripley, Steele, Tannehill, Wallace, Watts, Wiley, and Zenor—49.

So the motion to re-commit was agreed to.

Mr. THORNTON. I beg to offer the following proviso, as additional instructions:

"Provided, however, that the General Assembly shall have power to make such alterations in the boundaries of existing counties, as may be demanded by the public convenience, and of the inhabitants residing within the limits proposed to be changed by a majority of those inhabitants; and that such change shall not be made if the same shall be found materially to affect the permanent interests of the county or counties, the boundaries of which were proposed to be changed."

The instructions were, on motion, laid upon the table.

The question then recurred on the final passage of the remaining section of report number seven; and the yeas and nays being taken, resulted as follows:

YEAS.—Messrs. Alexander, Anthony, Badger, Barbour, Bascom, Beard, Berry, Bicknell, Blythe, Borden, Bowers, Bright, Brookbank, Bryant, Butler, Carr, Chandler, Chapman, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Colfax, Conduit, Cookerly, Crawford, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Edmonston, Farrow, Fisher, Foley, Foster, Garvin, Gootee Graham of Miami, Hadson, Hall, Hamilton, Harbott, Hardin, Helmer, Hendricks, Hitt, Hogin, Holman, Hovey, Howe, Huff, Johnson, Kelso, Kent, Kendall of White, Kinley, Lockhart, Logan, Maguire, March, Mather, May, McClelland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Mowrer, Nave, Newman, Niles, Nofsinger, Owen, Pepper of Crawford, Prather, Read of Clark, Read of Monroe, Robinson, Schoonover, Shannon, Sherrod, Shoup, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Stevenson, Tague, Tannehill, Taylor, Thomas, Thornton, Todd, Trimble, Wallace, Walpole, Watts, Wiley, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President—116.

So the remaining sections were passed.

Mr. MILROY moved that the Convention adjourn.

The motion was decided in the negative.

THE PUBLIC MONEY.

The Convention then proceeded to the consideration of report No. 8, being a report from the committee on finance and taxation, comprising two sections—the first, providing that no money shall be drawn from the treasury, except in consequence of appropriations made by law—and the second, that an accurate statement of the receipts and expenditures of the public money shall be attached to, and published with, the laws of each regular session of the General Assembly.

TAXING OF STATE AND OTHER STOCKS.

Mr. READ of Monroe. I wish to call the attention of the Convention to a subject which I deem of much importance. The great principle of equality in bearing the burdens, which society imposes upon its members, ought to stand forth in bold relief in every written Constitution. In order to carry out this principle, I shall move to re-commit the sections now under consideration, with instructions to incorporate with them the following sections:

SEC. — The Legislature shall provide by law a uniform rule of assessment and taxation, and shall prescribe such regulations as will secure a

just valuation, for taxation, of all property, both real and personal, excepting only such for municipal, educational, benevolent, or religious purposes as may be specially exempted by law.

SEC. — Money invested in United States or State bonds, shall be taxed as money at interest, and all other stocks shall be taxed as personal property,

I believe that there is hardly a subject connected with our State government, which has attracted more general attention among the people, than the existing inequality in the assessment and taxation of property.

Governor Whitcomb, in his message of 1848, called the attention of the Legislature to the subject. He says:

“A slight examination of our present revenue system will be sufficient to demonstrate its susceptibility of improvement. Under its workings, it is quite manifest that a large amount of the invisible wealth of the community, such as corporation and other stock, cash on hand, or at interest, and the more portable and valuable kind of personal property, &c., is not found upon assessment rolls. This description of taxables is generally owned by those best able to pay, and their non-assessment leaves the burden of taxation so much the heavier on property, which is visible, and especially on lands which cannot escape notice and scrutiny, &c., which the true policy of our State requires should not be visited with disfavor. The assessment sheets of 1847, as compared with those of 1845, show a decrease in personal property, in some counties, of \$20,000, in one county of \$40,000, in another of \$52,000, and in another of \$75,000.”

Gov. Dunning, in his message, earnestly urged the same subject upon the consideration of the last General Assembly.

It appears to me, that no provisions are more proper for a Constitution, than those requiring equality of assessment for purposes of taxation. The duty of the Legislature to devise a system which will secure such equality and which will cause all the property of the State to be brought under taxation, should be held forth in the Constitution. Such provisions will strengthen the hands of those who are laboring to bring about a just and equal system. The principle of equality of taxation is as proper a subject of Constitutional enactment, as that of equality of political rights. Special privileges and exemption should belong to no class of persons, nor be attached to any species of property.

I have prepared these sections with some degree of care, and I think they will meet the object intended. According to the provisions contained in them, all the property of the State, whether belonging to individuals or to corporations, must be taxed—with what exception only? Why, school houses, churches, the property of municipal corporations, and property devoted to benevolent or eleemosynary purposes,

so far as the Legislature may see fit to exempt such property. No property can be exempted, unless belonging to one or the other of the classes named in the exception, and unless, further, the Legislature shall, by law, declare that such property shall be exempted.

Now, I am aware, that no general rule laid down in the Constitution and laws, no matter with what stringency, will prevent property of some description, through fraud or concealment, escaping taxation. But that surely is no reason why we should not have the rule of exact equality in both the Constitution and the laws. The principle should be spread out in the fundamental law to be before the eyes of the people, and as directory to the Legislature.

The second section specifies a class of property most likely to elude taxation, and declare how it shall be taxed. It declares that all corporation stocks shall be taxed the same as any other personal property; and that the monies invested in State or United States bonds shall be taxed as money at interest. And why should they not be? Money loaned to the State or to the United States ought to be taxed just as money loaned to individuals.

I move that the sections under consideration be re-committed, with instructions to incorporate with them the sections which I have sent to the Secretary's desk.

Mr. BASCOM. I move to amend the instructions by adding the following: Stock in all other property or in banks, shall be taxed as all other property in this State is taxed.

Mr. COOKERLY. This appears to be a very important question, and one which appears to me to require serious deliberation: and, as it is now nearly dark, I move that the Convention adjourn.

Pending the question on the amendment offered by Mr. Bascom,

The Convention adjourned.

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WEDNESDAY, DEC. 4, 1850.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. STEELE.

The journal of yesterday was read and approved.

**Mr. KENT.** Would it be in order, Mr. President, to move the re-consideration of a vote that was taken yesterday?

**Mr. PRESIDENT.** Certainly.

**Mr. KENT.** Then, sir, I move the re-consideration of the vote upon the re-commitment of the section which provides that counties shall not be reduced below 400 square miles in extent. The section was re-committed yesterday with instructions so to amend as to provide that counties might be reduced below that standard, if a majority of the voters of two or

more counties were desirous of forming a new one.

I have no intention (continued Mr. K.) to discuss the question, because it has been pretty thoroughly investigated already, but since the vote of last evening was taken I have become satisfied that it ought to be re-considered, and I have no doubt that other gentlemen are also satisfied that they have fallen into an error in giving that vote.

**Mr. EDMONSTON.** Before the vote is taken upon the re-consideration, I move that there be a call of the Convention. I perceive that many members are absent.

The question was put on the motion of the gentleman from Dubois, and the Convention refused to order the call.

The question then being on the motion of the gentleman from Floyd to re-consider the vote taken yesterday, the yeas and nays were demanded, and they were ordered, and being taken were—yeas 64, nays 62—as follows:

**YEAS.**—Messrs. Anthony, Biddle, Bright, Brookbank, Bryant, Carr, Chapman, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Colfax, Crawford, Crumbacker, Davis of Vermillion, Dobson, Fisher, Foley, Foster, Garvin, Gibson, Gordon, Graham of Miami, Haddon, Hamilton, Hardin, Helm, Helmer, Hitt, Holman, Hovey, Howe, Johnson, Kent, Kendall of Wabash, Kendall of White, Logan, Maguire, Mather, May, McLean, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Moore, Morgan, Murray, Nave, Newman, Niles, Pepper of Ohio, Prather, Read of Clark, Read of Monroe, Ritchey, Schoonover, Sherrod, Smith of Ripley, Taylor, Terry, Thornton, Watts, Wiley, and Mr. President—64.

**NAYS.**—Messrs. Alexander, Allen, Badger, Barbour, Bascom, Beard, Berry, Blythe, Borden, Bourne, Bowers, Butler, Chandler, Chenoweth, Conduit, Cookerly, Davis of Madison, Davis of Parke, Dick, Dunn of Perry, Edmonston, Farrow, Gootee, Hall, Harbolt, Hendricks, Hugin, Huff, Kinley, Lockhart, March, McClelland, McFarland, Miller of Clinton, Morrison of Marion, Mowrer, Owen, Pepper of Crawford, Rastine, Ristine, Robinson, Shannon, Shoup, Sims, Smiley, Snook, Smith of Scott, Spann, Stevenson, Tague, Tannehill, Thomas, Todd, Trimble, Wallace, Walpole, Wheeler, Wolfe, Work, Wunderlich, and Yocum—62.

So the vote was re-considered.

The question then recurring on the re-commitment of the section with the instructions proposed by the gentleman from Spencer—

**Mr. GIBSON** demanded the previous question, and by ayes 50, noes 42, the demand for the previous question was seconded.

**The PRESIDENT.** Shall the main question be now put?

**Mr. COOKERLY** (addressing the Chair). Is it in order, sir, to move a call of the House?

**The PRESIDENT.** Yes, sir.



**Mr. COOKERLY.** Then I move that there be a call of the House.

The question was put on the motion of the gentleman from Vigo, and it was decided in the negative.

The question being, Shall the main question be now put?

The yeas and nays were ordered, and being taken resulted—yeas 86, nays 45—as follows:

**YEAS.**—Messrs. Allen, Anthony, Badger, Barbour, Beard, Berry, Biddle, Bowers, Brookbank, Bryant, Carr, Chapman, Chenowith, Clark of Hamilton, Clark of Tippécanoe, Coats, Cole, Colfax, Crawford, Crumbacker, Davis of Madison, Davis of Vermillion, Dobson, Farrow, Fisher, Foley, Foster, Garvin, Gibson, Gordon, Graham of Miami, Haddon, Hamilton, Harbolt, Hardin, Helm, Helmer, Hendricks, Hitt, Hogin, Holman, Howe, Johnson, Kent, Kendall of Wabash, Kendall of Warren, Logan, Maguire, May, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Mooney, Moore, Morgan, Morrison of Marion, Murray, Nave, Newman, Niles, Prather, Rariden, Read of Clark, Read of Monroe, Ritchey, Schoonover, Sherrod, Shoup, Snook, Smith of Ripley, Smith of Scott, Steele, Stevenson, Tague, Tannehill, Terry, Thornton, Todd, Watts, Wiley, Wolfe, Work, Wunderlich, Zenor, and Mr. President—86.

**NAYS.**—Messrs. Alexander, Bascom, Blythe, Borden, Bourne, Bright, Butler, Chandler, Conduit, Cookerly, Davis of Parke, Dick, Dunn of Jefferson, Dunn of Perry, Duzan, Edmonston, Gootee, Hall, Hovey, Huff, Kelso, Kinley, Lockhart, March, McClelland, McFarland, Milroy, Mowrer, Owen, Pepper of Ohio, Pepper of Crawford, Ristine, Robinson, Shannon, Shoup, Sims, Smiley, Snook, Spann, Taylor, Thomas, Trimble, Walpole, Wheeler, and Yocum—45.

So the main question was ordered to be now put.

The demand for the previous question having been seconded, and the main question ordered to be now put, the motion to re-commit with instructions was cut off, and the question being, Shall the section pass?

The yeas and nays were taken under the vote, with the following result—yeas 90, nays 38—as follows:

**YEAS.**—Messrs. Allen, Anthony, Badger, Barbour, Bascom, Beard, Berry, Bicknell, Biddle, Bowers, Bright, Bryant, Carr, Chapman, Clark of Hamilton, Clark of Tippécanoe, Coats, Cole, Colfax, Crumbacker, Dobson, Dunn of Jefferson, Farrow, Fisher, Foley, Foster, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Haddon, Hall, Hamilton, Harbolt, Hardin, Helm, Helmer, Hendricks, Hitt, Hogin, Howe, Johnson, Kent, Kendall of Wabash, Kendall of Warren, Kinley, Logan, Maguire, March, Mather, May, McClelland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Mooney, Moore, Morgan, Morrison of Marion, Murray,

Nave, Newman, Niles, Prather, Rariden, Read of Clark, Read of Monroe, Ritchey, Schoonover, Sherrod, Shoup, Snook, Smith of Ripley, Smith of Scott, Steele, Stevenson, Tague, Tannehill, Terry, Thornton, Todd, Watts, Wiley, Wolfe, Work, Wunderlich, Zenor, and Mr. President—90.

**NAYS.**—Messrs. Alexander, Blythe, Borden, Bourne, Brookbank, Butler, Chandler, Chenowith, Conduit, Cookerly, Crawford, Davis of Madison, Davis of Parke, Dick, Dunn of Perry, Duzan, Edmonston, Hovey, Huff, Kelso, Lockhart, Milroy, Mowrer, Owen, Pepper of Ohio, Pepper of Crawford, Ristine, Robinson, Shannon, Sims, Smiley, Spann, Taylor, Thomas, Trimble, Wallace, Walpole, Wheeler, and Yocum—38.

So the section passed and was referred to the committee on revision, arrangement, and phraseology.

The committees were then called for reports; there being none—

#### ORDERS OF THE DAY.

The Convention proceeded to the consideration of the order of the day, the first thing in order being the motion of the gentleman from Monroe (Mr. Read) to re-commit the sections reported from the committee on finance, with instructions to add the following sections:

**"SEC. —.** The General Assembly shall by law provide a uniform rule of assessment and taxation, and shall prescribe such regulations as will secure a just valuation of all property, real and personal, except so much for municipal, educational, benevolent, or religious purposes, as may be specially exempted by law.

**"SEC. —.** Money invested in State or United States bonds, shall be taxed as money at interest, and all other stocks shall be taken as personal property."

Mr. BASCOM moved to amend the instructions by adding the following section:

**"SEC. —.** The stock and all other property of banks shall be taxed as other property in this State is taxed."

The PRESIDENT. The question is upon the amendment to the instructions.

Mr. GIBSON. I think there is a decision of the United States courts that money invested in stocks is not taxable. I wish to call the attention of the Convention to this point.

Mr. DOBSON. I will merely remark, so as to prevent any misunderstanding, that it occurred to me yesterday that there was a provision in the Constitution of the United States, that prohibits the taxing of stocks. And upon looking at it, there is no doubt in my mind about the construction to be given to it. So far as I am concerned, I am for taxing all property, whether in money or otherwise, for the support of the government. But upon looking at the Constitution of the United States, we find that we are prohibited from doing many things that we

might consider it very desirable to do. I think, perhaps, we are going a little further in this matter than we have power to go, although, if we had the power, I should be in favor of exercising it. But the Supreme Court of the United States has decided this question. The decision is, that a State has no power to tax the Bank of the United States, because they have no power to restrain the Constitutional means given to the government to execute Constitutional ends.

And again, no State can control the exercise of any authority under the General Government.

In the same manner, it has been decided that a State has no power to tax stocks issued for loans to the United States.

Mr. GIBSON. What case is that?

Mr. DOBSON. It is the case of Wharton against the city council of Charleston.

A MEMBER. Read the decision.

Mr. DOBSON read as follows:

"A State has no power to tax stock issued for loans to the United States."

And again, there is another decision. The Supreme Court of the United States has decided, in the case of McCulloch against the State of Maryland, that the Bank of the United States has a Constitutional right to establish offices of discount and deposit within the States; and further, that the States cannot tax the branches—they have no right to tax any of the Constitutional means used by the Government to effect Constitutional ends.

There are a great many things that we would like to do, that we are prohibited from doing. It would have been very desirable for the people of the western country, to have had the right to purchase lands from the Indians; but the Government of the United States, had taken that matter under its own control, and reserved to itself the exclusive right, to control that matter.

It would be very desirable for Indiana, and other States, to regulate their own militia, but this is a matter that the General Government reserves to itself. It is very desirable to have the right to do many other things that I might enumerate, but we have surrendered certain rights, and we cannot now take them back. It is one of the attributes of sovereignty to take care of itself, to make use of all the means necessary for its perpetuation, and for the protection of its citizens or subjects, and to enable it to enforce its own decrees, and carry out its own will; and to enable the General Government to do this, it has the exclusive right to coin money, declare war, contract debts, and to do other necessary things, to enable it to discharge all its various duties. I am not quite clear upon this point, but according to the decisions of the Supreme Court, up to the present time, it does appear to me that the power to tax stocks of the United States, does not belong to the Legislature of the State; it is a thing over

which we have no control. The Legislature of a State has no power to control the issue of treasury notes, bonds, or anything of that sort by the General Government, or to prevent them from putting them into the market; and it is beyond the reach of the State authority to tax them after they are put into the market. That is my opinion, from the examination that I have given the subject.

Now, if a State had the power to tax the revenue of the General Government; if it had the power to levy a tax of one per cent. upon the United States bonds that might be found in it, then she would have the right to levy a tax of twenty; and if twenty, then she might go to fifty or a hundred per cent; and in that way, indirectly prohibit the General Government from raising means to prosecute a war or any other necessary enterprise. It is very clear that we have no such power, though we are now making provision for taxing all the property in the State, and I am for taxing all we have the power to tax. I ask the gentleman from Monroe, (Mr. Read,) if he intends to tax the Government lands in Indiana? I think he will not go so far as that. Well, if you cannot tax the property of the General Government in one shape, I ask, can you in another? If you cannot tax the real estate of the Government, can you tax the personal property, if you choose to call it so? I think not. Again, is there any consistency in the matter? Does Indiana tax all the property of the State? Does she tax the land mortgaged by her citizens to the Sinking Fund, and forfeited to her, or purchased in by her, after they are forfeited? There would be an inconsistency in it. She does not do it. The General Government does not pay tax on her means. There would be no propriety in Indiana levying a tax upon her own property. It would cost more than it would come to. I might go on and refer to other decisions bearing upon this point. We owe allegiance to the General Government, for we are protected by it. It not only protects us at home, but follows and protects us everywhere, and no law or code of laws Indiana could pass, would dissolve that allegiance. No act of the Legislature of the State can discharge the liability of one of its citizens to pay a debt, contracted with a citizen of a neighboring State, though Indiana may pass a law discharging him from the obligation of a contract with another citizen of Indiana.

I have no objection to this section being referred as a matter of inquiry, and if we have the power, I am willing that stock shall be taxed, but if we have not the power, we should not attempt to pass any such provision.

Mr. BORDEN. The question before the Convention, is one that really deserves a serious consideration. To fix upon a just and equal system of representation and taxation, is acknowledged to be two of the most difficult things in the art of government.



The question of taxing stocks in this country, is very similar in character, to the system of income tax in the mother country. For the same reason that the incomes of those who are living on the stocks issued by the English Government are taxed—that is for liquidation of the expenses of government—should we in like manner impose a tax upon those holding the stocks of this Government. Then, sir, the burden of taxation would be sensibly decreased.

Could all the stocks now held in the State, bear their just proportion of taxation, it would relieve the agricultural interests of the State from a large amount of taxation, which they are now compelled to bear. It is easy for assessors to ascertain the amount of property belonging to men living on small farms, with but little means—and such property is always taxed at its full value. This, however, has not been the case with the more wealthy capitalists of the State. If there was a just and equal system of taxation in force, I have no doubt that from three to five hundred thousand dollars would be brought into the State treasury annually, more than is now brought in.

The gentleman from Owen (Mr. Dobson) remarked that Government had the right to borrow money, and for that purpose issued stocks; and if we taxed that stock, we would thus restrict the General Government in the exercise of one of its powers. The fallacy of this argument is very evident, for we do not tax the stocks of the United States, but we tax the persons holding them—tax the amount of money invested in those stocks, as personal property. As well might we say, because Government possesses the power to coin money, and proceeds to coin money for individuals—that therefore, we could not tax the money thus coined and in the hands of individuals, for the reason that it would be interfering with the exercise of the powers of the General Government.

I do not consider the position of the gentleman a correct one—one that can be sustained by good authority. I believe if the State should impose a tax on such property it could be collected, no matter whether invested in United States stock, or in the stock of any of the States of the Union. I am aware that in the case of the old United States Bank it has been decided that the stock of the General Government held by that bank could not be taxed; but I do not think that that decision is applicable to this case. I know there has been considerable dispute as to whether the custom houses and other public buildings held by the United States, are taxable or not; and the General Government to secure itself against taxation in all cases where the State governments have ceded buildings for the use of the United States, has required that with the cession should be granted the right of the exemption of the property from taxation.

The question in this Convention has been asked whether the public lands of the United States can be taxed? To this I reply, while belonging to the United States of course not; but the moment individuals purchase them then they become the property of individuals, and as such, liable to taxation. I hope, sir, that a provision will be inserted in the Constitution requiring every species of property to be subject to taxation at its real value, except in the isolated cases of the property of religious and charitable institutions.

Why, sir, take the Treasury notes increased by the Government of the United States a few years since, and will it be contended in regard to them that an individual holding them did not have in his possession money as much as if they were the issue of a bank? and for one I see no reason why the investment of property in government stocks should be exempted from taxation when individuals having United States Treasury notes in their hands are liable to be taxed to the amount of those notes. For my part I think that both United States stocks and Treasury notes are liable to taxation, but as an impression has gone forth that they are not liable to taxation, I have thought that some principle fixing that matter should be inserted in the Constitution.

Mr. NAVE. I wish to call upon the gentleman from Monroe to withdraw his propositions in the form of instructions and allow them to be submitted to the Convention in the form of a resolution, that it may go to a committee, and that committee consult the necessary authorities as to the power of this State, under the Constitution of the United States, to levy a tax upon United States stock. I suppose that it will not be controverted on this floor that this Convention in making the organic law of the State has no power to levy a tax upon stocks issued by the United States. It is immaterial, sir, whether they have passed into the hands of individuals or not. I wish to be understood distinctly on this point, that this Convention has no power to levy a tax or to authorize the Legislature of Indiana to levy a tax to be collected out of the bonds of the United States. I believe such a tax, sir, would be in violation of the Constitution of the United States. We have no more power to levy a tax upon government stock than we have to levy a tax upon lands belonging to the Federal Government. We have no more power under the Government of the United States in the one instance than in the other. Therefore, sir, the proposition of the gentleman from Monroe is clearly in conflict with the Constitution of the United States. This fact, sir, has been settled by the Supreme Court of the United States from time to time, that to tax the property of the Federal Government which is thrown into market by their own act is unconstitutional. In view of this fact, sir, this is an important question; one that

should be fully matured before the Convention act upon it.

For that reason I prefer that the whole proposition should be withdrawn and a mere resolution of inquiry substituted and presented to the Convention, and then sent to an appropriate committee for their examination; the committee to report such a proposition as will be in conformity with the Constitution of the United States; one that will reach every description of property that we have power to levy a tax upon.

I suppose this would be all that the gentleman from Monroe, and other gentlemen would desire.

The Convention can then report a section that will levy an equitable tax upon the citizens of this State, so that no injustice will be done in future to our citizens in making some pay who own land the future revenue of the State, and others having their property invested in stock pay nothing. If the gentleman then will withdraw his proposition he can have his object attained in a different way. I see no particular necessity of incorporating this principle in the present section when it can be inserted in some other section of the Constitution just as well. Thus there will be no necessity of re-committing the section he now proposes to incorporate into the Constitution.

If the gentleman from Monroe refuses to adopt such a plan as I have proposed, I can only say that I shall feel bound to vote against his instructions, for I look upon them as a violation of the Constitution of the United States.

Mr. READ of Monroe. I have noticed that the Governors of our State in their annual messages for a number of years past, have called the attention of the Legislature, and the people of the State at large, to the great inequality of assessment and taxation as existing under our laws. In many parts of the State the subject has excited much attention. This is true of the district which I represent. If there is any political truth which may be regarded as an axiom, it is that the burdens of supporting government should fall in just proportions upon those who enjoy its benefits. There is manifest injustice in permitting property, in the hands of the wealthy, which ought to be taxed as other property, to escape taxation altogether, or to be taxed only on a very small part of its value. Some facts have come to my personal knowledge which have astonished me. Upon examining the Auditor's duplicate in my own county, I noticed farms which were of equal value assessed at a difference of fifty per cent., and farms of less value than other farms, assessed at a much higher rate. The same inequality exists in regard to counties. Some counties escape their proper proportion of taxes, while others pay, as a consequence, too much. Indeed the evil has become one no longer to be endured.

I do not suppose, sir, that these inequalities can be corrected by the Constitution, nor even

wholly by the laws. But I would lay down the rule in the Constitution. It will be in the minds of the people. It will be before the Legislature. It will strengthen those who wish to secure a system of just and equal taxation. The rule will be a part of the organic law, and the people and the Legislature will endeavor to work up to a rule so manifestly just and equitable. If the rights of society are to be equal—if men are to stand upon the same platform—if none are to enjoy special privileges or exemptions which others do not enjoy, let the rule requiring it go into the Constitution. Whatever else we omit, let us not omit a principle so fundamental in its character, and lying at the very foundation of free government.

In examining this subject I have had occasion to look into the Constitutions of other States, and especially into the Constitutions of States where the subject has attracted most attention. It is well known that in the State of Ohio there has been much agitation in consequence of a special rule having been established for the taxation of a particular class of property. I mean bank property. I have examined the report of the committee of their Constitutional Convention on finance and taxation. That committee reports United States stocks as well as State stocks as subjects of taxation.

It is to me a strange doctrine, that, in this country, a man may invest his money in any kind of stocks, and claim for it an exemption from taxation. It runs athwart all my notions of justice and right, that any one may live in our midst—may enjoy the full protection of Government—invest his money in the safest funds known in the country, and yet entirely escape taxation. He may, according to this doctrine, have the best fortune in Indiana, and pay on it not a dime to support the Government which surrounds him with safety. The poor man, who hardly knows the meaning of the word stock, must be taxed for all he has; but the man having his Government stocks, though amounting to thousands, utterly escapes taxation. You cannot anywhere find the poor man who asks exemption for any of his little property. All that he asks is, that others should be taxed as himself. And they ought to be so taxed. Who will say that the very safest property in the State shall go untaxed—that property which is found only in the hands of those most able to pay?

I much doubt whether there is any decision of the United States' Courts which will prevent any State from taxing the money of its citizens invested in Government loans, any more than money invested in loans to individuals. I do not profess to have looked for decisions in the matter. I know well that there is no country on the globe where government stocks are not taxed. It is so in Great Britain and France, and it should be so, everywhere. If a decision has ever been made, that a State can-



not tax the money of its citizens invested in United States' bonds, I feel quite sure that it is just such a decision as will be reversed.

It is said we do not tax Government lands, and, by parity of reasoning, we should not tax Government stocks. Now, sir, by special compact, we are inhibited from doing this. When, as a State, we entered the confederacy by contract, we agreed not to do it.

Mr. DOBSON. For five years.

It is not property belonging to the United States, sir, that I claim ought to be taxed. Any question of that kind I do not propose to discuss. It is property belonging to individuals which I hold taxable. If, by United States' bonds, were meant bonds belonging to the General Government, the question would wear a different aspect. But it is moneys loaned by citizens of the State to the United States, constituting in the hands of those citizens a most valuable kind of property, which I hold ought to be taxed just as property of the same class in the hands of their fellow-citizens. Until that is done, there can be no equality of taxation.

It is extraordinary, and beyond all my conceptions, that demands are made in behalf of that very property best able, under all difficulties and hazards, to pay, yielding a certain profit, and never found, except in the hands of the rich.

This subject I have brought forward with the sole view of securing simple justice in the matter of taxation. It concerns every citizen in Indiana. I little expected it would meet the determined opposition which it has encountered at the very threshold.

Mr. STEVENSON. I do not know, Mr. President, that I have any objection to the general proposition of the gentleman from Monroe, (Mr. Read,) if properly regulated; yet, I believe it is improper for this Convention to undertake to regulate taxation. This course has been adopted by but very few States as a constitutional provision. The report read by the gentleman from Monroe was one made in the Constitutional Convention of Ohio, but has not yet been acted upon.

The subject of taxation is one of great interest—one that we are sensitive upon, and probably more so than on any other. There is no one question, probably, that the people would like so much to control themselves as the subject of taxation. And it is with them that I should prefer to leave it, to be regulated and modified at their pleasure. Here it will be found to be entirely safe; and, in my humble opinion, can be safe nowhere else.

The proposition of the gentleman from Monroe is: that the United States' stocks and Indiana State stocks shall be taxed as money at interest, and that other stocks shall be taxed as personal property. Now, sir, there is a manifest inequality and consequent injustice in the first of these propositions. United States' stocks

are worth, say one hundred and nine dollars. This amount is paid by the purchaser; yet, in paying tax, he would only pay on one hundred dollars, while, in justice, he should pay on one hundred and nine. But the injustice of the provision is still more apparent. Indiana stocks are probably worth seventy-five dollars to the hundred; yet the purchaser of Indiana stocks would have to pay on one hundred dollars for what cost and is worth but seventy-five dollars. Thus is easily seen the injustice of the proposition. One hundred and nine dollars, vested in United States' stocks, would be assessed for taxable purposes at one hundred dollars; seventy-five dollars, vested in Indiana State stocks, would be assessed for the same purpose at one hundred dollars.

Mr. READ of Monroe. A man may receive ten or twenty dollars on a note, by way of interest, and still he has not only to pay taxes to the full amount of the note, and at what its market value, with interest added, might be, but upon the original amount.

Mr. STEVENSON. A man only receives six per cent. here for money at interest. The law prevents his receiving more. Although I am in favor of taking stock under proper regulations, yet, from what I have shown, it will be seen that there is danger in making constitutional provisions on the subject; because, if we are not exactly right, there will be no remedy until another Convention.

If the gentleman will withdraw his instruction, and simply refer his proposition to a committee, I shall not object; although I prefer leaving the whole subject of taxation to the Legislature.

A very large majority of our tax-payers are farmers and property holders; they constitute, at the same time, a large majority of the voters of the country; the Legislature, consequently, will always be under their control, so that I have no fears that stocks will escape their due proportion of taxation, even if there should be no constitutional provision on the subject.

But there is another reason, sir, why this matter should be left with the Legislature, and that is that there is a large amount of stock in this county about the taxation of which a just discrimination should be made. Companies have been incorporated for the purpose of constructing plank roads for the benefit of the public. Men take one or two hundred dollars' worth of stock in them, not for the purpose of making money thereby, but to subserve the interest of their immediate neighborhood; more as a gift than anything else. If that kind of stock is to be taxed the same as personal property, these improvements will not be made. This whole matter then should be left to the Legislature, and they can make such proper exceptions as the interests of the State may require.

It will be perceived, sir, by reference to the constitutions of other States, that as regards

this proposition if it is adopted we will be traveling over an entirely new ground. It will be dangerous then for us to meddle with it, while on the other hand it will be safe with the Legislature.

I think, sir, we should adopt some general rules by which to be governed in the ingrafting principles into the Constitution. It will be found difficult to incorporate everything into the Constitution that is right, for the reason that it will make it too large. I do not know any better rule for our guidance in this matter than where a thing can be safely left with the people for their action to leave it. If it is dangerous to leave it with the people why then we can put it in the Constitution under such restrictions as we may deem proper. We must adopt some general principle of this kind in regard to the Constitution we are framing, or else we will make it a revised statute.

Reference has been made to the action of the Constitutional Convention in the State of New York, but it amounts to nothing. The provisions of the Constitutions of the States of New York and Wisconsin both, as well as of the other States of the Union, clearly show that we are attempting to do that which no other States in the Union are doing. I think the terms of the provision in the Constitution of Wisconsin embraces all that we can properly do on this subject.

The following is their constitutional provision on this subject:

"The rule of taxation shall be uniform, and taxes shall be levied upon such property as the Legislature shall prescribe."

If we go further it will be found that there is great danger of involving the subject in difficulties that it will be difficult to get rid of. New York in her Constitution has even done less than this. Here is all that I find in her Constitution upon this subject:

"Every law which imposes, continues, or revives a tax, shall distinctly state the tax, and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such tax or object."

Mr. HOVEY. I think that upon examination these instructions will be found to be of a purely legislative character. There is a section already in our statute covering this whole ground. I will read it:

"The terms 'personal estate,' and 'personal property,' as used in this chapter, shall be construed to include all household furniture, goods, chattels, and moneys, all ships and vessels, whether at home or abroad; all moneys at interest owing to the persons to be taxed more than they pay interest for, and all other debts owing to them from solvent persons more than they are indebted for *all public stocks, stocks in turnpikes, bridges, insurance companies, and moneys, corporations, whether within or without this State;* also such portions of the capital of incorpo-

rated companies liable to taxation on their capital as shall not be invested in real estate."—Page 208 Rev. Stat. 1843, sec. 4.

By this section it will be observed that it embraces everything that is proposed to be obtained by these instructions.

The gentleman from Monroe (Mr. Read) will perceive that the stocks which he proposes to make liable to taxation are embraced within the section I have just read, and that it is, therefore, unnecessary to frame any constitutional provision on that subject.

The instructions further say that the Legislature shall pass uniform laws in regard to taxation. I would inquire, sir, if we have not laws of that character now? Wherein are the present laws not uniform? Will the adoption of these instructions make them uniform? Laws not uniform now cannot be made so by the adoption of these instructions. If you adopt sections embracing these instructions the Legislature will have to pass new laws under them which will be of the same character as those now existing, and, therefore, there can be no practical benefit attained by the adoption of these instructions. The revised code settles this matter, and needs not the further action of this body.

Mr. BASCOM. I find no provision in the section offered by the gentleman from Monroe, taxing the stock and property of banks. Now I shall not do as he has done, go into the discussion of the propriety of taxing United States stocks. I leave that for the investigation of legal gentlemen.

Now, sir, I take the ground that in fixing upon the taxable property of this State we should include bank stock and property. If any gentleman will take the trouble to examine the reports of the State Bank of Indiana, he will see how much property they have exempted from taxation. This fact, sir, a most nefarious one too—has been brought to my notice more particularly in one of the counties which I represent. It will be seen that the Bank owns in the State some two hundred thousand dollars' worth of property, independent of its banking houses. The Bank owns considerable landed property in one of the counties I represent—and that property is not subject to taxation for county or road purposes whatever. In that county, a man who owns a small piece of land has to pay a tax of one dollar and ninety cents for every one hundred dollars' worth of real property. This is a most tremendous tax; a heavy burden upon the people of new counties; while the Bank owns hundreds of acres in that county, it pays not one cent into the county treasury; and, sir, this state of things is not confined to that county alone. If any one will take the trouble to examine further, they will find one hundred and ninety-nine thousand dollars' worth of property, independent of the banking houses, which are not taxed. I find, sir, from



the report of the State Treasurer, that the Bank only pays five thousand dollars tax for State purposes. If, sir, the landed property and stock of this Bank was taxed as private property is taxed, there would accrue yearly a sum sufficient to pay the expenses of the State Government.

There is no inducement for a man to invest his money in real estate in this country, on account of the heavy tax—and he has only to invest his money in the stock of the Bank, and he is entirely free from taxation. Thus, sir, the capital of the State is exempt from taxation and the labor of the country is made to bear the burthen of the State taxes.

Yet gentlemen will get up and say that this matter should be left to the Legislature. I am instructed to say that so long as this matter is before the House, it shall no longer be overlooked—so that the capitalists of the State shall hereafter be exempt from taxation. Not only that, sir, but I shall advocate that the banking houses of the State be taxed. This matter, sir, heretofore has been left to the Legislature, and this is the reason why nothing has been done. I desire to strike at the root of the evil. I want to repeal the decision in the fifth volume of Blackford's Reports, page 195, in reference to the taxation of bank property. You will find there, under the decision of the Supreme Court of Indiana, the decision that the property of the State Bank is not taxable. This matter should be specially provided for in the Constitution, and then the Supreme Court will not have the power to decide that the property of banks should not be taxed. Sir, this is unjust—it is bearing down upon the energies of the people—upon the hardy yeomanry of the State; and all, too, for the benefit of capitalists.

Mr. HOVEY. The State Bank has a particular charter, which is a contract which cannot be repealed by this Convention.

Mr. BASCOM. I was showing what evils we now labor under and there is no reason why we should not put a stop to all similar encroachments in the future. If we have been swindled heretofore—if we have suffered this Bank and capital generally to get clear of taxation—is there any reason why we should be governed in the future by the same rule? There is nothing, sir, that shows greater injustice—that cries out louder for reform, in regard to the interests of the State, than this power of taxation. We are all striving to do something to alleviate the burthens of the people—to relieve the people of a tremendous burthen of taxation, and can we adopt a better policy than to strike at the capital of the State, and make it bear its share of the burthen?

This, then, sir, is a question of great importance. I am willing it should go to a committee for investigation. I desire that it should be examined. I am satisfied that if gentlemen

will take the trouble to look over the reports of this Bank and figure for themselves the amount of property it has exempted from taxation, that they will seek to remedy this great and growing evil.

Now, sir, is the proper time to do this, when we have the power and the opportunity. I ask gentlemen to reflect upon the subject and consider whether they are willing further to allow the people of the State, who are land-owners, to bear all the expenses of government, and that the wealthy capitalist shall be exempted from paying his share of these expenses? If we do not attend to this matter now, and leave it for the Legislature, the evil will continue in the future as it has prevailed in the past.

Mr. McFARLAND. This is a very important question, sir, and I am glad it has been brought before the Convention. It will be recollected, sir, by many of the members, that some weeks since I offered a resolution upon the subject of taxation. It was a resolution of inquiry, and was referred to the committee on finance and taxation. If this subject is again referred to that committee, sir, it should be unaccompanied by any definite instructions. They should be allowed some latitude of action upon the question, so as to secure some degree of uniformity in taxation.

Mr. READ of Monroe. I will modify my section as soon as opportunity is afforded me.

Mr. McFARLAND. With such a modification as I have suggested, I will sustain the gentleman's motion with pleasure. I am satisfied from the experience of the past—whatever may be the opinion of other gentlemen, that there should be a uniform mode of taxation. The Legislature from time to time, sir, has exempted first one species of property, and then another, until it has become a great abuse. Scattered over this State, sir, is a large amount of property, which there is no more propriety in exempting from taxation, than there is in exempting the private property of individuals.

I ask gentlemen why the Masonic Hall, which it was proposed to hire for our deliberations, should be exempted from taxation under the statute of this State. There is a large amount of property throughout the State which, under various pretexts, is exempted from taxation, when there is no good reason for it. I was first led to reflect upon this subject from the fact that I belonged to a secret association in which this question of exemption from taxation was mooted, and I came to the conclusion, that all such exemption, was unjust to the balance of the citizens of the State. The amount of property for which charitable and benevolent and other institutions have claimed and received exemption from taxation, is immense, and the amount is increasing. The Legislature have not been stringent enough upon the subject. It is best then, to insert in the organic law of the State a fixed and defi-

nite rule on this subject, beyond the limits of which the Legislature shall have no discretion. With the modification made by the gentleman from Monroe to his motion I have no objection to the reference.

Mr. WALPOLE offered the following amendment, to the amendment offered by the gentleman from Wells, (Mr. Bascom,) on yesterday:

[The amendment was, in substance, a provision for a more uniform mode of taxation. The reporter was unable to obtain it.]

Mr. LOCKHART. I would suggest to the gentleman from Wells, and the gentleman from Hancock, that they withdraw their amendments for the present, for the purpose of allowing the gentleman from Monroe to modify his motion as he has proposed. They can then offer their amendments to the instructions, thus saving a good deal of trouble and unnecessary voting.

The amendments were accordingly withdrawn.

Mr. READ of Monroe. I desire, sir, to say a word to my friend from Posey (Mr. Hovey). He thinks the present law sufficient for the purpose of securing a just and equal assessment, and a uniform mode of taxation. Well, I can only say, that men having much more experience in the affairs of the State than either myself or himself, think just the reverse, and that the revenue system greatly needs correction and revision. All our late Governors have thought so, and I now hazard the prediction, that Governor Wright will again call the attention of the people of the State to this subject, and present startling facts, showing the utter inadequacy of the existing system to secure any equality as among the citizens and counties of the State. It is not to be disguised, that there is monstrous injustice and inequality in the present system. Vast amounts of property escape taxation, and thus a grievous burden is thrown upon those whose property is open and visible to all the world.

In regard to the Constitutional objection to taxing moneys invested in United States bonds, one of the first lawyers of the State, a few moments since, came around to my seat and assured me, there is nothing at all in the objection.

But, sir, I will withdraw the proposition which I made, and also the motion to re-commit, and move in lieu thereof the following: "to re-commit with instructions to introduce a section or sections requiring a uniform and equal assessment and taxation of all property, real and personal, in the State, excepting such as may by law be specifically exempted."

Mr. HOVEY. I desire to inquire of the gentleman of Monroe, in what particular the present law of the State does not provide for a uniform mode of taxation and assessment.

Mr. READ of Monroe. I would refer the gentleman to the opinion of Governor Wright, and—

Mr. HOVEY. I want the law.

Mr. BORDEN (interposing). With the permission of the gentleman from Monroe, (Mr. Read,) I will here state a fact in support of the truth of the assertion that there is not a uniform mode of taxation at present, in force, and that there is a great deal of the property that goes untaxed. I have been informed, from authentic sources, that the estate of one gentleman in Madison, which was taxed at some sixty thousand dollars during his life-time, recently at his decease, was appraised at its real cash value, and was valued at something like three hundred thousand dollars. I have heard also, of another instance in this State where an individual had been taxed only to the amount of a hundred thousand dollars, when the estate, upon his decease, was found to be really worth between four and five hundred thousand dollars. This difference, sir, is enormous, and shows how unjust has been the operation of the present system of taxation. I would state, in addition, that I was recently informed that the taxation of the property of this city, for city purposes, amounted to near one million dollars more than it did for State purposes. This has been the case also in the city of Madison, although not to so great an extent.

Mr. HOVEY. That was the fault of the officers of the law, and not of the law itself. And if the amendment now proposed is ingrafted in the Constitution, it will be liable to the same objection and want of execution that the present law is liable to.

Mr. READ of Clark moved to amend the instructions of the gentleman from Monroe, so that they should read "inquire into the expediency of."

The PRESIDENT ruled the motion out of order.

Mr. McFARLAND moved to amend the instructions by striking out the word "law," and inserting the words "this Constitution," in lieu thereof.

Mr. SMITH of Ripley. I rise, sir, to call the attention of gentlemen to the fact that they must send up their proposition now, as imperative restrictions, or they cannot be reported back. This committee has not the right to report them back. Amendments must be prepared containing the principles that gentlemen desire to have embodied in the sections reported back. The committee then has nothing to do but report the sections back containing those amendments proposed. This I think is the parliamentary law.

The PRESIDENT. The Chair is of opinion that instructions now adopted must be of an imperative character, and just as the Convention desires they shall be reported back. The Chair decides all other amendments out of order.



Mr. CLARK of Tippecanoe said, he had no doubt that the particular character of the section which the Convention should desire to have re-committed and reported back—should be determined upon now. He would merely remark, in this connection, that if every species of property was to be taxed in the State, the collection of the tax upon landed property, covered by the loans of the State, would cost the State more than it would receive for tax.

Mr. PEPPER of Crawford. I rise to a question of order, Mr. President, for certainly, if amendments are out of order, debate is out of order.

The PRESIDENT stated that instructions of an imperative character were now in order.

Mr. WOLFE. I would inquire of the Chair whether it is in order to move a reference to a select committee.

The PRESIDENT. It is in order with instructions.

Mr. WOLFE. As this is a matter in which the people of the entire State are interested, I move its reference to a select committee composed of one member from each Congressional district.

The PRESIDENT. The Chair would remark that at this stage of proceeding, a motion to refer must be accompanied by instructions. On a third reading of a section, it can only be referred with imperative instructions—and beyond these instructions the committee have no right to act.

Mr. BASCOM. I move to refer to a select committee with the instruction lying on the Clerk's table.

The PRESIDENT refused to entertain the motion.

Mr. BRIGHT. I desire to remark, sir, that these two sections reported here, should be adopted without any reference to the mode of taxation. The method of taxation is an entirely different subject from those embraced in these sections. If gentlemen will look at the old Constitution they will find that two provisions—similar to the present sections—are there incorporated without any reference to the method of taxation. The subject of taxation is a separate section, that has not yet been reported upon by any committee. I will, therefore, move to lay all the pending amendments on the table.

The PRESIDENT. The Chair has already ruled all amendments out of order, that were not to re-commit with peremptory instructions.

Mr. PRATHER. If it is in order to move to re-commit with instructions, I move to re-commit the second section with the following instructions:

The instructions were here sent to the Secretary's table, when

The PRESIDENT stated that as the entire article was under consideration, a motion to re-commit the entire article was only in order.

Mr. PRATHER. I move then to re-commit the entire article with the following instructions:

The instructions were here read by the Secretary, and provided that a correct statement of the receipts and expenditures of the public money, should be made annually under the direction and supervision of the Governor, and should be published with the laws, at each regular session of the General Assembly.

Mr. PRATHER remarked, that as the Convention had decided upon biennial sessions of the Legislature, it seemed to him proper and right that they should have an annual exhibit of the condition of the finances of the State.

The PRESIDENT. To which committee does the gentleman propose to refer.

Mr. PRATHER. To the committee on finance and taxation.

Mr. CLARK of Tippecanoe. I think that these exhibits, sir, ought properly to come under the supervision of the Legislature. By this amendment it is proposed that they shall come under the supervision of the Governor. I think the Legislature ought to supervise them, and they can order them to be made annually if they choose.

Mr. STEVENSON. I would suggest to the gentleman who offered this amendment, that this exhibit will only be published with the laws of the Legislature once in two years, and therefore to take it annually will accomplish nothing. If the report was published annually it might accomplish something.

Mr. PEPPER of Crawford. I think, sir, that this subject comes up more appropriately under another section—number twenty-two, reported by the committee on the executive department. If the present amendment is necessary at all, it will be in order when that section comes up for consideration. I think it is entirely foreign to the sections now under consideration.

Mr. RITCHEY. I concur entirely with the remarks of the gentleman from Jefferson, (Mr. Bright,) that these sections now before us should be adopted, and that the method of taxation is a subject that should be separately acted upon. I, therefore, move the previous question.

The PRESIDENT. Will the Convention second the demand for the previous question.

The demand was seconded.

The PRESIDENT. The question is, Shall the main question now be put?

It was so ordered by consent.

The PRESIDENT. The question now is, Shall the first and second sections of article number eight now pass?

On this motion the yeas and nays were taken under the rule, and the Secretary reported the following result—yeas 119, nays 3:

Those voting in the affirmative were,

Messrs. Alexander, Allen, Badger, Barbour, Bascom, Beard, Berry, Biddle, Blythe, Borden, Bourne, Bowers, Bright, Brookbank, Bryant, Butler, Carr, Chandler, Chenoweth, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Colfax, Conduit, Cookerly, Crawford, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, Duzan, Edmonston, Farrow, Fisher, Foley, Foster, Garvin, Gibson, Gootee, Graham of Miami, Haddon, Hall, Hamilton, Harbolt, Hardin, Helmer, Hendricks, Hitt, Hogin, Holman, Hovey, Howe, Huff, Johnson, Kent, Kendall of Wabash, Lockhart, Logan, Maguire, March, Mather, May, McClelland, McFarland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Mowrer, Murray, Nave, Newman, Pepper of Ohio, Pepper of Crawford, Prather, Rariden, Read of Clark, Read of Monroe, Ristine, Ritchey, Robinson, Schoonover, Shannon, Sherrod, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Stevenson, Tague, Tannehill, Taylor, Thomas, Thornton, Todd, Trimble, Wallace, Walpole, Watts, Wiley, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President—119.

Those voting in the negative were,  
Messrs. Chapman, Kinley, and Pettit—3.

So the first and second sections of number eight passed, and were referred to the committee on revision, arrangement and phraseology.

Mr. WATTS. Is it in order to amend by adding an additional section?

The PRESIDENT. The gentleman cannot amend the sections, for they are passed.

Mr. BASCOM, on leave, offered a resolution, that the committee on finance inquire into the expediency of subjecting the stock, and all other property of any banking institution that may be created in this State, to the same taxation as other property; which was adopted.

The Convention then proceeded to the consideration of report No. 11, being a report from the committee on the rights and privileges of the inhabitants of the State.

#### PREAMBLE TO THE CONSTITUTION.

The PRESIDENT. The question is first on the preamble.

Mr. SMITH of Ripley suggested that it would be a great saving of time to pass a number of sections by one vote rather than to take the vote on each section separately.

The PRESIDENT. This is the only section that is on its third reading.

Mr. SMITH. Then I move to lay the section upon the table until we get through with the whole report.

SEVERAL MEMBERS. "No, no, no, no," and "question, question."

The question was then taken on the adoption of the preamble, which is:

"We the people of Indiana, grateful to Almighty God for our freedom, in order to establish justice, maintain public order, and perpetuate liberty, do ordain this Constitution."

The yeas and nays being taken on the question, under the rule, resulted as follows:

YEAS.—Messrs. Garvin, Gibson, Gootee, Graham of Miami, Haddon, Hall, Hamilton, Harbolt, Hardin, Helm, Helmer, Hendricks, Hitt, Hogin, Holman, Hovey, Howe, Huff, Johnson, Kelso, Kent, Kendall of Wabash, Kinley, Lockhart, Logan, Maguire, March, Mather, May, McClelland, McFarland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Moore, Morgan, Morrison of Marion, Mowrer, Murray, Nave, Newman, Owen, Pepper of Ohio, Pepper of Crawford, Prather, Rariden, Read of Clark, Read of Monroe, Ristine, Ritchey, Robinson, Schoonover, Shannon, Sherrod, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Stevenson, Tague, Tannehill, Taylor, Thomas, Thornton, Trimble, Wallace, Walpole, Watts, Wiley, Wolfe, Work, Wunderlich, Yochm, Zenor, and Mr. President—124.

NAY.—Mr. Pettit.

So the preamble was adopted.

On motion, the Convention then adjourned.

#### AFTERNOON SESSION.

The Convention resumed the consideration of report No. 11.

The PRESIDENT stated the question to be on the first section, which is as follows:

"We declare that all power is inherent in the people; and that all free governments are, and of right ought to be founded on their authority, and instituted for their peace, safety, and happiness. For the advancement of these ends, the people have at all times an inalienable right to alter and reform their government."

Mr. WATTS. I have an amendment which I wish to offer to that section. It is to add to it the following words:

"That the general, great, and essential principles of liberty and free government, may be recognized and unalterably established: WE DECLARE, That all men are born equally free and independent, and have certain natural, inherent, and inalienable rights; among which are the enjoying and defending life and liberty, and of acquiring, possessing, and protecting property, and pursuing and obtaining happiness and safety."

Mr. BORDEN. If gentlemen will turn to the first section of the first article of the existing Constitution, they will see that it is this section which it is proposed by the gentleman from Dearborn, to insert in the bill of rights.

Mr. PETTIT. I hope the Convention will not proceed to take the question on that amendment, until there is a call of the House. I do not hold to the truth of that doctrine, notwith-



standing that it is found in the old Constitution, and therefore I move a call of the Convention.

The motion was agreed to and the roll was accordingly called.

Mr. READ moved to suspend the further call, which was agreed to.

Mr. CHAPMAN. I move to lay the amendment of the gentleman from Dearborn (Mr. Watts) on the table.

SEVERAL MEMBERS. "No, no, no," and "Vote, vote, vote."

Mr. CHAPMAN. Well, if gentlemen are disposed to vote upon the question, I will withdraw my motion. But I really must express my hope that we shall not have another negro discussion, considering that there is a committee of ten appointed to take this negro business altogether under their consideration, and report the result of their deliberations to the Convention. I cannot see that there is any utility in discussing these abstract propositions before we get a report from that committee. If gentlemen are disposed to say that any portion of the white inhabitants of the State shall not enjoy the same rights which are enjoyed by the other portion, why, then, there may be some necessity for modifying the section. If gentlemen desire to go into a discussion of the abstract question, I will not press my motion to lay the amendment on the table; but I did hope and desire that we should be relieved from another negro discussion during the same week; for I must say that I regard such discussions as neither calculated to promote the public good, nor as creditable to the State.

Mr. PETTIT. I hope the gentleman will not persist in his motion to lay the amendment on the table.

Mr. CHAPMAN. If gentlemen wish to discuss the matter, I withdraw my motion.

Mr. PETTIT. Mr. PRESIDENT: I not only think that this or any other Constitution should be plain of understanding, with simple and direct words of meaning, but that it should contain declarations of truths, not only in theory, but in fact. Now, this first section of the old Constitution does not contain the truth in fact, and for that reason, I am opposed to its insertion in the new Constitution. The language is, "That the general, great, and essential principles of liberty and free government, may be recognized and unalterably established, we declare that all men are born equally free and independent, and have certain natural, inherent, and inalienable rights," &c.

Now, however true this may be in theory, and however desirable that it should be true in fact, it is a falsehood in fact and is not true. This Convention, in a resolution which they have recently passed, recognizes the truth of what I have said. It is so recognized the world over, that it is not true in fact. We have just given

our sanction to a law for capturing men—if men they are to be called—bipeds, I suppose some would call them, with two feet, and two hands, and two eyes, and other organs constituted like men—from other States. This language in the old Constitution is too broad, as is also that reported by the committee. It declares that "all free governments ought to be founded on the authority of the people," &c. Now, this language may do very well, if it is restricted to our own State. I would suggest that it should read "and that the government of *this State* is founded," &c. Sir, there is no propriety whatever in our declaring a principle that is to go beyond our territorial limits as a State.

Now that all men are born free and independent, is a direct and unequivocal lie in fact. The negro is not born "equally free and independent" in Kentucky, in Tennessee, or South Carolina, or in any of the slave-holding States. In the first place, it is bad language. It is a solecism to say that "all men" are "born" equally free. Why, sir, "men" are not "born" at all; there is no such thing as "born" with "men." [Laughter.] It is a lie in fact; it is a solecism in language; "babies" are born, sir, [great laughter,] not "men." Now, if they had used the term "persons," instead of "men," they would have been nearer the mark, although that might not suit the notions of some, inasmuch as "women" would then be included in the term. I am descanting on the section to show its absurdity in form as well as in substance. The language should have been "persons," and then it might have been good enough, although the assertion itself, would still have been false.

Sir, children may be "born equally free and independent;" but, as I have said, in the slave-holding States they are not born equally free and independent, nor indeed are the children of all white men.

Sir, I contend that, in framing an instrument of this kind, all the language that we employ in it, should apply to our own territorial limits, and to them only. We ought to confine ourselves to our own jurisdiction. The people in Ireland, or in England, or under the dominion of the Czar of Russia, that great polar power, are not born free and equal. There is no equality between the serf, though white he be, and the Emperor Nicholas, or between them and the free born citizens of Indiana, and therefore, any language which we may employ, should be confined to our own limits, where we have the power to secure that freedom and equality.

But, sir, a little more as to this freedom and equality. We have given our sanction—and I approve of what we have done, and I do not want to put a contradiction into the new Constitution—we have said that men may be arrested and taken to the State of Kentucky, or Louisiana, or Tennessee, on *ex parte* evidence, there-

by clearly admitting that they were not born equally free and equal with ourselves. We allege, therefore, that which is not true in fact. The child of the slave in Kentucky is not free and equal, like the free-born child of the citizen of Indiana, and to employ such language, is to introduce an absurdity which we ought not to adopt.

Sir, I am advised and informed that this difficulty stared the committee in the face, and that they did not, therefore, report back this section, but have reported one which is tantamount to it in all other things, so far as the citizens of Indiana are concerned. As I have already remarked, the language ought to be so restricted as to apply to our own territorial limits, and then, if we were to say all white persons of the State of Indiana were born free and equal, we would be nearer the truth.

Now, I ask what gentleman—except it be that one who desires that the negro should occupy an entire political equality with himself—will, or can vote for this old section? Is there any truth in it? No man can say that they are not men; and I say, though he be free born in Indiana, the descendant of one of your free negroes—the man of color in this State—is not born with the same equality with which the white child is born, and I ask the Convention not to give a direct lie to their practice, in their declarations in the Constitution. I hope the section will be abandoned, as the committee were compelled to abandon it. At the time that this old Constitution was made, the language was used merely to speak of a political independence. At the time of the Declaration of Independence, and the formation of the Constitution of the United States, negroes were not regarded as men, in the Constitution at all. I know that in the Constitution of the United States, they were quasi men for the purposes of representation, but for that only. But since that time things have changed, and there are men now to be found, who contend that these men ought to form part and parcel of our political body.

Sir, if this section were to be adopted, we ought to strike out the word "men," and insert "all white persons in this State." That is the way in which it ought to read, if we would avoid showing our supercilious arrogance, by declaring a principle as applicable to the whole world, when we have no right to go beyond our own jurisdiction. Sir, the Emperor Nicholas, with his serfs, or Queen Victoria, with her subjects, would care very little about such a declaration, made in the State of Indiana. Sir, the most ultra abolitionist I ever came across, acknowledges that there is no equality between the negro and himself. He is not willing to put them upon an equality with himself, either socially or politically. It is true that the law may make them politically equal, but no law can ever make them socially equal. If they

are to be politically equal, I would propose, too, that they should be socially equal, and then we will see what our abolitionist agitators will say to that.

I have said that all men were not and could not be socially equal; inasmuch as there is a diversity of tastes and tendencies, arising from education, as well as from prejudice, just so certainly will there be a difference in social equality, and they never can make it otherwise.

The gentleman from Monroe (Mr. Foster) the other day objected to what I said about social equality, and he seemed to think that all men were socially equal as well as politically equal, and that he had seen men of letters who had not five ideas above an oyster.

This may be true—and this might be the character of the man with whom he is best acquainted. But then, I ask, would such a man be a fit associate for the good hard sense and well informed farmer and mechanic? Or would either feel that they were the social equals of the learned divines of the country? Certainly not; for they could not talk about the same subjects with equal interest to each. Let the man who thinks there is a perfect social equality go and associate with chamber-maids or the gutter-wallowers. This he will not be willing to do.

So that you see there is no social equality. I do not pretend to say which is the most valuable member of society. You may take your kitchen girl who is constantly laboring over kettles and pans, and attending to household drudgery, and the ladies, or women, whichever you chose to call them, who are constantly poring over novels, or "literary pursuits," and compare them together. I will not give any opinion as to which is the most useful member of society, or whose social qualities are the best; but I do not recognize that they are not socially equal, nor can they be, although either of them may have very little more than "five ideas above an oyster." So much for "social equality."

Sir, I hold it to be always better to have no sort of ambiguity. I like the truth—the plain, open, honest truth; and no man need tell me that I have ruined myself with the democratic party by speaking the truth. Now, sir, you may go to the farmer who earns his living by his labor in the fields; and ask him if the gutter-wallower is on a social equality with him; if he would allow him to come to his fire-side and be socially equal with his family, and he will tell you indignantly, "No sir." Ask him again if he were placed among a body of learned men, either of the clergy or the laity, who were discussing matters of philosophy or literature, whether he would feel himself on a social equality with them, and he would give you the same emphatic answer, "no, sir; I would not be happy in their society any more than a fiend would in heaven, or an angel in hell." Society in such case is reversed. In order to be social-



ly equal, you must have the same tendencies and appetites, and tastes, and sympathies, let the parties have more or less ideas.

Now, I say that we all admit that in this State there is neither a political nor a social equality between the negro and the white man. He cannot vote at your elections; he cannot sit on juries in your courts. No man desires that he should. Even the most violent abolitionist would not desire to sit on a jury with him or to go to the ballot-box with him; and hence he denies that there is a political equality; and how much more does he deny the social equality? Sir, there can be no social equality where there is no intermarrying. If a man tells me that the negro is on a social equality with him why then let the negro marry his sister. If a man tells me that having a son, and that there being a young negro of his own age in the neighborhood, he allows him to be on the same footing with his son in all respects, why then, sir, he will tell me that the young negro may marry his daughter. Sir, it is evident, beyond a question, that there is neither political, nor social equality, and we ought not, therefore, to adopt this section with this glaring truth staring us in the face. Let us then contrast our declarations. Even that part of the section which talks about "all free governments," is too broad, in my opinion, and ought to be confined to the governments of the State. I hope that the section will be dropped or abandoned, and if not that it may be so modified as to read "all white persons in this State are born free and equal, and have certain rights," &c. With such a modification, I think the section would not be objectionable. But I think we ought to make a Constitution with plain declarations of truth not only in theory, not only as they ought to be, but as they are in fact; and there is no man in this State, who does not know that there is no equality between the white and the black races, even where slavery is not known.

Mr. RARIDEN. To that part of the gentleman's speech, the object of which was to restore himself to his correct position with his party and his country, I have nothing to say. It was right that he should do so; and I should be happy to see him restored to the confidence of those whom he has heretofore so faithfully served, and so gloriously led. But, with regard to this section, I have something to say. I do not want it slain in this House upon a false apprehension of its true history, and true meaning, and its true character. I call the gentleman back to its true origin. The sentiment of the section is to be found in the Declaration of Independence, when our fathers met to form a government, and when the forms and theories of every government in the civilized world were before them. They comprehended the theories of all other governments; but this government, the one which they established, had not a parallel on the face of the earth. All governments were based upon the

theory that all power was vested in the king; and that the subject had no power except as his majesty thought proper to grant to him. That was the foundation of every government on the face of the earth, that existed as an organized government at that time. Now, what said our fathers at the time they put forth these glorious ideas to the world? "A decent respect for the opinions of mankind, induces us to put forth the principles on which we are about to found our government. It is not the theory that 'all power is in the King.' No. A decent respect for the opinions of the world, makes it our duty that we should tell mankind that we have changed the whole theory of civil government. We start out upon the theory, that all power is in the people; that the people have capacity for self-government—that they have innate rights, and there is a natural equality of rights," &c.

Now, let me say another word as to what is meant by "the people." It is the people whose rights were attacked—the people who felt themselves trodden under foot by the tyrannical power of Great Britain. That was "the people" who looked upon Great Britain as their head, and who called her the "mother country." These are the people who declared that all men are born free and equal, and have certain natural and inalienable rights—they spoke for themselves and for those upon which theory was to act, and no other "people" were recognized, according to my understanding of the matter, than such as had political rights in the great struggle.

Then, sir, I am for keeping up that declaration. Whether it be practically true or theoretically true, it is that which our fathers thought was necessary, out of respect for the opinions of the world, to put forth in the formation of a new government, as its model basis. [Applause.] And, sir, I want it perpetuated as long as time shall last. [Applause.] I want no changes in it, and I want practice to come as near to theory as possible. I am not going to discuss it metaphysically, whether it is theoretically true or practically true; it is the great basis—the great principle on which our fathers assumed to act in the organization of the government which they gave to the world, and which has not a parallel in the annals of history. Then I am for clinging to it. I glory in it. I see our fathers' faces in it when I look at it, and when I contemplate the circumstances under which that declaration was made. They were not sitting, as we are sitting, in peace and quiet, apprehending no danger except the danger which may arise from our own unruly passions. A power was raised against them, strong enough to almost cause the world to tremble, but they spoke out.

The magnitude of the occasion which brought them together—the respect which they showed for the opinions of mankind, gives to that declaration, in my mind, a moral grandeur and a

value beyond price, and with which I will not willingly part. ["Hear, hear."] The sentiment is to be found in the Declaration of Independence, and it is expressed there just for the reason which I have assigned. They were about to establish a government on a new theory, unknown to kingly and other governments of the old world. And for that reason I want to commemorate it, and to hand it down to the latest posterity, just in the same shape which they gave it, and in the same spirit which they infused into it. [Applause.]

Mr. DUNN of Jefferson. I desire to say a few words to the Convention, and gentlemen need be under no apprehension that I am going to deliver a harangue on the "negro question." I took no part in the protracted discussion of that question when it was before the Convention, and do not expect that I shall, when, in the order of business, it again comes up for our consideration. I would advocate the amendment proposed by the gentleman from Dearborn (Mr. Watts) if there was not a negro in the State or the Union. It appears to me that a sort of *negro-phobia* has seized upon the majority of this Convention, and that they are ready with a "mad dog" cry to pursue any proposition that may be even remotely connected with the welfare of that unfortunate race. It might be well for us to take heed lest in our zeal to banish the negroes from the State, we fail to provide the ordinary and necessary guaranties for the protection of the white inhabitants of Indiana.

The first section of the bill of rights in our present Constitution, which it is now proposed to insert, appears to have been most carefully avoided by our committee on rights and privileges. That section declares "that all men are born equally free and independent, and have certain natural, inherent, and unalienable rights, among which are the enjoying and defending life and liberty, and of acquiring, possessing, and protecting property, and pursuing and obtaining happiness and safety."

Among the inalienable rights here enumerated is that "of acquiring, possessing, and protecting property." It appears to be thought necessary to deprive the negroes of this right in order to banish them from the State, and that I suppose is the reason why our committee on rights and privileges has not reported the section. But, sir, is it necessary for the disfranchisement of the African race that we should put at peril our own dearest interests? This indirect mode of accomplishing an object may be found to work so well in practice as to become a little too popular. It will put it in the power of a majority to banish an odious minority from the State, not indeed by a direct decree, but indirectly, by depriving them of the right "of acquiring, possessing, and protecting property."

Only a few days since, a member of this Convention denounced the negroes as "vermin," and the abolitionists as worse than the negroes. He is very anxious to drive the "vermin" from the State, and why, then, should he not be in favor of banishing that class of persons whom he considers worse than vermin? No doubt so desirable an object might be attained by depriving the abolitionists of the right of acquiring property. Any class of persons obnoxious to the majority may, by this summary process, be banished from the State. Sir, I understand the very object of a Constitution is to protect the minority in the enjoyment of their rights—to put a restraint upon the hot blood and the strong arm of the majority. And unless this restraint is employed in this very case, you leave unrestricted a power which history proves is peculiarly liable to abuse.

In our mother country the confiscation of property was long a favorite mode of punishing political offenses and religious heresies. It was doubly agreeable to those in power, because, while it punished the offenders it enriched those who enforced the law. If a favorite courtier needed an estate, the readiest way of obtaining it was to select one suited to his tastes, charge the owner with heresy, and cause the estate to be confiscated and bestowed upon himself. Half the wars that ever distracted that kingdom had their origin in the robberies growing out of this system of confiscating property.

It is not a very difficult matter even in republic to excite strong prejudices against certain classes of persons. We often hear it asserted that certain religious doctrines and organizations are inimical and dangerous to our institutions. Circumstances may occur to greatly strengthen such impressions, and under the influence of strong prejudices or extraordinary excitements this potent remedy retained for the benefit of the black, may be applied to the disfranchisement of some portion of our white population. This right of acquiring and possessing property is secured either expressly or by implication in the Constitution of almost every State in the Union, a few of them, indeed, limiting its enjoyment to white persons; and the necessity must be a very imperious one that will justify us in failing to give it an express recognition in our Constitution.

The first part of this section expresses that sentiment which occupies so prominent a place in our Declaration of Independence: "We hold these truths to be self evident, that *all men are created equal*, that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness." To this sentiment I cling with that fondness of affection which has been so beautifully expressed by the gentleman from Wayne (Mr. Rariden). It has revolutionary associations. It was made by the fathers of



the republic, and comes down to us hallowed by the memory of their long and arduous struggles to maintain it. In the "unanimous declaration of the thirteen United States of America," we find the first authoritative enunciation ever made of the great principle that all men are created free and equal. The oppressed of every nation received the announcement with joy and hope. They have repeated it from one to another until it has become the watch-word of liberty throughout the world. [Great applause.] Wherever there is now a man struggling for liberty, his heart swells with emotion as he repeats this sentiment, and turns his eyes to the Republic of the west as affording the world an example of freedom and equality—of a government instituted and sustained by the consent of the governed. Under the influence of this principle thrones have crumbled to the dust, and despots have been compelled to relax the bonds of their subjects. It has not yet fulfilled its destiny, nor will it until universal liberty prevails throughout the earth. And shall we now discard this principle which our fathers proclaimed defiantly in the face of the most powerful nation on the globe, and for the support of which they cheerfully endured all the privations and calamities of a protracted war? Shall we strike it in disgrace from our bill of rights? [Cries of "no, no."] I trust not, sir. Let us give to this sentiment the first place in our bill of rights, that our children and our children's children may early learn it, and cherish it in their hearts as one of the fundamental principles of our government.

The gentleman from Tippecanoe (Mr. Pettit) says very truly, that the existence of slavery in our country is inconsistent with this declaration, and that our practices give the lie to all our professions on the subject of freedom and equality. Our fathers felt this inconsistency, but they boldly proclaimed what they believed to be the true principle of government, trusting that in time slavery would cease to exist, and with it this gross inconsistency. The history of those times and the debates in the Convention that formed the Constitution of the United States, show that the men of the Revolution looked upon slavery as a temporary institution—one that circumstances beyond our control had established among us—but one that must fall before the advancing progress of Christianity and philanthropy. Let us cherish the same hopes, and let us not accommodate the declaration of our principles to the existence of slavery, but let us rather earnestly labor in every way we properly can, for the removal of the inconsistency that stares us in the face, by the removal of slavery itself.

Mr. BORDEN. It occurs to me that the objection that has been made, that the committee has not reported back the section as it is in the old Constitution, is not a good one. I think it is most likely that they left it out be-

cause the subject has now been referred to another committee. It occurs to me that we might pass the section as it stands in the old Constitution; and then it would be in the power of the committee on phraseology to change it if any change should be deemed necessary. For my part, I am willing to vote for the section as it stands in the old Constitution. I do not wish to go into any discussion on the subject, for it is clearly one which cannot bear much discussion. Our views and principles of freedom are well understood in this country, and I think there is too much danger to be apprehended from the causes suggested by the gentleman from Jefferson (Mr. Dunn). I cannot, however, take my seat without saying that I feel under great obligations to that gentleman for the speech he has just made, considering the section of the State from which he comes; and if he never should make another speech in this Convention, the one that he has made here to-day will always stand forth as a justification both of his head and his heart.

Mr. STEVENSON. I move to amend the amendment by striking out all after the word "declare," and inserting the words "of the original Declaration of Independence in regard to this matter."

[The words as proposed to be substituted were read by the Secretary.]

That, said Mr. S., is an exact copy of part of the Declaration of Independence, and I prefer it to any other section that can be framed.

Mr. WATTS. I will accept the modification of the gentleman from Putnam.

Mr. OWEN. As chairman of the committee on rights and privileges, it becomes my duty to state to the Convention what were the circumstances under which this section was not reported. The gentleman from Jefferson has employed the words "stricken disgracefully out of the organic law of our State." Now, in the first place, all that the committee intended to do—all that they have done—was to refrain, for the present, from reporting that section. I presume that the gentleman from Jefferson was not in his seat when I made this explanation a few days since.

But why did they refrain from reporting that section? In the first place, for the reason assigned by the gentleman from Allen, (Mr. Borden,) that there was another subject—the subject of the exclusion of negroes from this State, and the question of their holding real estate therein—which had not been acted upon by the Convention, and with regard to which it was impossible that the committee could know what the action of the Convention would be.

How reads the section in question? Among the "inalienable rights of all men"—black and white—there is no distinction—"is the right of" acquiring, possessing, and protecting property. Now, sir, it is quite clear, that if we

prevent negroes, under any circumstances, from coming into this State, or from holding real estate, we have no right to put such a declaration as this into our Constitution; until that matter is decided one way or the other, common consistency requires that we should refrain from reporting the section. I remark, however, that we expressly refrained, also, from asking to be discharged from the further consideration of the first article, reserving to ourselves the right to report, at any time, in such form, as, under all the circumstances might seem best.

I will say for myself, that there was another subject—I do not know that it had influence with other members of the Convention, but it had great weight with me—that in regard to the property of married women, which, as it has not, at the time of the report, been acted upon, seemed to me to require that we should postpone the reporting of this section. When we employ, in a Constitution, the words “all men,” we use the term “men” in a general sense. We include both sexes. As, for example, when we say: “All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences.” This, of course, guaranties liberty of conscience to women, as well as to men. So when we say: “All men have an inalienable right to enjoy, possess, and protect property,” the declaration extends to women as well as to men. Now, unless we change the old principle of the common law, which merges, in the husband, the legal existence of the wife, women, during the entire period of their married life—and that is their usual condition—have no more active or available rights, to acquire, or to enjoy, or to protect property, than the negro slave has. Unless, therefore, we change that principle, we have no right to insert in our Constitution any such declaration as that contained in the section under consideration. As to one-half of the white citizens of this State, that declaration is an absolute falsehood.

I differ with my friend from Allen (Mr. Borden) as to the remarks of the gentleman from Jefferson (Mr. Dunn). I do not think that the gentleman has spoken with his usual perspicuity. He asks us “Where in this new Constitution, is the right of the citizen asserted to life, to liberty, and to property? Are we to have no security for these rights? Is it all to be done away?” Would the gentleman have us believe that the security of rights invaluable as these hangs upon a few words recorded in the instrument we are now engaged in framing? Is it not elsewhere, and otherwise, secured to us? The gentleman spoke of the Declaration of Independence. To whom does that noble document belong? Technically, it is the “declaration of the thirteen United States of America.” But is it not ours as much as theirs? Are not we, a younger State, indeed, and coming somewhat later into the Confedera-

cy—are not we as much participants in the rights therein guarantied, as the original thirteen States? Is not that one Declaration, traced by the pen of the immortal Jefferson, all-sufficient? Must we and every other State repeat it before we are entitled to its guaranties? Did they re-write it in the Constitution of the United States, when that instrument was framed? And because they did not, will the gentleman from Jefferson argue, that, as citizens of the Union, these rights are not guarantied to us at all? That, surely, is not a logical inference.

Sir, there were some suggestions made in committee to modify this section. There was some talk about inserting the word “white,” so as to give it a limited application, and avoid the difficulty alluded to by the gentleman from Tippecanoe (Mr. Pettit). I can say for myself—and I believe I may speak for the rest of the committee if they speak not for themselves—that we preferred to report it just as it stood, or not at all. We were confirmed in that opinion by the fact, that in the Constitutions of several of the States it is wholly omitted. Here, for example, is the New York Constitution, only about four years old, in which this section or anything corresponding to it is not to be found. Will the gentleman from Jefferson thence infer, that the citizens of that great State are not guarantied in the right to acquire, to possess, to protect property? His argument leads inevitably to such a conclusion.

Even in some of the other Constitutions there are similar omissions. I turn to the Constitution of Connecticut—a State for which I have a warm feeling, for I found my wife there—and I perceive that in the bill of rights there is not a word about the right of acquiring, enjoying, and protecting property. Here is the only corresponding clause: “All men, when they form a social compact, are equal in rights; and no man, or set of men, are entitled to exclusive public emoluments, or privileges from the community.” Again I turn to the gentleman from Jefferson, and ask him whether he holds that the citizens of Connecticut also, are without security as to the right of acquiring and protecting property? That argument will not do, sir. The gentleman himself, must, I think, perceive its fallacy.

So far as the committee is concerned, I believe I may say that we have no feeling in regard to this matter. We passed the section over, after a brief conversation, in which we concluded that it was best to postpone it for the present; and I here protest against any inference being drawn from its not appearing here, except simply this, that we were not at the time prepared to report it in the words of the old Constitution.

Mr. HOWE. I am not particular whether the section in the original Constitution is retained or not, but I protest against the argu-



ments which have been introduced here to induce us to dispense with it. As I have remarked before in this body, and as every gentleman is aware, even a good cause may be injured by a bad argument; and whether this section is to remain or not, is a question to be discussed and determined by rational men upon very different grounds, and for very different reasons from any that I have yet heard.

The gentleman from Tippecanoe (Mr. Pettit) contended that the proposition that all men are born equally free and independent is not true. In the sense in which he uses the words, he is undoubtedly correct; but with his intellect certainly he ought to have been able to approximate to the meaning which existed in the mind of the immortal author of these words when he first committed them to paper. In the sense of Jefferson and the framers of the Declaration of Independence, the assertion is true, and always will be true. The assertion refers to the rights of man as existing under the law of nature; and by that law, in contra-distinction to the law of man, all men are born equally free. That is the way in which the term "men" is used.

It does not require a grammarian to know that men are not "born" in the sense in which the gentleman from Tippecanoe used the term. All know that this "man" is a generic term, including the whole human race, and refers undoubtedly to the time of their birth. It simply declares that all men are born free, and that by the law of man, and usurpation alone, they have become enslaved. That is the meaning precisely, and nothing more nor less. The objection that slavery now exists has nothing whatever to do with the matter. Now we all know—for we have all both heard and read—what is the origin of slavery. Is slavery legitimate by the law of nature or of man? Can you hold slaves by the law of nature? Every school-boy will respond "no" to the question, and tell you that it exists only by usurpation. The words, therefore, are not only true, but beautifully true; and as an abstract proposition it is eminently just. As I said before, I care very little whether it is retained in the new Constitution or not. It will be equally true whether we adopt it or reject it. But inasmuch as our ancestors have seen proper to adopt these words, and inasmuch as they were in the mouth of every freeman of the country at the time, and have become nationalized, and immortalized by the circumstances under which they were written, I think we ought to retain them. There certainly can be no impropriety in doing so; but, on the contrary, I regard them as manifestly proper. If there be one political document that has been given to immortality more than another, it is precisely that Declaration. Nothing whatever in all Grecian or Roman times can possibly excel this in classic purity or excellence. Let us then adopt it.

And let me now refer for a moment to an argument used by the gentleman from Posey (Mr. Owen) that these words conflict with the section in regard to the rights of women.

Now we are not going to determine by this article what the laws of nature are. I have said that by the laws of nature all men are equally free and independent; that by the laws of nature every one, whether man or woman, is entitled to the first fruits of his industry and his possessions. By the law of nature the savage who first builds and occupies a hut is entitled to it; but when he enters into society he must conform to the rules and regulations which that society may adopt; and the mere fact that by marrying a woman her property is thereby transferred to her husband, is nothing more nor less than transferring the property as it were by deed. She is not compelled to marry. It is usually with her a matter of choice. It is a contract like all other contracts so far as property is concerned; and when she marries she transfers her property to her husband by the law of the land. But what, let me ask, has this to do with the laws of nature. I may as well say that whether these words are good or not, whether they are right or not, no argument which I have heard against them has shown to me their impropriety; but, on the contrary, the very absurdity of the arguments made use of shows to me their truth and excellence.

If it be in order at this stage, I will move an amendment to the first section under consideration; it is to add at the end of the section these words: "in accordance with their Constitution." That clause of the section will then read—

"For the advancement of these ends the people have at all times an inalienable right to alter and reform their government in accordance with their Constitution."

I will make one or two remarks in relation to the propriety of the amendment, although I do not feel like discussing the subject at the length which its importance demands. It is really a question which is at the foundation of all free governments. It is a question on which the mutability or immutability of true popular sovereignty in this country as it really ought to be considered is based. I am aware that there are, perhaps, very few in the Convention will agree with me in what I am about to say in support of the amendment; but notwithstanding that, I have offered it under a sense of duty and propriety, and even if I knew that not a single member would sustain me, I should still feel it my duty to offer it.

My proposition is, that these words as they stand—"that the people have a right at all times to alter and reform their government"—are not true. If you adopt these words without any limitation, and carry them out to their legitimate consequences, it will lead to anarchy and confusion; and it is precisely that doctrine on

which all the modern notions, which have produced so much anarchy in Europe, have been based. It is precisely that dogma which has been so zealously preached that a mere popular majority may set themselves up as arbiters and alter the law of the land at their own will. This dogma is not true. Undoubtedly, both in theory and in fact, the right to govern is based on the will of the people. No man will doubt that, for it is not merely an abstract proposition, but one which is manifestly true in fact. At the same time we all know that the exercise of authority by the whole people in their collective capacity is practically impossible. Still they have the sovereignty; but being incapable of exercising it themselves in person, they have a right to exercise it in the only way in which it can be exercised—by a delegation of it to others. That is the foundation of republican institutions in this country. A delegation of sovereignty is not a restriction, but an absolute delegation of power. There may be, and undoubtedly is, in every Constitution, in one sense or another, a reservation of the exercise of sovereignty for the same particular purpose. The people may reserve a part of their sovereignty, but they do not restrict it; for if you assume the idea that a Constitution is merely a restriction of the popular sovereignty, what is the inference? That the people retain the sovereignty and all the powers of government; the exercise of which is merely restricted, and that all their power remains—which is manifestly untrue—and that at any moment they can remove these restrictions and exercise all their sovereignty again. This idea is founded in the false analogy of the ancient democracies of Greece, where all the members of the democracy met together and performed the functions of government, which in this country is impossible. Therefore there must be a delegation of power to the different branches of government—the legislative, the executive, and the judicial—and the people delegate that power to these functionaries as they shall from time to time, under that Constitution, come into existence. In every point of view it is not a restriction upon the popular sovereignty, but it is a delegation of power to all intents and purposes whatever. True, our Constitution and the Constitutions of many other States preserve the power of altering and amending the organic law. There is no doubt about the propriety of this. This is not a restriction of the popular sovereignty, but a reservation. There is a vast difference between a restriction and a reservation of power, and this is a reservation and nothing more nor less. A Constitution then like our's contains a delegation of power to the different departments—the legislative, the executive and the judicial—and it contains a reservation that the people may recall or revoke that delegated power and amend or alter it from time to time. That is the true theory of government in this coun-

try, and any other theory will lead to endless anarchy and confusion.

Besides, government in this country is founded on the idea that it is created not for the benefit of the *majority*, but for the benefit of *all*. In whom is the popular sovereignty placed in this country. Practically it is placed in the majority. It is by the majority that the Constitution is adopted. It is by the majority in all our assemblies that the government is carried on. But who are the subjects? for wherever there is a sovereignty there must be a subject. Every individual in the land is a subject, but more especially the minority. In every country there is a sovereign power; the sovereignty is supposed to reside somewhere; and in this country it implicitly and in fact exists in the majority of the people. Now is it not manifestly true that the sovereign power, whatever it be, may at all times limit and restrain itself—that it may part with some of its power? Clearly it is. This is the foundation of all the steps which liberty has taken to arrive at its present position in theory. Were it not for the truth of that theory England would never have arrived at its present position of power. The sovereign power, then, may restrict itself, and it may restrict itself irrevocably if it pleases. I hold that the people may delegate their power without retaining the privilege of recalling it if they please to do so. They have a right to say that they will delegate their sovereignty for five years, or ten years, or twenty years, or forever; and unless you adopt that theory you at once remove all guards and restrictions for the protection of liberty.

I shall not enter now into any further argument upon this question, for I suppose the Convention will not agree with me, and therefore I shall say no more on the subject at present. I have merely said this much with the view of placing myself in a right position in having offered the amendment, and for these reasons I have submitted it to the Convention.

Mr. FOSTER. I presume that the object of the committee who made this report was to endeavor to epitomize the two sections of the old Constitution, and to blend them into one. They have reported, but in doing so it appears to me that they have left out some points that should have been inserted in that article. I do not cast any reflection on that committee or on its Chairman; but, sir, even in the very preamble they did not think it necessary to acknowledge even a superintending Providence or an overruling Power. That part has been amended, but perhaps we may see from circumstances, the way the straws go, how the thing took place. I have no particular objection to the phraseology of the article; but it appears to me that it is not sufficient. I prefer the phraseology of the two sections of the old Constitution, and I hope they will be adopted.



I do not purpose entering on the present occasion into any philosophical discussion in regard to the rights of man, but merely to give my views, and to make some remarks in relation to the observations which fell from the gentleman from Tippecanoe (Mr. Pettit).

It appears that the other day I was unfortunate in making this remark: "that there were some men of letters who had not five ideas above an oyster." The gentleman from Tippecanoe has adverted to that remark, and has played a tune upon it with all the variations from the highest to the lowest note; from the five keyed bugle down to the penny whistle. [Laughter.] Now were it worth the pains to prove it, I think I could very easily establish that proposition, and perhaps I should not have occasion to travel very far to find suitable examples. [Laughter.] It will perhaps be recollected that at the time I made the observation, that I made it with a reservation or qualification, which was, that if a man of letters did not mix with the world and become acquainted with mechanics and farmers and professional men and traders, he was incapable of duly appreciating things as they occurred, and that many of them, shut up in their closet from month to month, and from year to year, could scarcely have five ideas above an oyster in relation to the business of the world around them.

I am happy that the gentleman has modified the remark which he made the other day. He has entered into a labored explanation to elucidate his views; but, sir, he did say the other day, and he said it without any qualification whatever, "that there could be no social equality between the laboring man and the man of letters." I took it down at the time. Now had he said that there could be no social equality between the drunken man and the sober man—between the blockhead and the gentleman—I could have coincided with him. But when he said there could not be any social equality between the laboring man and the man of letters, I dissented from his proposition at once as being both anti-republican and anti-democratic. I said I could point to men upon this floor, far superior to many so-called men of letters, who were acquainted with the views and wishes of the people in the every day concerns of life, and were more adapted to carry them out, than many professing to possess great literary attainments. I did say that I knew some men of letters, who had gone through college and had got their degree duly certified on a piece of sheep-skin, who had not five ideas above an oyster. Now, sir, of the two, who are the most useful men? Why, sir, the laboring man; whether he labors in the pulpit or at the bar, or at the plough, or at the anvil, or anywhere else. Sir, such men as Elihu Burrett, the learned blacksmith, are far superior in every respect to your sickly students who waste their lives in the

closet. Go into Congress and you will find men there—self taught men—who are far superior to many of the dolts who emerge from your colleges. Sir, Henry Clay never received a college education, and he has not his superior in any or every respect in that body, or perhaps in the United States. But I will not pursue this matter further. I merely wished to dissent from the proposition set forth by the gentleman from Tippecanoe, (Mr. Pettit,) and to protest against the position he assumed. I have the pleasure of being acquainted with many men of letters in the various professions, and who are useful members of society—men too who have never had a college education, but are self taught, and they will bear comparison with any men the gentleman from Tippecanoe may select, whom he may be pleased to designate as men of letters. The position I assumed was, that the sentiment expressed by the gentleman from Tippecanoe, was anti-republican; and I am glad that he has so far coincided with me as he has shown by his labored effort to set aside the force of the remark he made on last Saturday.

It was well remarked by the gentleman from Wayne, (Mr. Rariden,) in opposition to the views set forth by the gentleman from Tippecanoe, in regard to all men being created free and equal, that this was an assertion of principle in opposition to the doctrine of the "divine right of kings," that all power was derived from the throne; and that our fathers asserted that all power was inherent in the people, and that all power should be derived from them. That is the sum and substance of the whole affair. The time was when Louis XIV of France declared "I am the State;" but such a doctrine would not go down with the people in many parts of Europe now-a-days, much less in this country.

The gentleman from Jefferson, (Mr. Dunn,) has been pleased to allude to a remark which I made some days ago, in regard to terming negroes and abolitionists "vermin." When I first made the remark I qualified it. I observed that I had been in the Island of San Domingo, where they had been free for more than sixty years; and that I had seen them in Philadelphia; and that from what I had seen of them, they might justly be termed vermin. Some other gentleman put in a word and remarked that there was another species of bipeds, who might also with the same propriety be classed under that category—the abolitionists. Now I have no hesitation in saying, that I consider any people vermin, who encourage incendiarism, and endeavor to destroy their own government, and do every thing in their power to create dissension. I say they are vermin, and worse than vermin.

Sir, I did not rise to make a speech, but merely to show the qualified sense in which I used these words, and to congratulate the gen-

tleman from Tippecanoe on the fact that he appears to have come to his senses, with regard to the unfortunate expression which he made use of the other day.

Mr. FARROW. I wish to say a word in support of the amendment offered by the gentleman from Lagrange, which proposes to add to the section these words, "according to their Constitution." The section would then read as follows:

"That all power is inherent in the people, and all free Governments are founded on their authority, and instituted for their peace, safety, and happiness. For the advancement of these ends, they have, at all times, an inalienable and indefeasible right to alter or reform their Government in such manner as they may think proper, according to their Constitution."

It will be observed that in the preceding section it is proposed to establishing a Government, and as all Governments are founded on and consist of power, that power in a free Government is declared to be in the people, and that the design of its exercise in the formation of a Government is to secure peace, safety, and happiness. These objects being accomplished, the end for which the Government was formed is fully realized. The question arises, have the people a right under such a declaration, to call a Convention to alter a Constitution that seems to them everything contemplated by the Government, formed by the power of the people? If the framers of our present Constitution believed that this power might be exercised at all times, what interpretation do you suppose they would give to the eighth article of that instrument? Certainly, sir, they intended to prescribe a mode how, and a time when the people should exercise the power that is inherent in them, to alter or amend their Constitution. This, sir, is the sense in which the people of Indiana viewed the eighth article of our Constitution during the two first terms of twelve years that it passed, never pretending to meddle with it only at the time provided for in the Constitution. But, sir, during the last period of twelve years, the discovery has been made that because it is declared in the section proposed to be amended, that all power is inherent in the people, that therefore they have the right to alter or reform their Government in such manner as they may think proper, regardless of any Constitutional provision whatever. Now, sir, it is under this new interpretation of the Constitution that we are here sitting in Convention two years before the time fixed by the former Convention, for calling on the people to vote whether they would call a Convention or not. Sir, if we refuse to adopt this amendment, what assurance do you propose to the people that they shall not be annoyed from year to year by calling upon them to vote for a call of a Convention to make some alteration in their Constitution, for it is not to be denied that we have

now, and I fear we shall continue to have those amongst us that will be ready at all times to urge upon the people that they would be greatly benefited by making further amendments to the Constitution, and that there is no restraint upon their power to do so whenever it may suit the purposes of politicians to enact a law requiring it of them.

Mr. President, this Convention is more the creature of politicians than of the people, for notwithstanding the people voted to call a Convention, I presume it will not be denied that politicians worked the wires for them. And now, sir, although it is unusual for one generation of men to hold more than one Convention, and I feel satisfied that the time and money that we shall expend, will deter the present generation from calling one, nevertheless I wish to see some provisions adopted that will render it unnecessary for our successors to use this power without doing so according to their Constitution.

Mr. KINLEY. Mr. PRESIDENT, I have hitherto refrained from speaking of matters personal to myself, thinking it wiser that charges and personal assaults go unanswered, than that the time of a hundred and fifty men, assembled for the solemn purpose of making a Constitution, should be taken up with a mere personal explanation. I thought also that charges, without a shadow of truth in them, are unworthy of refutation. But reflecting that these charges go to the record, and that my silence might be construed into an admission of their truth, I have determined for once to explain. It is due to myself as well as to those to whom I am indebted for the place I occupy on this floor to set myself right on the record.

An abolitionist has been represented as a species of non-descript animal, with but one idea, and that the overthrow of all government, human and divine. With this amiable definition the gentleman from Monroe (Mr. Foster) has been pleased to taunt me with the epithet of abolitionist. The opinions and actions of that party are matters of history, and it may be impossible for even the gentleman from Monroe to reverse the record, or to make the tenets of its political faith any other than what its rightful exponents have themselves avowed. They have a right to be the keepers of their own consciences, the exponents of their own faith. But if they should need the talents of the gentleman from Monroe, (Mr. Foster,) I hope they will not be slow in informing the gentleman of the fact, and that his excessive modesty may not constrain him to withhold the desired assistance. But, sir, with their own definition of their principles, I never have been a member of their party or an advocate of their policy. Slavery I have always regarded as a State institution, existing by authority of State laws, and over it in the States Congress has no control. The abolition party, of whose principles



Garrison is a distinguished exponent, holds the contrary of all this. So if I have not been an abolitionist in practice neither have I in theory.

I will say further, Mr. President, that I believe the Constitution of the United States makes some compromises in favor of slavery. I recognize, also, the acts of Congress as the supreme law of the land, and have never counseled forcible resistance to their execution. If I am in favor of resistance to the fugitive slave law, it is that kind of resistance which is consistent with the duties of an American citizen. I would test the constitutionality of the law before the proper judicial tribunal—I would urge its repeal. Though I would not be a member of the Union party existing in the heated imaginations of some gentlemen, yet I am for law and order—I am for the Union. I would not do, even for a just and humane purpose, what the gentleman from Monroe (Mr. Foster) avows himself ready to do for an unjust and evil one—join in insurrection against the law of the land. And I must be permitted to say, the resolutions of yesterday to the contrary notwithstanding, that I have never heard any but the gentleman from Monroe (Mr. Foster) avow a different sentiment. Whatever conceptions gentlemen may have of abolitionism, I declare that I would rather advocate the most ultra principles of that party I ever heard avowed, than to assert here in my place, and send the declaration down to all coming time, as did the gentleman from Monroe, my willingness to violate the great principles for which Constitutions are established and laws are enacted. The gentleman from Monroe (Mr. Foster) says that negroes are "*vermin*" and abolitionists are *worse than vermin*," and in his own inimitable style declares himself ready to assist to "tar and feather" them! Yet he is for the Union.

The gentleman in his place denies it. If in the face of his pointed speech and in opposition to the recollection of every gentleman on this floor, he chooses to deny his former avowal, he certainly is at liberty to do so. I thought at the time that the gentleman possessed more natural goodness than he gave himself credit for, and that in the heat of debate, he said what in his cooler moments he would be glad to retract.

MR. FOSTER. Will the gentleman pardon me. The speech was not altogether correct; but I will tell you what I did say. I said that when a foreign incendiary, such as Geo. Thompson, an Englishman, came here to talk about freedom, and left his own country, where the peasantry of England and Ireland are subjected to the veriest thralldom—I did not say that I would do it, but I said that I would freely see such an incendiary as he, tarred and feathered, so as to drive him away; and I repeat it here now.

MR. KINLEY. Mr. President, I have no desire to hold the gentleman to his original decla-

ration. I wish, indeed, he has explained away rather than repeat in substance, his former avowal. True, he does not say, as in his former speech, that he, himself, would assist, but that he would "*freely see*," violence done to the freedom of a freeman, in the exercise of a Constitutional privilege. The gentleman denounces the English agitators of American slavery, because they cannot see suffering at home. He places himself in a similar situation. He also condemns evil abroad, and declares himself ready to inflict it at home.

When a distinguished statesman of a sister State had declared that the law of God is higher than human laws, he was denounced as a traitor to the Constitution. But here, in the Constitutional Convention, mob-violence is declared to be above the law of the land, and the author of the unblushing avowal would "*freely see*" its execution?

I hope to be excused for having paid so much attention to the gentleman from Monroe. It is an offense of which I shall not again be guilty. I will leave the gentleman to himself. Let him have not only the praises of his contemporaries—let him enjoy, in anticipation, the plaudits of the people of all coming time, for the willingness which he manifests to trample under foot the principles to which they, too, will be indebted for whatever of freedom they may enjoy.

While I have the floor, I will say a few words in reference to the subject immediately under consideration.

Gentlemen object to having the natural equality of man declared in the bill of rights, because

1st. It is not true.

2d. It is true only in the abstract.

If the doctrine of the natural equality of man is a "*lie*," as is so vehemently declared by the gentleman from Tippecanoe, (Mr. Pettit,) it has been the most glorious "*lie*" upon record. No political truth has ever accomplished so much for the well-being of man. With this "*lie*" inscribed upon their banners, with this "*lie*" impressed upon their hearts, our forefathers achieved the victory of liberty over tyranny. And this "*lie*," as gentlemen are pleased to call it, is the rock on which the fabric of our Government rests. But it did not stop here. The nations abroad caught the idea and rang the "*lie*" from nation to nation, from heart to heart, till the Christian statesman, Lamartine, big with the idea of "Liberty, Equality, Fraternity," proclaimed France a republic!

But now it is discovered that we have held out false lights to the nations; that they have followed a mirage that will lead them to their ruin!

If the assertion of this "*lie*" has accomplished so much for the happiness of man, it may accomplish more; its mission of goodness may

not yet be ended. I wish to see it on the record.

But it is an abstraction. Sir, all first principles are abstractions. Christianity is founded upon an abstraction. Government, law, science are all based upon abstractions. And this glorious abstraction to which the world is indebted for so much of all that civilizes and happyifies man, this *one idea* where centres and radiates all our conceptions of human liberty, should occupy a prominent place in the Constitution of a free people. "*But it is not true in practice.*" The principles of Christianity and of abstract justice are often violated, but does this circumstance derogate from the principles of the gospel, or deny the power of justice? Will gentlemen argue that because government does not carry out the whole idea of the natural equality of man before the law, therefore, the principle is unsound? "Love the Lord thy God with all thy heart, and thy neighbor as thyself," is an injunction, which requires a degree of purity to which few people ever attain. Suppose some ecclesiastical synod, had, on this account, expunged it from the gospel! Sir, if they could have found no precedent for the sacrilege future time would have shown them. in a Constitutional Convention, gentlemen willing to follow in their footsteps.

As this great and leading truth of Christianity is the beacon light to which the whole world is steering, and in whose beams all will ultimately see, so this grave *political idea* that all men possess the same inherent rights, is a truth too far in advance of the age, a truth which time will appreciate, a truth which, in practice as well as in theory, the world will ultimately adopt.

The Bible says *Thou shalt not steal*. Our laws say in effect, *Thou shalt not steal*. Some men notwithstanding, do steal. Shall we, therefore, repeal the law against larceny, because the principle is true only in theory?

I love this doctrine of equality, because, as the gentleman from Wayne (Mr. Rariden) has beautifully said, "We see our father's faces in it." But more do I love it, because I see in it the faces of posterity. I believe in the doctrine of human progress, and in spite of his errors, I will have faith in man. That policy which is just, and reasonable, and right, man will ultimately adopt. His own interest and happiness demand it. The future, bright and beautiful, is looming up in the distance, with smiles on the face and gladness in the heart. And mankind, in one great brotherhood, will rally around the spurned and condemned idea of the equality of man.

Mr. CHANDLER moved the previous question, which was sustained.

The question was then taken on the amendment to the amendment, offered by Mr. Howe and it was rejected.

The question then recurred on the amendment of Mr. WATTS;

And the yeas and nays being demanded and ordered, resulted as follows:

YEAS.—Messrs. Anthony, Barbour, Bascom, Beard, Bicknell, Biddle, Blythe, Borden, Bowers, Brookbank, Butler, Chapman, Clark of Hamilton, Clark of Tippecanoe, Cole, Colfax, Conduit, Crawford, Crumbacker, Davis of Parke, Dobson, Dunn of Jefferson, Farrow, Foley, Garvin, Gordon, Graham of Miami, Hamilton, Helm, Helmer, Hendricks, Hitt, Holman, Hovey, Huff, Johnson, Kendall of White, Kinley, Lockhart, Maguire, March, Mather, May, McClelland, McFarland, McLean, Miller of Fulton, Miller of Gibson, Morgan, Morrison of Marion, Mowrer, Nave, Newman, Niles, Owen, Pepper of Crawford, Rariden, Read of Monroe, Robinson, Schoonover, Shannon, Shoup, Sims, Smiley, Snook, Smith of Ripley, Steele, Stevenson, Thomas, Thornton, Todd, Trimble, Wallace, Watts, Wolfe, Work, Wunderlich, and Zenor—72.

NAYS.—Messrs. Allen, Badger, Bright, Carr, Chandler, Chenoweth, Coats, Davis of Madison, Davis of Vermillion, Dick, Dunn of Perry, Edmonston, Fisher, Foster, Gibson, Gootee, Haddon, Harbott, Hardin, Hogin, Kelso, Kent, Kendall of Wabash, Logan, Milroy, Mooney, Moore, Murray, Pepper of Ohio, Pettit, Prather, Read of Clark, Ristine, Ritchey, Sherrod, Smith of Scott, Spann, Tague, Tannehill, Walpole, Wiley, Yocum, and Mr. President—44.

So the amendment was adopted.

The PRESIDENT. The question now is on ordering the section as amended to be engrossed for a third reading.

Mr. PETTIT. I hope this section will not be ordered to be engrossed for a third reading. It does not contain the truth; and I am far from believing—

The PRESIDENT. The Chair would remind the gentleman from Tippecanoe that the question is not debatable, the previous question being still in force.

Mr. PETTIT. Very well. Then I shall vote against ordering the section to be engrossed for a third reading.

The question was then taken on ordering the section to be engrossed, and upon a division it was decided in the affirmative as follows: ayes 65, noes 42.

Mr. SHERROD moved that the Convention adjourn, which was decided in the negative.

#### RIGHTS OF CONSCIENCE.

The Convention then proceeded to the consideration of the next section in the report providing that "All men shall be secured in the natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No man shall be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent. No law shall in any case whatever control the free exercise and enjoyment of re-



ligious opinions, or interfere with the rights of conscience. No discrimination shall be made by law between religious societies, nor preference be given by law to any mode of worship. No money shall be drawn from the treasury for the benefit of any religious or theological institution."

Mr. PETTIT moved to insert two words after the word societies, in the twelfth line. They were the words "or sects;" so as to make the section read: "No discrimination shall be made by law between religious societies or sects, &c."

The amendment was adopted by consent.

Mr. NEWMAN moved to strike out that clause of the section which had just been amended, and insert the following:

"No preference shall ever be given by law to any religious societies or modes of worship; and no religious test shall be required as a qualification for any office of trust or profit."

Mr. N. said: These are the words found in a corresponding section of the old Constitution; and as gentlemen have been a little nice in the composition of their sections I would suggest whether the words "No discrimination shall be made *between* religious societies," is not an inappropriate expression? According to strict grammar to say *between* religious societies would imply that there were only two of them. If the section is retained this proposition certainly ought to be changed to *among*. I think, however, that the words of the old Constitution would be better; and I, therefore, move to strike out that clause of the section, and insert the words as I read them from the old Constitution.

Mr. OWEN. If the objection is merely to the word "between" as inappropriate, the gentleman from Wayne (Mr. Newman) is well aware that it can be changed by the committee on revision. But if I understand the effect of the amendment it would not only change the phraseology of a considerable portion of the section, but would insert a considerable portion of the section which succeeds it.

Mr. BERRY would ask the gentleman from Wayne (Mr. Newman) if he meant to strike out the words "No person shall be incompetent as a witness in consequence of his religious opinions," which was a part of the next section!

Mr. NEWMAN. No.

The question was then taken on the amendment offered by Mr. NEWMAN, and it was—

Mr. PETTIT moved to amend the amendment by inserting the words "or creed" after the word "worship," which was adopted.

The question was then taken on the amendment as amended, and it was agreed to—ayes 62, noes not counted

Mr. BRIGHT. I move to amend the section by striking out after the words "all men" the words "shall be secured in," and inserting the

word "possess," so as to make it read "all men shall possess the natural and indefeasible right," &c. He regarded this right as a present possession, and not as a thing hereafter to be secured. He thought the amendment he suggested would be better than the words in the section as reported by the committee.

Mr. OWEN. The amendment offered by the gentleman from Jefferson declares that the right exists; but the section as it is reported not only declares that the right exists, but that its existence shall be secured to all men.

Mr. BORDEN. That is the very objection which I have to the section. Suppose that the Legislature should have a majority which was not disposed to allow, the right to be enjoyed. I think the amendment of the gentleman from Jefferson is a proper one. We want to have it declared that we "possess" the right.

Mr. OWEN. No Legislature could ever refuse to secure to the people this right without a manifest violation of the Constitution, as the gentleman from Allen must perceive if he reflects for one moment. We provide here in our organic law that all men shall be secured in the right to worship Almighty God, &c. We intended by this that they should be so secured, and it will be the duty of the Legislature to enact such laws as will prevent any and every religious society from being disturbed in their worship.

Mr. HOWE. I would ask, in the name of common sense, why assert the notorious truth, that all men in this country, and in every other country, have a right to worship Almighty God as they please? If you assert anything at all, therefore, why not assert that they shall be secured in that right? I feel satisfied that you cannot insert a more appropriate term. What does it mean? It means, that, inasmuch as all men have a right to worship God according to their own creed, they shall be protected in that right. For example, if their meetings should be wantonly disturbed, that the creating of such disturbance should be regarded as a criminal offense, and punished accordingly. The object of the provision is, that the law should recognize the right and protect it by proper legislation; that is all. It is simply tying up the hands of the Legislature so that they cannot decree otherwise.

Mr. BRIGHT. We are now on the bill of rights, and all that we aim at is a declaration of rights. Among other rights, we propose to say that all men are born free and equal, and that all power is inherent in the people. Then comes the section under consideration, declaring that all men possess the natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. As it is reported, it provides that "all men shall be secured," &c. Now how are they to be secured? We do not propose to dictate future security to the people. We say that it is an

inherent right now—not a right that is to be hereafter legislated upon and secured to them. They possess it now. It is a mere declaration of abstract right; and it seems to me, that, instead of saying we shall be secured in the right, we ought to make the declaration that we possess it now, and at all times, and that it cannot be interfered with.

Mr. FOSTER. It appears the difference between the gentleman from Jefferson (Mr. Bright) and those who sustain the report of the committee, is this: The committee say in their report, that all men shall be secured in the right to worship, &c.; and the gentleman from Jefferson proposes to change this, and make it: "All men possess the right to worship," &c. Now, I would suggest that the matter might be compromised in this way: by adopting the amendment offered by the gentleman from Jefferson, and retaining the words as reported by the committee. It will then read: "All men possess, and shall be secured in the right to worship Almighty God," &c. I move to amend the amendment in that way.

Mr. BARBOUR. The term "natural and indefeasible right" is an acknowledgment that we possess it. The very terms used in the section show that we possess the right, and why, therefore, should we repeat the same thing in the section. It appears to me that the section not only says that all men possess the right, but it goes a step further, and says that they shall be secured in it. I think there can be no objection to the phraseology as it now stands. If the right is "natural and indefeasible," of course we possess it.

Mr. SHOUP moved to lay the amendment and the amendment to the amendment on the table.

The motion was agreed to.

The question was then taken on ordering the section, as amended, to be engrossed for a third reading, and it was decided in the affirmative.

On motion, the Convention adjourned.

#### THURSDAY, DEC. 5, 1850.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. CRESSY.

The journal of yesterday was read and approved.

There being no reports from committees,

The Convention proceeded to the consideration of the

#### ORDERS OF THE DAY,

The first thing in order being the first section of report No. 11, on its third reading. The section is as follows:

"We declare that all power is inherent in the people; and that all free Governments are, and of right ought to be, founded upon their author-

ity, and instituted for their peace, safety, and happiness. For the advancement of these ends, the people have, at all times, an inalienable right to alter and reform their Government."

The question being: Shall the section pass?

Mr. WATTS moved to re-commit the section, with instructions to insert the amendment offered by him on yesterday. It is as follows:

"That the general, great, and essential principles of liberty and free government may be recognized and unalterably established, we declare that all men are born equally free and independent, and have certain natural inherent and inalienable rights: among which are the enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining happiness and safety;" Following the language of the Constitution of the State of Indiana.

To this amendment,

Mr. STEVENSON had moved a modification which had had been accepted by the gentleman from Dearborn, to the following effect, viz: "All men are created free and equal," &c.; Following the language of the Declaration of Independence.

Mr. WATTS. On accepting the modification of the gentleman from Putnam, yesterday, I remarked that I believed it contained the same in substance as that which I proposed; but I was deceived. It does not contain the same. I therefore hope the section will be re-committed to the committee on rights and privileges with instructions to strike out and insert the following:

"That the general, great, and essential principles of liberty and free government may be recognized and unalterably established, we declare that all men are born equally free and independent, and have certain natural inherent and inalienable rights: among which are the enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining happiness and safety."

Mr. STEVENSON. I trust that the section will not be re-committed. I listened yesterday with a good deal of patience to the arguments of the gentleman from Dearborn: and it occurred to me, from hearing not only his arguments, but the arguments of some other gentlemen, that the great object was to flatter Thomas Jefferson. Upon an examination of the section in the old Constitution, it was found that it was not the language used by Thomas Jefferson in the Declaration of Independence; and I merely copied the language of the Declaration for the purpose of suiting the gentlemen. And, sir, if they are not satisfied with the Declaration of Independence—if they want something more—why, I have a little something to say about it. I am satisfied with the language of the Declaration



of Independence upon this point, and I think it is broad enough to satisfy everybody. How any gentleman can object to this language, I am at a loss to know. There has been nothing stated in my hearing which amounts to a reasonable objection to it; and I am unprepared to answer objections that may exist in the minds of gentlemen, but which have not been advanced here. "All men are created equal." That seems to me to be sufficient to satisfy every man. "They are endowed by the Creator with certain inalienable rights." If there is anything more required than this, I am not aware of it. I trust that the section will not be re-committed. It seems to me that the language of the Declaration of Independence is quite sufficient, and that gentlemen ought to be entirely satisfied with it.

Mr. GORDON. On yesterday I voted for this section as it now stands, but I believe that its phraseology may be improved by re-committing it. We say in this section that all men are created equal. It is not strictly true that all men are created equal. It is probable that no two men now living were born equal in every respect. There is a very great natural inequality among men. Some are endowed by their Creator with a high order of intellectual powers; others have very limited mental abilities. The minds of men differ as much as their countenances differ from each other. Some are born with that cast of intellect that fits them to lead in the affairs of State; others possess a mind that disposes them to seek the walks of private life. Men are not created intellectually equal, neither are they created physically equal. Some possess naturally great physical strength, while others have but a small portion of it.

The only natural equality among men is an equality of rights; and in this respect all men are equal. The strong have no more natural rights than the weak; the wise than the unwise; the rich than the poor; the white than the black. The Creator has given to all men equal rights and equal privileges. Nor does the fact that one portion of the human family are slaves to the other, contradict the truth of this declaration. It does not follow that because a man is not permitted to exercise his natural rights, he never possessed natural rights.

There is such a thing as being restrained from exercising the rights that naturally belong to us. A man in a state of nature has a right to redress with his own hand any injury he may receive from others, but when he becomes a member of society he is restrained from exercising this natural right. He cheerfully submits to this restraint in order to obtain greater security in the enjoyment of such rights as are reserved to him. Human laws restrain the slave from exercising his most important natural right; yet it does not follow from this that

he never possessed these rights. His natural rights are equal to those of his master, and he is deprived of the free exercise of them only by an act of usurpation and tyranny. The subjects of the Russian Autocrat have natural rights equal to those of American citizens, but their government places greater restraint upon the exercise of these rights than our Government does upon the exercise of the rights that appertain to us. All men have by nature equal rights and equal privileges; or, as it is expressed in the old Constitution, "all men are born equally free and independent."

I hope the section will be re-committed, and that the language of the old Constitution may be retained, as it conveys the idea correctly.

Mr. SMITH of Ripley. One or two friends on my right proposed yesterday to amend this article, and I favored the proposition to amend at the time, and I now favor it in consequence, partly, of the antiquity of the language proposed to be inserted, and partly in consequence of its being the language of the first article of our present Constitution; and I would inquire whether there is any gentleman in this Convention who has ever heard the slightest objection made to that article by the people of Indiana? I apprehend there is none. I will remark that in the canvass last summer I took the ground that the declaration of rights in our present Constitution was good, and that it required no amendment. I think that we all took that position in the neighborhood of country from which I come. Being pledged, then, to support this article of the Constitution, I wish to put a direct vote upon the entire article. I do not inhale the idea that some gentlemen have entertained, nor am I convinced by the criticisms of some of the learned delegates in this body; and permit me to remark, that I regret exceedingly that some of those criticisms have been made. I regret those which have been made by my young friend who has just taken his seat, although I have no doubt that everything he said was well intended.

Mr. President, I like the language of this section as well as any other language that could be interpolated or adopted in its stead. I do not agree with the opinion of the late Mr. Calhoan, and some others, that men are not born. If we look into history, ancient and modern, sacred or profane, we will find it written that some great men were born. It occurs to me that in some part of the Holy Scriptures it is stated—I will not undertake to quote accurately, not being so attentive a reader as I ought to be—but it occurs to me that it is stated that our Saviour *was born* in Bethlehem of Judea.

Mr. PETTIT. He was not a man.

Mr. SMITH of Ripley. I am referring to the Sacred Record. Perhaps by friend over the way disputes its authenticity. Well, sir, I will come down to more modern time. I believe it

is stated in the life of Washington, and in the history of the United States, that Washington was born in the State of Virginia.

Sir, my friend opposite, for whom I have great respect—as all gentlemen know I entertain great deference for his opinion—perpetrated a criticism on this phrase, “being born.” I have no doubt he did it for the amusement of the House—to show how he could criticise words like these;—but my friend last up made an unfortunate remark—and I know he will correct himself—that men are not born equal. And another remark of his, that the Autocrat of Russia had been born with higher powers and attributes than other men—

Mr. GORDON. If the gentleman will permit me to correct him, I said this: that the subjects of the Russian Autocrat had the same rights and privileges naturally that we have, but that they did not enjoy those rights and privileges from the fact that their government restricted them.

Mr. SMITH of Ripley. Now, sir, laying aside all these criticisms the idea is simply this: all that we undertake to declare is this, that God Almighty created all men equal, and that all men are born equal, and by nature have a right to live, and move, and breathe. Sir, the Autocrat of Russia was not created with any of these extrinsic attributes that are now thrown around him. They have all been imposed upon him by society. These matters are all conventional, and in regard to them the people may act their pleasure and violate no natural rights. Mr. President, we are informed that the hand and the power that creates men creates them equal, and in addition to that, whether they are born men or not, after they become men the power that creates them has no respect to their persons. Mr. President, is it possible that the Convention of the State of Indiana will put a declaration into the bill of rights that will deny, if I may be allowed the expression, that God Almighty created all men equal. Have we not equally the right to live, the right to breathe the pure atmosphere of heaven, the right to pursue happiness, the right to enjoy it, and the right to obtain it? For what purpose did the Almighty envelope this earthly ball upon which we live with an atmosphere? Was it for the Autocrat of Russia? was it for those men only who have got these exclusive attributes of society thrown around them? Was it for them alone? No, sir; it was for all that live and breathe. Sir, let me inquire for what purpose did the Almighty give us the power of locomotion? For what did he spread out the extended plains upon the surface of the earth? Was it not for men to walk upon? Now shall not all men be equally entitled to breathe the free air that costs them nothing? Shall they not equally have the right to walk abroad and look upon the brightness of the sun at noon-day? Are not these things self-evident? Why, if we were

fed by manna from Heaven they ought to have the right to go and seek it, and to gather it. When it was provided for the children of Israel in the wilderness, they were compelled to go out and gather it at a certain time. They had the right of locomotion, they had the right to live, and breathe, and enjoy the blessings that were showered upon them from Heaven—the hand of Heaven is always even and just in its dispensations.

Mr. President, some gentlemen seem to discover something extraordinary in this article.

They argue as though some men had not the right to live, and move, and breathe the air of heaven, nor to drink of the stream that flows in exhaustless abundance at their feet.

They seem to apprehend that this Convention may do some fell and nefarious act that will contradict the declaration of our fathers, framed by the immortal Jefferson, that by nature all men are equal—“created free and equal.”

Sir, I say the committee on the bill of rights have acted upon the supposition that this Convention would do something to contradict the assertion of natural equality amongst men; and to be consistent, as was explained by the chairman of that committee (Mr. Owen) the other day, they postponed it, awaiting the action of this Convention.

Sir, I have respect to conventional rights as well as natural rights, and I am willing to set up these different barriers between castes in society if necessary, but at the same time I will not outrage the public sentiment of Indiana, or the opinion of the world, by doing a thing not requisite and proper to be done at this time and in this place.

While up I will make a single remark in regard to my learned friend over the way (Mr. Pettit). I place him in that category in regard to things touching social equality. Sir, I admit it is difficult to get up any exact social standard, moral, mental, or physical, and it is as unnecessary in the one case as the other, as social enjoyment depends more upon taste than it does upon anything in morals or mind. It is true that corruption of morals, and imbecility of mind, are loathsome and disgusting to most persons. But he same may be said of personal deformity. My friend might as well say there could be no social equality between himself and the Delegate from Brown, (Mr. Chandler,) because the latter is six inches taller than the former, as to say because some men were learned and some unlearned, they could not enjoy the society of each other.

I appeal to my friend if he thinks it any more indispensable to social enjoyment that men should be capable of thinking alike, than that they should look alike. Sir, his social theory is contradicted by many facts in real life. Is it not frequently the case that men of towering intellect are untried in the delicate relation of husband to ladies of inferior capacity and mod-



erate attainments? Does it not often occur that ladies of high mental endowments, qualified to shine and embellish any station in life, and grace and adorn any society, are united to men who are mere bores in manners and mind, and who, to all appearance, jog on through life in the enjoyment of a full share of social and domestic happiness.

In these matters men must not be over nice. There are many things in real life that will *debar* any standard, if I may be allowed the expression, that we can fix or set up.

I will give my friend (Mr. Pettit) an instance of misanthropy upon the leveling-down principle. The celebrated John Randolph of Roanoke hated all mankind, except himself, and old maids in particular.

He used to say that he would go ten steps out of his way to kick a sheep—thence there was no social sympathy between him and that innocent animal. But still he was a social being, and showed it eminently in his affection for dogs. It is said of him that in making boarding arrangements he always provided ample accommodation for them in food and lodging, and that on all occasions he was followed by a pack of dogs, caressed and mutually caressing them. When he went Minister to the Court of Russia he took those social companions with him; on them he spent all his sympathies; he placed them on a social equality with himself. Sir, John Randolph and his dogs stood upon an equal footing of social equality. And surely the gentleman from Tippecanoe will not insist that they must have been mentally equal to have induced this friendship. John Randolph, intellectually, was a giant of the age in which he lived, and if alive he might compare favorably, in mind and attainments, with the gentleman from Tippecanoe.

Sir, I cannot bring myself to the conclusions that the gentleman has arrived at, that there can be no social equality between different grades of society, and that the man of letters and the unlearned man cannot associate together, and sympathize with each other. I reject and repudiate his criticism and assertion that men are not *born*, and the assertion of the gentleman that the first section of the first article of our Constitution is a lie upon its face. I deny it. Sir, it is true to the letter, and is that great political *truth* that is overturning the world, and just as far as the declaration goes that all men are "*born free and equal*," the chains of despotism will be broken off; mental and moral darkness will be dissipated; kingdoms will be thrown down and crowns will crumble before it.

[Here the PRESIDENT notified Mr. Smith the fifteen minutes had expired, and he took his seat.]

Mr. NILES. I would not rise at this moment, except to make a personal explanation that seems to have been rendered necessary by the remarks that were made by the Chairman

of the committee on rights and privileges, yesterday. It seemed to be inferable from those remarks, that all of the committee had acquiesced in the omission of this section of the old Constitution. Now the gentleman did not, of course, intend to place me in a wrong position. But if such an inference was drawn from those remarks, I need hardly say that it was altogether erroneous. I did not think it worth while to controvert the matter there, or to make a separate report, but it was undoubtedly known to every member of the committee, as it would be expected by every man who ever knew me at any time, or in any place, that unless a new section like that offered by the gentleman from Dearborn had been proposed by some one else, it would have been offered by me. I have no hesitation in saying that I should have looked with alarm upon the omission of this section by this Convention. I should have regarded it as indicating a downward tendency in our affairs. And though I was not aware that a motion to recommit would be made this morning, I will say that I did regret on yesterday, that the amendment offered by the gentleman from Putnam was accepted by the gentleman from Dearborn. I prefer, sir, the language of our old bill of rights. I prefer it not because it may be expressed in the purest English. Great truths have often been uttered in homely style. But they have none the less influenced the mind and destiny of the world. Now I am attached to those old words, because they fairly and fully and boldly speak out in plain unvarnished and unmistakable language, the spirit of the fundamental truths of the Declaration of Independence—those great truths upon which our social fabric, and our political liberties all rest. It not only says that men are born free and equal, and endowed by their Creator with certain inalienable rights, such as the enjoyment of life, liberty, and the pursuit of happiness, but it carries out the sentiment in such a manner that he who runs may read—that every man, woman, and child within the limits of the State, shall be capable of understanding the nature of the truths that we assert—that among those rights are those of acquiring, possessing, and protecting property, of pursuing and obtaining happiness and safety. And, sir, what danger, or what impropriety can there be in using this language? It is language that was used by our fathers and valued by them. Sir, it is dangerous to tamper or trifle with such great rights. Trifle not with the essential elements of liberty, not at least with the rights of our own race. If we must assume other positions which are in controversion of them, let us still adhere to those truths in relation to ourselves and to our posterity, that are essential to our and their welfare and happiness. And, sir, I confess that I feel an attachment for these words, because they were placed here by our fathers. Other people have placed a high value upon mere

scraps of their early history. Why need we go to the opposite extreme and blot out every word and act of our predecessors? When they uttered a noble sentiment, why may not we be content to retain it in the form in which it was expressed by them?

The gentleman from Posey has remarked that he feels an attachment to the State of Connecticut, because he married his wife there. I feel an attachment to this language, not only because it was used by men of whom I believe that truer, more high minded, more liberty-loving, more patriotic men, have never lived, but, sir, because, though I was born in a far distant State, some of that blood flows in my children's veins. And, sir, on an occasion like this, when men seem afraid to assert essential truths lest at the next moment they should give them the lie, it is not too serious or too much in earnest to utter such a sentiment. Sir, I would even now hope at this late day, that gentlemen would not reject this language, but that they would at least retain, in so many words, this one section as it was penned by the men who laid the foundations of our State. Let no Vandal spirit seek to obliterate from the Constitution, every word which was placed there by our fathers.

Mr. ZENOR. I am opposed, sir, to the motion for the re-commitment of this section. But I have not risen so much for the purpose of discussing the question that is before the Convention, as for the purpose of admonishing gentlemen against a further waste of time. I consider it a duty which I owe to those who sent me here, and perhaps to the country, to make this suggestion. I had hoped that the orators of this Convention would by this time have exhausted all their stores of knowledge, and have been ready to proceed to vote. We are progressing but slowly; and, sir, the people of this State are taking notice of the slowness of our progress. It may be that any thing that I may say will fail to have any influence with gentlemen here, but I hope that the orators of this Convention will be admonished to make their speeches shorter and fewer. Sir, we have been here almost three months, and what have we done? If we proceed in the manner in which we are now progressing, it will take us at least three months to get through with our business. Are the people prepared to tolerate such a protraction of the session of this Convention? It is true, gentlemen may be desirous that their speeches should go before the people; but when they consider that each one of the long speeches that they make costs the country from fifty to a hundred dollars, they may be assured that the people will be dissatisfied. Sir, I have been for a long time in the Legislature, I have served here for many weeks together, but I must acknowledge that my patience has never been so much tried as it has since this Convention met. Sir, I can bear without com-

plaint, perhaps, as much as any other man; but I think it is time that we should begin to make better progress with our work. If the minority are disposed to retard business by moving to re-commit every section that is acted upon here, we shall never get through, and we may just as well pass a resolution to adjourn and go home, and let the people send other Delegates. I have felt it my duty to make these few remarks; and I have nothing further to add.

Mr. KELSO. A few words, sir, in reply to the gentleman from Harrison. We have heard so much about the extraordinary greatness of Indiana, about her relative position, her high standing among the States of this Union, that I think it is only necessary for us to look at the time that the Conventions of other States have occupied in re-modeling the Constitutions of those States to be convinced that the gentleman is altogether mistaken as to time being uselessly spent by us. We have not yet consumed half the time that has been occupied by the Conventions of other States. And, sir, if the State of Indiana occupies so high a position in point of wealth and the numerical strength of her population, should we not occupy a proportionate time in framing her organic law? If we apply this rule, we must necessarily set ten or fifteen weeks to do the State justice, so that the gentleman who seems so extraordinarily anxious to get through with the work in a few weeks will be sadly mistaken if he expects that when it is done it will be properly done.

The forming of a Constitution is not like the work which Lady Macbeth was counseling the execution of, when she said:

"If, 't were done;  
When 't is done, 't were well done  
If 't were done quickly."

Now, sir, a proposition has been made to re-commit a section which was passed yesterday, with instructions to strike it out and insert another section in its place. I voted yesterday against the passage of the section, but I did not cast that vote because I had any less regard for the language it contained than those gentlemen had who voted for it. But, sir, coming here as we do, to form an organic law for the State, we come prepared, as we all confess, to act above and independent of party, and many of us in this Hall, if we do that which we believe to be right, may find ourselves running counter to the opinions of both our political and personal friends. Now I think I may be supposed to know something of what we came here for. It was not to make a Constitution for the whole world, nor for the United States, nor for any other people than the people of Indiana. And, sir, some of us came here instructed upon certain questions which were expected to be brought before this body, and I, for one, am so instructed, especially in regard to the admission of persons of color within the State hereafter. Perhaps the most solemn pledge that I



gave to my people was that I would vote uniformly against permitting them to emigrate into this State.

Only yesterday I voted against the re-commitment of this section, for the purpose of inserting this same amendment. The after action of this Convention will show when compared with what we have already adopted that the falsehood is already sufficiently large for any reasonable purpose, and if we amend as proposed it will only make it worse. Now if I could vote throughout in accordance with the language contained in the proposed amendment, I would cheerfully vote for its insertion; but as I cannot do that, I do not choose to lay a snare to catch myself in. In deciding a sentiment which I cannot carry out and keep my pledge to the people, I will not cast my vote so as to entrap myself if I know it. If I vote from the proposed amendment I must hereafter vote under instructions from the people, so as to give to it the black lie on its face. It is true the language is beautiful, but can we not make a Constitution that will be sufficiently good for the State of Indiana without having it in that form.

Mr. SMITH of Ripley. Will you deny the sentiment?

Mr. KELSO. No. I say I believe in it, and I approve of the language; but shall I vote to ingraft it in the Constitution, and by the face of another vote I have given, or rather that I shall give, and must give, in another part of the Constitution, give to this the lie? No, sir, I choose to be more consistent. My conscience must submit to my duty to my constituents in this instance. Because it is a matter, and I now repeat what I was about to say when the gentleman interrupted me, and that is cannot this Convention make a Constitution ample and sufficient for all the purposes of a free government without having this section there at all? I maintain that we can. Now what is it? "that the great and essential principles of free government may be recognized and established." That they *may* be recognized and established! Now in the name of God I ask if the principles of free government have not been recognized and established in the country for the last seventy years. Can we re-establish them? You cannot re-establish that which is already in existence; nor can you give them any additional strength. If each member of this Convention were a minister of the Gospel, and should solemnly repeat each morning the Lord's Prayer, would it give to it any greater solemnity? Certainly not. Then would the repetition of this language, embodying principles that have been established for two-thirds of a century, give to those principles any additional force or effect? I say it would not. Then, sir, I say we can do without it.

Well now what is the language proposed to be inserted? It is that all men are born free and

equal. That, sir, is not true; they are not born equal—men are born subject to the laws of the country in which they are born; and if those laws do not confer upon all men in the government equal privileges, then, sir, they are not born equal. Shall I then be required to vote for such a declaration. If it were confined in its application to the State of Indiana, it might be true that all are born free, but not equal. But the declaration is general, and it is not limited; an inference may be drawn from it that we do not intend, and it is absolutely useless. "And they shall have certain inalienable rights." Now what is an inalienable right? It is such a right as the subject possessing it cannot himself dispose of. It is something that belongs to him that he cannot sell, barter, swap, or give away. Among these rights is that of enjoying life and liberty, and of acquiring, possessing, and protecting property. Well now let us take the last clause. It is proposed to provide that negroes shall not enjoy property upon equal footing with the white man in Indiana. Well, he is a man. If he was born in Indiana he was born equally free with a white man, and it may be possible equally independent. Now if we carry out the principle that has been proposed to be introduced into another part of our Constitution, that the negro shall not be entitled to enjoy property equally with the white men, if we vote for that provision, and at the same time make the declaration here proposed to be made, we shall stultify ourselves. One or the other must be a positive falsehood. Now I do not choose to record my vote for both of these propositions; because when I go home my constituents may ask me which of these propositions I consider the right one, as both cannot be true, and intend to adhere to!

I maintain that the proposition that all men have an equal right to enjoy life, liberty, and property, is not strictly true. For instance, if a white man meets a black man upon the public highway in Indiana, and they are alone together, and the white man falls upon the other with a bludgeon, and beats him unmercifully the black man is not permitted to go into a court of justice and make an affidavit upon which the offender can be arrested; or if the man be arraigned, the black man cannot give testimony by which he could be convicted. I ask then, if the black man has equal rights with the white. I say he has not. I say then, if you adopt both of these propositions, one or the other must be false. That is the reason why I voted against this proposition yesterday. If I could carry out the principle, and do common justice to the people of Indiana, and redeem the pledges that I made at home, I would most willingly vote for it, for I like the sentiment; I think it is a good one. But I cannot vote for both, so I choose to do in this matter as I promised the people I would do.

I am much obliged by the gentleman from

Dearborn (Mr. Watts) making this motion; it has afforded me an opportunity to explain the reasons for my vote on yesterday. I freely confess that I am governed in this vote by the circumstances which surround me.

Mr. OWEN. This subject is one worthy mature deliberation; yet I should not have risen, but for an allusion made to me as chairman of the committee, by my friend from Laporte, (Mr. Niles,) for friend, I am sure, I may call him.

The gentleman will do me the justice, I know, to believe that, in what I stated yesterday, it was the furthest from my thoughts to place him in a false position. I spoke of the action of the committee, that expression being always construed to mean a majority of the committee. It would have been unparliamentary for me to allude to the action of the minority; nor in any discussion here, is it the province, or the right even, of a chairman so to do. I merely said, or meant to say, that the majority of that committee had decided, for the present, not to report the section of which I was speaking.

Now, to come to the point immediately before us:

The Convention has adopted, as a portion of the first section of our bill of rights, a clause from the Declaration of Independence; and with that clause they have re-placed that declaration in the old Constitution which speaks of the inalienable right of all men to acquire, possess, and protect property.

The gentleman from Laporte says he venerates these words as a legacy from our political forefathers.

Mr. President, I value words, no matter whence derived, only when they are followed by deeds. I value no words that are mere words—empty words—declaring what is not to be carried out. But is the gentleman himself prepared to carry out the declaration he so much venerates? So far as the very difficult question regarding negroes and their rights to property is concerned, no doubt he is prepared; he will vote with the minority; and on that point, therefore, his action and the declaration he advocates harmonize. But did he not, the other day, vote against the section that was passed, and may yet be re-considered, securing to married women the rights to property, of which the common law utterly deprives them? Did he not, by that vote, deny to one-half the white citizens of this State the right to acquire, to possess, to protect property. And if so, with what propriety—with what truth—with what regard to the most ordinary consistency—can he propose to insert in the Constitution a provision which his own vote thus flagrantly violates?

The gentleman from Lagrange (Mr. Howe) attempted yesterday to prove to us that the common law principle, as to the property of

married women, was no violation of the declaration in question. And how does he set about it? He says that such rights are guaranteed, "under certain restrictions;" and that it is the province of law to determine what these restrictions shall be. I reply that to restrict, is one thing, to destroy, another. Married women, while they remain married, have, by the common law, no active or available rights of property whatever. Their personal estate has been vested absolutely in another; every dollar from real estate goes the same way. They have no property. There is no regulation about it. It is taken from them. Are declared rights to be so construed? Under color of restricting, are we to destroy? Under pretense of regulating, are we to regulate out of existence? Then a declaration of right is but an idle mockery. The promise is kept to the ear, and to the ear alone.

But women, says the gentleman, are not obliged to marry. So Paul told us eighteen hundred years ago; but he hinted, at the same time, that if they did not, they might chance to do worse. [Laughter.] The gentleman knows very well, that, as a general rule, the married state is the natural and necessary condition of women. This is an unworthy evading of the issue.

I repeat it sir; I value words but as the types of things. High-sounding words, if they carry with them no practical results, I value not.

For these reasons, I adhere to the opinion, that, for the present, at all events, we shall do well to abstain from adopting the section referred to, from our old Constitution.

Mr. HOWE. I am sure that gentlemen who have argued as to the impropriety of the use of these words, taken from the Declaration of Independence, have done so under a misapprehension of their meaning.

These words, sir, were penned by Mr. Jefferson, and endorsed by his co-patriots. Mr. Jefferson was a scholar as well as a patriot. No man in this Convention, and I need not say that I do not disparage any member of it by that assertion, is the superior to Mr. Jefferson, in point of literary attainments. Not only, sir, are these words suitable and appropriate, but they are beautiful and classical. No words in the English language could be more pertinent to express the idea the drafters of the Declaration intended to convey.

"All men are *born* equally free and independent," declares the first section in our present Constitution; and with great propriety, and "have certain natural, inherent, and inalienable rights;"—that is to say, as I remarked yesterday, by the law of nature in contradistinction to human laws, all men are free and equal; yet this does not affirm that man may not become unequal under human laws. But it is a great fundamental truth, that lies at the foundation of all human governments, that men possess these inherent and inalienable rights. The word "in-



alienable" is used to show that no voluntary transfer of these rights by any part of mankind, is binding in respect of that transfer, and is thus inalienable.

But this does not contravene the power of man by superior physical force, or by the public or municipal laws of States, to divest other men of those rights. That fact is implied; but it is no reason for dispensing with this declaration of sentiment.

Gentlemen say that, from the fact that slavery exists in this country, there is a notorious inequality of rights, and also present the assumed fact that we will forbid the immigration of negroes into this State, and prohibit their right to hold property. There is nothing inconsistent, even in view of this state of things, in inserting these words from the Declaration, in our bill of rights. It only shows us one of the fundamental truths, "self-evident" to all whose moral perceptions are not obtuse, or blinded by selfishness. There is nothing contradictory involved in its insertion. It is simply a truthful declaration.

I do not see, sir, the force of the argument of the gentleman from Posey, (Mr. Owen,) that we contradict ourselves by retaining these words, and yet not allowing to woman her equal rights. As I understand this matter, sir, the rights of married women, in respect to their property, have little to do with the declaration of the rights of mankind as conferred upon them.

What human laws may do and say on this subject of married women's property, is unimportant; it does not alter the laws of nature, and there can be nothing conflicting. This, sir, is a great fundamental truth that should not be dispensed with. I thank the gentleman from Wayne (Mr. Rariden) for the beautiful figure he gave us in some remarks on this subject yesterday;—they have been before my mental vision ever since—"we can see our father's faces in these words," said he. The immortal band that signed the Declaration of Independence, appear to stand up before us when we read these words.

I have an amendment, sir, which, while up, I will offer to the instructions—and I desire then to say a few words in relation to it. I wish to amend the instructions so as to add the second section of the old Constitution, in addition to the one before us.

That, sir, will restore the sections of the old Constitution as they were. Section two of the first article of the old Constitution concludes with this sentence: "For the advancement of these ends, they (the people) have, at all times, an inalienable and indefeasible right to alter or reform their government in such manner as they may think proper." To this I wish to add these words at the conclusion, "In accordance with their Constitutions."

That, sir, was the amendment I proposed yesterday, but by some mistake, the question on it

was not correctly put, and I now propose it again for consideration.

I will not argue the question now, but simply say that yesterday I made what might be considered a somewhat abstract argument—not a general or appropriate kind of argument—but in this case I thought it necessary, because it looked to practical results. It is an abstract question, but its solution lies at the foundation of our rights. It has become an important question. The very fact that so many States are remodeling their Constitutions, is an interesting fact—a momentous one for good or evil.

Here, then, is a practical question—whether *ad libitum* we shall have the right of amending or totally changing the whole structure of the government of this State.

What, sir, I ask, is tyranny? It is a word of Greek derivation. Originally it signified the unrestrained and unlimited government of one man. In Athens there were at one time, thirty tyrants; at another time a single tyrant, *Pysistratus*.

In this country, the whole sovereign power, since the Revolution, has been considered as lodged in the hands of the people. In every country it must be lodged somewhere, and in this country, it is lodged with the people. But for the people to exercise that power *en masse*, is impossible; and yet, having that power, they have the right to delegate it. They must exercise it by delegation, or not at all; and thus they do, and have the right to say how long it shall be delegated, or whether it may be resumed at any time.

A Constitution is a delegation of sovereign power to different departments of government, which, taken together, receive all that power. The people retain the right in general, to declare at the ballot box, who shall exercise the functions of those departments from time to time, but they are always supposed to be, and, indeed, are filled. This may at first seem an abstract question of little importance, but in reality, it is a vital question of liberty. If a Constitution be a mere restriction of popular sovereignty, there is a portion of sovereignty left which is practically false, for the whole sovereign power, during the existence of the Constitution, is not in the people; otherwise they should meet together and perform the functions of sovereignty. Besides this doctrine of restriction is a manifest exhortation to revolution and anarchy. It comes to this, that the people are incapable of binding themselves by any recorded prohibition of the amendment of their Constitution, for a given period, which they make.

Every other sovereign in the world is capable of binding himself. Why not a popular majority, which is the original sovereign with us? Public liberty equally demands that the rule be the same in either case.

When the people reserve or possess the right to re-model or change their Constitution, this is not a restriction, but a reservation, or more properly, a power of revocation of that sovereignty which they have delegated. But it is said the people declare, in their Constitution, the manner in which power shall be exercised, which is nothing more than a restriction of sovereign power. This is a contradiction in terms, for it implies that sovereign power *has been delegated*, which is repugnant to the supposition of the restrictionists. All power is really delegated, but *limitations* are placed on its exercise.

The people then by their Constitutions delegate their power; and they have the right to declare in those Constitutions when and under what circumstances they will resume it again.

As I said yesterday, this argument if taken in its ultimate consequences leads to a position which is undoubtedly true, that the people may delegate their sovereign power for ten, twenty, or any number of years. It does not, however, deny the abstract right of revolution. When a government becomes intolerable a revolution may occur; possibly it may be a peaceful one—but a revolution it will be, notwithstanding.

No government, however, can admit this for it strikes at its very existence; it would be nothing more nor less than indorsing the power of revolution.

We must restrict sovereign power, and if we desire stable government we must admit the idea that sovereign power is capable of restricting itself. If this is not done the idea of tyranny or irresponsible power is at once realized and called into existence, and that definition is absolutely correct; and we thus realize every hateful element of evil comprehended in the meaning of the word tyranny since the first ages of the civilized world. There is no means by which you can have a government of true liberty, unless you can restrict the sovereign power.

I care not where tyranny exists, whether in a single tyrant or in a majority of the whole people, it must be limited, and the right of taking back the delegated power at pleasure must not be admitted in our Constitutions and practically developed. If it be formed to responsible government, Conventions and decrees will then take the place of legislative assemblies and well digested laws.

Mr. WILEY moved to lay the amendment with instructions upon the table.

The PRESIDENT. That motion, the gentleman I hope understands, will carry the section with it.

Mr. WILEY. I move the previous question then, sir.

The PRESIDENT. Will the Convention second the call for the previous question?

The call was seconded.

The PRESIDENT. The question now is, Shall the main question be now put?

This was so ordered by consent.

The PRESIDENT. The question is upon the passage of the section as it now stands.

On this motion the yeas and nays were taken under the rule, and the Secretary reported the following result—yeas 114, nays 10:

Those who voted in the affirmative were,

Messrs. Alexander, Allen, Anthony, Badger, Barbour, Bascom, Beard, Berry, Bicknell, Bidle, Blythe, Borden, Bourne, Bowers, Brookbank, Bryant, Butler, Carr, Chandler, Chapman, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Colfax, Conduit, Cookerly, Crawford, Crumbacker, Davis of Madison, Davis of Parke, Dick, Dobson, Dunn of Jefferson, Farrow, Fisher, Foley, Foster, Garvin, Gibson, Gootee, Graham of Miami, Haddon, Hall, Hamilton, Harbolt, Hardin, Helm, Helmer, Hendricks, Hitt, Holman, Hovey, Huff, Johnson, Kent, Kendall of Wabash, Kendall of Warren, Kinley, Lockhart, Logan, Maguire, March, Mather, May, McClelland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Mooney, Morgan, Mowrer, Murray, Nave, Newman, Niles, Owen, Pepper of Ohio, Pepper of Crawford, Prather, Ariden, Read of Clark, Read of Monroe, Ritchey, Robinson, Schoonover, Shannon, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Stevenson, Tague, Tannehill, Taylor, Thomas, Thornton, Todd, Trimble, Wallace, Watts, Wheeler, Wiley, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President—114.

Those who voted in the negative were,

Messrs. Dunn of Perry, Duzan, Edmonston, Gordon, Hogin, Howe, Moore, Sherrod, and Walpole—10.

So the section passed and was referred to the committee on revision, arrangement, and phraseology.

#### LIBERTY OF CONSCIENCE.

The second section of No. 11 was then taken up and read a third time.

The original section is as follows:

"All men shall be secured in the natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No man shall be compelled to attend, erect, or support any place of worship, or to maintain any ministry, against his consent. No law shall, in any case whatever, control the free exercise and enjoyment of religious opinions, or interfere with the rights of conscience. No discrimination shall be made by law between religious societies, nor preference be given by law to any mode of worship. No money shall be drawn from the treasury for the benefit of any religious or theological institu-

The question being on the passage thereof—



The yeas and nays were taken under the rule, and the Secretary reported as follows—yeas 122, nays none:

Those voting in the affirmative were,

Messrs. Alexander, Allen, Anthony, Badger, Barbour, Bascom, Beard, Berry, Bicknell, Bidle, Borden, Bourne, Bowers, Bright, Brookbank, Bryant, Butler, Carr, Chapman, Chenoweth, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Colfax, Conduit, Cookerly, Crawford, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, Duzan, Edmonston, Farrow, Fisher, Foley, Foster, Garvin, Gibson, Gootee, Graham of Miami, Haddon, Hall, Hamilton, Harbolt, Hardin, Helm, Helmer, Hendricks, Hitt, Hugin, Holman, Hovey, Howe, Huff, Johnson, Kelso, Kent, Kendall of Wabash, Kendall of Warren, Kinley, Lockhart, Logan, Maguire, March, Mather, May, McClelland, McLean, Miller of Clinton, Miller of Fulton, Miller of Gibson, Mooney, Moore, Morgan, Mowrer, Murray, Nave, Newman, Niles, Owen, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Rariden, Read of Clark, Read of Monroe, Robinson, Schoonover, Shannon, Sherrod, Sims, Smiley, Snook, Smith of Scott, Spann, Steele, Stevenson, Tague, Tannehill, Taylor, Thomas, Thornton, Todd, Trimble, Wallace, Walpole, Watts, Wheeler, Wiley, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President—122.

None voted in the negative.

So the section passed and was referred to the committee on revision, arrangement, and phraseology.

#### RELIGIOUS TESTS.

The third section of No. 11 was then taken up and read a second time as follows:

SEC. —. No religious test shall ever be required as a qualification for any office of trust or profit; and no person shall be rendered incompetent to be a witness, in consequence of his opinions on matters of religion."

Mr. EDMONSTON moved to amend by striking out all before the word "no" in the second line.

The motion was adopted.

The section as amended was then ordered to be engrossed.

#### MANNER OF ELECTIONS.

The fourth section of No. 11 providing "that all elections shall be free and equal," was then taken up for consideration.

Mr. PETTIT moved to strike out the entire section.

The motion was disagreed to.

Mr. OWEN moved to strike out the word "equal" and insert the word "easy."

The motion was disagreed to.

The section was then ordered to be engrossed.

#### PERPETUITIES AND MONOPOLIES.

Mr. READ of Monroe. I propose, as an amendment, the following additional section:

SECTION —. Perpetuities and monopolies are contrary to the spirit of a free State, and ought not to be allowed.

Mr. RARIDEN. I would ask the gentleman to explain what he means by "perpetuities."

Mr. READ of Monroe. The delegate from Wayne is a legal gentleman, and surely ought to know the legal meaning of the word "perpetuities." It is a long time, sir, since I have looked into law books, and never as a professional student; but if I understand the meaning of the word, it is the direction which an individual may permanently give to real estate. I think that they are contrary to the spirit of a free government. Some of the States have so declared in their Constitutions, in reference to monopolies as well as perpetuities. I think both are contrary to the spirit of a free State, and that we ought to make a declaration of that kind in our Bill of Rights.

Mr. RARIDEN. The word "perpetuities" has a very extensive meaning, sir, and I do not know what the gentleman from Monroe, in his proposition, intends to comprehend under it. If he intends by it to say that the family shall not succeed to property or real estate in the statutory line, I go against it. If he intends that the owner of property rights shall not be perpetual, and he shall not distribute it by testamentary disposition, I also go against it. If he means simply that there shall not be entailed estates here, as in Great Britain, I do not care much about it.

My objection, sir, is to the breadth of the declaration—that there shall be no perpetuities or monopolies. What the gentleman might consider a monopoly I might not. What I might consider a monopoly he might regard as of infinite benefit to mankind, or incidentally so. What he might consider a monopoly in the hands of one or more individuals, I might regard as a measure that would result to the general good of mankind. I object, then, sir, to these general and sweeping terms which have no clear and fixed meaning in a Constitution. What they will be deemed to mean will depend upon the temper of those who may act upon them. I see no necessity for it, sir. I feel perfectly content to let those who come after us settle these questions in their own way. All these propositions, sir, in regard to monopolies that I have heard, are based upon the assumption that those who come after us will be incompetent to act for themselves in regard to the subject. There, sir, the gentleman differs with me. I believe in the possession of knowledge of the science of government. I believe there will be considerable experience gained up to the time when the people of this State next

meet to form a new Constitution or to alter the one we make. I want, then, sir, those who come after us to have the benefit of their own experience, and have the right in their own hands of doing their own business in their own way. And if those who come after us think proper to perpetuate real estate in the hands of families, it is not for me to grumble at it.

There is a good deal of talk about consistency, and some gentlemen say they would not go for this broad doctrine of human rights because they do not expect to live up to it. Well, sir, there are many things in which we come short. We do not live up to our profession as Christians. There is a model of perfection held up to the human eye, as Christians, and we come very far short of its perfection in our sins; and so in our political administration of matters. Our fathers put forth to the world broad declarations of the rights of man, but we do not carry them all out; and this fault I am sure is with us, and not the declarations.

All conveyances and all gifts for benevolent purposes have clauses of perpetuity in them; and, indeed, to destroy their perpetuity you destroy the thing itself, and defeat the purpose of benevolence very frequently.

Mr. READ of Monroe. Great general principles, lying at the foundation of human liberty, are incorporated into that part of our written constitutions called the Bill of Rights. I shall not discuss the question whether such a bill is an essential part of a constitution. It is a settled point with us, that we are to have one. It only remains for us to determine what principles shall go into it.

Is the principle now proposed such a one as ought to be incorporated into the Constitution? I hold that it is. Whatever is recognized by the Constitution becomes infixed in the minds of the people. The rising generation of men grow up indoctrinated in their political principles by the Constitution. In monarchical governments, the throne and the altar are sacred in the feelings of men. In republics, it is the constitution and the altar. The principle contained in the proposed section, is one which, in both the subjects embraced, is, I believe, acknowledged in the common law.

The gentleman from Wayne (Mr. Rariden) is fearful of these general and sweeping declarations, as he calls them. He wished to know the meaning of the word perpetuities. I believe that is as well fixed as any term used in the common law. It is, as I have before said, long since I examined books on the subject, but I thought there was no doubt as to the legal import of the word perpetuity. It is, according to my recollection, the settlement of property in such a way that it must go in the particular course directed by the grantor, and without any power of alienation. This is contrary to the policy of society, and especially injurious in a free government. It subverts the true end

of property. Why, sir, even in England perpetuities are not tolerated, and such, according to my recollection, is the distinct doctrine of the books. Property ought not to be tied up by the dead, so that it will not subserve the purposes of the living generation of men. I am quite sure the declaration is not in advance of the spirit of the English law. Mankind have always manifested a strange propensity to continue their control over the property which they have possessed, beyond their own lives, and if not prevented by law, to establish its use and descent for all time. Hence, entailed estates, perpetuities, and that direction of property by a past generation, which prevents its free and full use by the present generation. In a new State, in laying the foundations of society, I can see nothing improper in entering a declaration against all such abuses in the control of property.

Does the gentleman desire a definition of a monopoly? I believe it is defined to be an exclusive right granted to a man, or set of men, to employ their labor or capital in some particular manner. There was a time when almost every kind of business was carried on by the aid of monopolies. But in the progress of free principles, they have come to be considered odious;—that is the term which I believe the law applies to them. They are prejudicial to trade, hostile to the great principles of equality of rights—beneficial to the few and injurious to the many. The law and the science of political economy looks upon a monopoly in the same way.

If there is any use in having any great fundamental principles go into the Constitution, it seems to me that the proposed declaration may suitably enough find a place in the Bill of Rights.

Mr. BIDDLE. Mr. PRESIDENT: I wish to make a remark on the meaning of the word "perpetuities," as used in this amendment. I do not mean, sir, to detain the Convention with a critical, legal, or etymological definition of that word, but would give what I understand to be its practical effect. The gentleman from Wayne (Mr. Rariden) says that he believes in the progress of the human mind, and the general advancement of mankind, and, therefore, would not have this word in the Constitution. His logic does not appear to me to be sound. I believe in those principles as heartily as the gentleman, and, therefore, I *would* have this word in the Constitution. I would not bind those who are to follow us by perpetuities. There are certain natural rights which mankind never can control. One generation has no moral right to bind subsequent generations. We should not give direction to great and universal rights, such as the right to rocks for the building of State works and national edifices, to rivers for the purpose of navigation, to forests for timber trees, and even the right to con-



trol lands forever,—so as to bind them in perpetuity. These great elements of national strength came to us immediately from the hand of the Creator, and if destroyed cannot be reproduced by man. Every generation should use them fairly with a view to the claims of succeeding generations. I will give the gentleman an example of a perpetuity—such a one as I wish to avoid by this amendment. The ordinance of '37 which we talk so much about, provides that: "The navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways, and forever free, &c., &c."

Now, sir, this shows the utter futility of man undertaking to do more than he can perform. This provision in the ordinance has been, and must ever be repeatedly violated. Every dam constructed across the Wabash river by the State is directly against that provision. Every mill-dam, sir, erected by individual enterprise directly contravenes it. A vast majority of these tributaries are wholly useless for navigation. You may step across many of them. The carrying places between were then by Indian trails, and have long since been fenced up and cultivated. They could not now be opened. Sir, what folly then for man to write down on paper a contradiction to what God has engraved on the universe! Sir, no legislature, no court, no human power can enforce that part of this celebrated ordinance. It is to keep out of such absurdities that I support this proposition.

Mr. NEWMAN. I think perhaps that gentlemen have mistaken the meaning of the word "perpetuities" to some extent. It may accomplish the purpose designed, but in a more general sense it will cut off the dearest rights of citizens of the State. He who conveys lands to another conveys to him simply a life estate, if he uses other words that he will transfer to him, his heirs, or assigns, he uses words of perpetuity; and the right of transfer to others to hold, to them and their heirs and assigns, to all time, includes words of perpetuity. He who devises to another, to his children, to strangers or educational institutions real perpetuity of estate, to be held by heirs and assigns, or by institutions and successors, gives to it words of perpetuity. It perpetuates the same power in the grantee that the grantor possessed. The fact that persons may entail property on their children is an example of perpetuity.

Mr. BIDDLE. The gentleman from Wayne (Mr. Newman) gives us an example of *fee simple* as a perpetuity. That undoubtedly may become a perpetuity. It is possible that it may continue forever in the grantee and his heirs, but not at all probable, practically speaking; for it must be remembered that it does not exist a single day without the power in the owner to sell and convey. That which is subject to

be cut off and changed at any time by the will of the owner will never become a perpetuity in our government. A perpetuity is where the subject matter of it is so bound that the present or subsequent owner has not the power to change, or cut it off by his own act. Such a compact, I must insist, is against the spirit of our government and people, and opposed to the rational progress of the age.

Mr. NEWMAN. If I understand the definition of the gentleman from Cass, as he gave it, it expresses but a limited portion of the word "perpetuity." In answer to the inquiry of the gentleman from Monroe, (Mr. Read,) whether words of perpetuity and a perpetuity are not different, I would say that, if you use words of perpetuity which tend to perpetuate a particular thing, in a particular way, it is to every intent and purpose a perpetuity. This should not be with the class of cases he has in mind. That was the objection; it was too large a ground, and is in conflict with itself.

The class of perpetuities to which the gentleman refers is simply a class of entailment, and is within the control of the Legislature, who, for the last twenty-five years, have legislated against it. They have directed that entailment shall not exist, nor any power to perpetuate estates in a particular line, say to the oldest heir or male, to certain female heirs. It becomes a general estate; but still it is a perpetuity in its most general sense.

The same objection is maintained against monopolies. It cannot be denied that the charter of the Indiana University, to which funds have been appropriated to keep it in existence, for all time to come, is a perpetuity. No man can doubt that it perpetuates its property in a particular line, and that there is no power to direct it in any other way justly. You have a College Fund in the State, which is a perpetuity in a particular way; and on the same principle, and in the same manner, property can be vested in the State or in individuals.

You have erected a University at Greencastle. It has been endowed by the donations and gifts of the people of this State; yet it will be a perpetuity so long as there is a good Government existing in the State. To a certain extent, these institutions are monopolies; for they possess ample means over and above ordinary citizens to compete with individuals in educating the youth of the country. This is a monopoly designed for great and good purposes. So it will be in all those cases where the grantee and successors receive and apply an estate or funds for educational, religious, scientific, or benevolent purposes. Still the Legislature are not bound to grant such monopolies, although it is free and ought to grant, under all circumstances where the public good would be subserved by any such monopoly.

In regard to entails, I certainly am as much opposed to them as any one. It is one of that

peculiar class of perpetuities which my friend from Monroe looks upon as so odious.

Gentlemen ought to be careful how they introduce words into our Constitution which might be misunderstood or misconstrued.

Mr. HOLMAN said:

I would suggest a case, sir, where a perpetuity ought to be allowed. It is where a benevolent man grants property, either real or personal, for the sole purpose of endowing an institution of learning or of benevolence. The strong, and in most instances, the controlling motive, which would induce a man of enlarged liberality to set apart the labors of a life-time to the advancement of human happiness, is the hope that the effects of his benevolence may be perpetual. The cause of education, religion, and the general interests of humanity, have, during the past and present century, received a new impulse from the endowment of institutions having the advancement of those interests in view, by private and public munificence, induced alone by the prospect of perpetuity.

Every grant to trustees and their successors for a specific object, where the power of alternation does not vest in the trustees, or in the persons beneficially entrusted, creates a perpetuity; and there are but few, if any, gentlemen on this floor, who do not remember of some instance of a perpetuity created for educational or other benevolent purposes.

I mention this very usual species of perpetuities for the purpose of showing that the section proposed by the gentleman from Monroe might tend to defeat grants of the most useful and benevolent character, and in the permanency of which the dearest interests of society are involved.

Every other species of perpetuities, however, except those created for educational and eleemosynary purposes, are, in my humble judgment, contrary to the genius and spirit of our republican institutions.

The language of the proposed section is manifestly too general: "Perpetuities and monopolies are contrary to the genius of a republican government, and therefore should not be allowed."

There are instances within my own knowledge of private grants made years ago, for the general purpose of education. If the incorporation of such a section into our organic law did not defeat such, it would at least prevent grants of an equally benevolent character from being created in future.

Entailments of property in families, trust estates, and all other perpetuities of a like character, for the purpose of fostering and perpetuating aristocratic establishments, are always anti-republican in their tendencies, and should not be allowed; and, in fact, are not allowed by our present system of jurisprudence. Grants made in perpetuity for public purposes

are created for a very different purpose, and produce very different results.

I fully endorse the sentiment of the proposed section as to monopolies. In every sense they are utterly inconsistent with the genius of our Government, independent of the manifest injustice of conferring, by law, on individuals or associations, franchises not enjoyed by the body of the people. The necessary tendency of a monopoly is to wield a concentrated power ever at war with individual rights.

The section, as it now stands, is too general; properly modified as to perpetuities, it must produce the most beneficial results.

Mr. KENT moved to amend as follows: Strike out the words "ought not," and insert the words "shall not."

Mr. PEPPER of Crawford. Mr. PRESIDENT: As the section offered by the gentleman from Monroe (Mr. Read) embraces new principles for constitutional reform, and may be of more importance, affecting a greater variety of causes than the friends of the measure are at present apprised of; and that all may have an opportunity to examine the question fully, I move to lay the section and amendment on the table.

The motion was agreed to.

#### OPERATION OF THE LAWS.

The fifth section of No. 11 was then taken up, read a second time, and ordered to be engrossed, as follows:

"The operation of the laws shall never be suspended, except by the authority of the Legislature."

#### SECURITY OF PERSONS AND PROPERTY.

The sixth section of No. 11 was then taken up, read a second time, and ordered to be engrossed, as follows:

"SEC. — The right of the people to be secure in their persons, houses, papers, and effects against unreasonable search or seizure shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized."

#### PRIVILEGES OF THE PEOPLE.

The seventh section of No. 11 was then taken up and read a second time, as follows:

"SEC. — No law shall restrain any of the inhabitants of this State from assembling together, in a peaceable manner; nor from instructing their representatives; nor from applying to the Legislature for redress of grievances."

Mr. HOLMAN moved to amend by striking out the entire section and inserting in lieu thereof the following:

"The people have a right to assemble together in a peaceable manner to consult for their common good; to instruct their represent-



atives, and to apply to the Legislature for a redress of their grievances."

The amendment was rejected.

So the section was ordered to be engrossed without amendment.

#### DISFRANCHISEMENT OF ADVENTURERS.

Mr. HOWE. I propose, sir, to offer the following section as an amendment to the article:

"Every person who shall unlawfully engage in the invasion of the territory of a foreign nation with whom the United States are at peace, shall, in consequence of such offense, be *ipso facto* disfranchised, and rendered incapable of holding any office under this Constitution."

I have offered this amendment, sir, because I thought it to be right. It is known to every member of this Convention that the greatest difficulty in all republican governments, and to which they are most liable, is a species of propagandism and a tendency of adventurers, under these governments, seeking to uproot and overrun neighboring countries; and this has been a universal theme of reproach abroad to our Government. I appeal to gentlemen whether it is not notorious that citizens of the United States, in the East, the South, and West, did not long since engage in a piratical expedition upon the people of a nation with whom we were at peace; and it is a known fact that that offense has not received its adequate punishment. Now, sir, it is the duty of the people of this State to take this matter in hand, *as far as they can*, and in one point of view, this is the proper place for us to do it.

It is quite possible, sir, that no penalty under this amendment will in point or fact, ever take place—but then an action in this manner cannot fail of having a good moral effect.

There has been a question raised whether in a legal point of view a man could expatriate himself and resign his allegiance to this Government. This is a question that has never been decided.

But in a moral point of view, certainly, it should be conceded that a man has expatriated himself, and justly forfeited all political rights if he engages in any expedition of the kind I have alluded to.

Suppose an army composed of citizens of one State to invade a foreign territory with the government of which the United States are at peace, and these governments are thus embroiled in war; is it too much to demand of that State to place a mark of disapprobation on those citizens, if her laws permit it. So far as foreign governments are concerned, the States have merged their sovereignty in that of the General Government. That General Government has not the power of disfranchising a citizen of a State in respect to his rights as a citizen of that State, and is not that State by

every implied obligation of justice and good faith to restrain her citizens from such piratical outrages, as far as she can? Manifestly, she is; and in view of the present tendency of affairs in this country, that State is doing no more than exact justice, which thus attempts to restrain her citizens.

The States have not the right to pass criminal laws on this subject, and proceed by indictment against those citizens who violate these laws. The offense is not one against her sovereignty, but that of the United States. All the aid, then, which the State can afford the General Government, is the little mite which is indicated in this amendment, and this, upon every moral consideration, she is bound to extend. One object of a Constitution is to guard against evils which can be reached in no other way, and a permanent and extensive evil should be met as far as practicable by a permanent remedy. Are we patriots? Do we wish by all means in our power to give our Government stability at home, and character abroad? We aid these objects by the passage of this section. The energies and valor of our young men, whose bravery and force of character have been so signally demonstrated, should be invited to the avocations of peace. The elements of character which they possess will always make them good soldiers when their country may demand their services in a lawful war, and those elements will always be retained without the stimulus afforded by unlawful invasions.

Mr. EDMONSTON. I was not aware, sir, that this Convention was authorized to take under its care and control the business of the Congress of the United States; and if this course is to be pursued hereafter, I think we had better send a telegraphic dispatch to Washington to inform Congress that it cannot do so, as we will transact their business. I move, sir, to lay the proposition on the table.

Mr. MATHER called for the yeas and nays, but the requisite number of members not arising to second the call, they were not ordered.

The question was then taken upon the motion to lay the amendment upon the table, and it was decided in the affirmative.

Mr. SMITH of Ripley moved to amend the article by adding the following additional section:

"That no person arrested or confined in jail shall be treated with unnecessary rigor, or be put to answer any criminal charge but by presentment or indictment."

Mr. BASCOM moved to lay the amendment of the gentleman from Ripley (Mr. Smith) on the table, and

The motion was agreed to.

Mr. PETTIT moved that the Convention adjourn, which motion was rejected.

Mr. EDMONSTON moved to suspend the regular order of business, and take up for consideration article No. 20, but

The motion was rejected.

On motion of Mr. PRATHER,

The Convention adjourned until two o'clock,  
P. M.

#### AFTERNOON SESSION.

The Convention proceeded to the consideration of the next general order, being a report from the committee on the legislative department.

#### THE LEGISLATIVE DEPARTMENT.

The PRESIDENT stated the general question to be on the first section of the report, which is as follows:

"The legislative authority of this State shall be vested in a General Assembly, which shall be designated 'The General Assembly of the State of Indiana,' and shall consist of a Senate and House of Representatives; and the enacting clause of every law shall be, 'Be it enacted by the General Assembly of the State of Indiana.'"

Mr. NAVE. I move to amend the section by striking out the words "Senate and" in the third line, so that it shall read—

"The legislative authority of this State shall be vested in a General Assembly, which shall be designated 'The General Assembly of the State of Indiana,' and shall consist of a House of Representatives," &c.

In speeches that have been made in the Convention heretofore objection has been made to the number of Senators. For my part I see no good reason why we should retain the Senate at all, but that we should have a House of Representatives fresh from the people. With the restrictions that we propose to throw around the Legislature no evil could ever attend the action of the House of Representatives, as appears to be contemplated by some gentlemen, they being the immediate representatives of the people. Why, therefore, should we put the people to the additional expense of having a Senate; an irresponsible body, sitting in a different part of the Capitol, and elected, as some would suppose, for the purpose of looking over and controlling and regulating the action of the immediate representatives of the people—a body of men who hold their offices for four years, when the representatives of the people are only to hold their offices for two years? I ask the reason why we should continue this aristocratic body in the organic law of the State? a feature opposed in principle to our republican habits—a badge of tyranny borrowed from our mother country, Great Britain. There they have a House of Lords, men possessed of large fortunes, the adherents of the Crown, and who regard not the interests of the subject. It seems to me strange indeed that a nation should have resorted to a Revolution to rid themselves of tyranny, and continue to adhere to any of the features of that Government, which have for their object the concentration of power in the

few, to guard over the people's representatives; aye, sir, over the people themselves. But we are told that a Senate is absolutely necessary in this State, to act as a check upon the representatives of the people, to prevent improvident and hasty legislation by them. Sir, has the Senate heretofore, in the legislation under the old Constitution, had the effect of preventing such legislation? If it has that would be an argument against my position; but the history of legislation in Indiana, since 1836 up to 1850, proves the fact that the Senate, in lieu of preventing improvident and hasty legislation, has aided in such legislation, and will continue to act in concert with the House of Representatives in all time to come, if the House and Senate are composed of one hundred and fifty members, although they may sit and act in separate bodies as heretofore; and the reason is this: that a majority of the Senators are elected from the same districts throughout the State that a majority of the members of the House are elected from, and have the same constituency, the same local and general interests to represent, and therefore certain interests have been promoted in different parts of the State to the prejudice of others more deserving, and those interests are all to be found in those counties having one Senator and from two to four Representatives. Sir, the time was once that on hearing the name of Senator uttered, we had associated with the word in the mind a man of learning, age, and experience; but what impression does it make on the mind of an individual at this period in the history of the world? Nothing more than this: that the individual has been successful in an electioneering contest, and therefore has succeeded to the office of Senator. You cannot say that he is a man of either learning, experience, or age, but is a Senator elect. I therefore am of the opinion that the people ought to have a direct representation, and through that immediate representation let them have laws passed for their government. That which is done by the representatives of the people sent immediately from them for that purpose, can never result to their injury. In all the States and the Colonies, at the several periods when the delegates have assembled together for the purpose of making their organic laws or Constitutions, those delegates have invariably met and transacted their business in one body. It must be apparent to all that the making of organic laws is of more importance to the people than the passage of statute laws, the former of which may remain in force for centuries, while the latter may be changed or repealed at pleasure. I therefore conclude that there is no necessity for a Senate in this State. But, sir, there is another reason. If you continue in office for four years a set of men called Senators, they do not know the immediate wishes of those whom they should represent. They remain so long in office that they forget the ob-



jects for which they were elected. They are not, therefore, in fact representatives of the people, but merely an aristocratic body, sitting in another part of the Capitol overlooking the people's immediate representatives. With these views I propose this amendment, and also for another reason, to which, for a moment, I will advert. It has been alleged here that one object of this Convention is to cheapen the administration of the government of the State. Why then not cheapen it by cutting off fifty men who perform no useful service, and who yet have a *per diem* allowance of three dollars per day? Why not dispense with this body and fix the number of Representatives at eighty? Why not dispense with a body which, in my opinion, is altogether unnecessary? Those who have heretofore had the honor of serving the people in the legislative Halls of the State will bear me out when I say that in consequence of measures having to pass through another and independent body, they have not been prepared and considered with that degree of care and attention which they would have received if our system had so ordered it, that they should be perfected in one representative body. If, then, you dispense with the Senate you will impose upon the remaining branch the duty of cautiously passing every thing they act upon; and in so doing I say again there cannot result any danger to the interests of the people. Sir, it appears to me to be preposterous in the science of government that we should continue two legislative bodies to act in separate capacities for no other purpose than that I can see than that of entailing a debt upon the State. With the view, therefore, of cheapening the administration of our government I propose this amendment, and am anxious that the same may prevail, thereby securing to the people a safe and wise government, whereby they may in the future govern themselves. But we hear objections to such a radical change in the organic law of the State; and who are the objectors? Are they to be found in the industrious and hard-working portion of the State? No, sir! Where do we find the objectors? They are to be found amongst that portion of our citizens called office-hunters. They all object, and why? Because they expect to live by office, at the expense of an unsuspecting people, and the greater the number of offices to fill the more men will thereby be accommodated. I have thought it due to myself and the country at large to say as much as I have said on this important subject, and much more might be said in support of the motion; but owing to the noise and confusion which prevails in this Hall, I will add nothing more.

Mr. WATTS. I have a small amendment, which perhaps the gentleman from Hendricks will add to his. If not I will offer it myself as an amendment to his amendment. It is, "and that the south end of the Capitol be sold, and

the proceeds applied to the payment of the public debt." [Laughter, "consent," and applause.]

The PRESIDENT. Will the gentleman from Hendricks accept of that amendment?

Mr. NAVE. No, sir.

Mr. PEPPER of Crawford moved to lay the amendment on the table, which was agreed to.

Mr. NEWMAN moved to amend the section, by striking out the words "shall be designated the General Assembly of the State of Indiana," so that the section would read,

"The Legislative authority of this State shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives," &c.

The words which he moved to strike out were mere surplage and wholly unnecessary.

The question being taken on the amendment; it was adopted, and the section was then ordered by consent to be engrossed for a third reading.

#### NUMBER OF SENATORS AND REPRESENTATIVES.

The PRESIDENT. The question now is upon the second section of the report.

The section provides that the Senate shall consist of not less than one-third nor more than one-half of the members of the House; and the House of Representatives shall consist of not less than sixty nor more than seventy-five members, to be chosen by the qualified electors of their respective counties, or of the districts into which the State may from time to time be divided.

Mr. EDMONSTON moved to amend the section by striking out the words "seventy-five," and inserting the words "one hundred." [Cries of "consent," "consent."]

Mr. SMITH of Scott, offered an amendment to the amendment, which was to strike out the words "sixty, nor more than seventy-five," and insert "one for each county, nor more than a hundred and twenty," and also to add the following proviso:

"Provided, That each county shall be represented by one member."

Mr. KELSO. I rise to a point of order. The point is that the amendment of the gentleman from Scott is not in order for the reason that it proposes to strike out a portion of the amendment that has not been acted upon by the Convention.

The PRESIDENT. The amendment of the gentleman from Scott is perfectly in order. Any gentleman has the same right to offer an amendment to an amendment, as to offer to amend the original section.

Mr. KELSO. I always give way when I am beaten; but I don't like to give way to men no better than I am.

Mr. SMITH of Scott. Mr. PRESIDENT, Inasmuch as I am placed here to represent the honorable constituency of the county of Scott,

I would be derelict in duty, if I did not raise my voice in opposition to the passage of such a section as will in the future deprive my people of their voice in the passage of laws by which they are to be governed. Now, sir, what is the question under consideration? Nothing less than a reduction of the present number of Senators and Representatives. My amendment proposes to fix in the new Constitution, the present members, with a proviso that each county in the State shall be entitled to one Representative. Is there anything unjust or unreasonable in this request? Every county in the State is a species of independency—a feeling of identity of interest pervades the feeling and interests of every individual in each county. It matters not how or what produces that feeling—it exists; and if the people are the sovereigns, if all power is inherent in them, if all “free governments are founded on their authority and instituted for their peace and safety and happiness,” we as their servants, as their representatives, are bound to regard their will. Why then should not each county have an immediate representative—a man whose interest is identified with the interests of the people whom he represents—who residing among his constituents, feel as they feel, thinks as they think, and therefore truly reflects their will. How can a representative living in another, a remote county, understand the interest of a distant county. The people cannot anticipate every question which may arise in the Legislature, and therefore cannot instruct their representatives on some questions that may arise; therefore, every county should have an *immediate* representative, understanding their habits, manners, customs, feelings, and interests, to speak their voice in the Legislature.

But if two or more counties are united together, how can one man represent both counties upon any one question, unless, as is seldom the case, there should be a coincidence in all the interests under consideration? The strong can take care of themselves, the weak only need protection. If a large and small county are united together for representative purposes, the stronger will always rule, and all the interests of the smaller will be merged and lost in the greater, and the consequence will be that a large portion of the people will be dissatisfied with the enactment of laws in the passage of which they were either not heard at all, or misrepresented. If the larger counties yield to the smaller a representative, they gratify thereby all the selfishness of our nature, and exhibit a spirit of magnanimity worthy of their greatness, while on the other hand they lose nothing thereby, for they too have an immediate representative to represent their interests. If it is a fault to be weak, we of the small counties are not chargeable with our condition, for the Legislature without our consent, and with a perfect knowledge of the present state of

things, has made us what we are, and the sin of the act is to be visited upon our heads as though we had created ourselves, if we are deprived of an immediate representative. But it is said that hereafter the Legislature will be permitted only to pass general laws. What harm then can arise by permitting each county to select a man to advise upon those general interests? If the representative represents only several interests, what danger can arise to the larger counties, if the smaller ones should elect an undue number of representatives? If each member of the Legislature is the representative of the *whole* State, as has been argued, what evils can arise by permitting unequal districts to select the representatives? We ask therefore that each and every organized county shall be permitted to have their will, their feelings, and their interests represented by a member to the Legislature selected by themselves, who may at all times reflect their will. But, sir, adopt the doctrine of some gentlemen who have taken part in this debate, that is, “the further the representative is removed from his constituents the better will be our laws”—I say adopt such a principle, by cutting down our representation, by making our senatorial and representative districts so large as to destroy the intimate relation and connection now existing between the representative and the people, and my candid opinion is that the people of our State will reject any Constitution you may present them, with such a provision. I therefore hope, that this Convention will give the amendment which I have just offered, that consideration which, in my judgment, it merits.

Mr. BADGER. Believing that this section as reported by the committee, reflects the will of the people of the State, and is just as it should be, I move to lay the amendment and the amendment to the amendment on the table.

Mr. COLFAX called for a division of the question.

The PRESIDENT. A division of the question being called for, the question will be first on the amendment to the amendment.

The yeas and nays being demanded and ordered, were taken with the following result:

YEAS.—Messrs. Alexander, Allen, Badger, Barbour, Beard, Berry, Bright, Butler, Clark of Hamilton, Clark of Tippecanoe, Coats, Colfax, Cookerly, Crawford, Davis of Madison, Davis of Vermillion, Dick, Dunn of Jefferson, Duzañ, Farrow, Fisher, Foley, Foster, Gibson, Gordon, Haddon, Hall, Hamilton, Helm, Helmer, Holman, Hovey, Howe, Huff, Johnson, Jones, Kent, Kendall of Wabash, Kinley, Lockhart, Logan, March, Mather, McLean, Miller of Gibson, Morgan, Morrison of Marion, Mowrer, Nave, Newman, Niles, Owen, Prather, Rariden, Read of Clark, Read of Monroe, Ristine, Robinson, Schoonover, Shannon, Sherrod, Sims, Smiley, Steele, Stevenson, Tague, Tannehill, Taylor,



Thomas, Thornton, Todd, Trimble, Wallace, Walpole, Watts, Wolfe, Yocum, Zenor, and Mr. President—80.

**NAYS.**—Messrs. Anthony, Bascom, Biddle, Blythe, Borden, Bowers, Brookbank, Bryant, Carr, Chandler, Chapman, Chenowith, Cole, Conduit, Crumbacker, Dunn of Perry, Edmonston, Garvin, Gootee, Graham of Miami, Harbolt, Hardin, Hendricks, Hogin, Kelso, Kendall of Warren, Maguire, May, McClelland, McFarland, Miller of Clinton, Miller of Fulton, Milroy, Mooney, Moore, Murray, Pepper of Ohio, Pepper of Crawford, Ritchey, Snook, Smith of Ripley, Smith of Scott, Spann, Wheeler, Wiley, and Wunderlich—46.

So the amendment to the amendment was laid on the table.

**THE PRESIDENT.** The question now is on aying the amendment of the gentleman from Dubois (Mr. Edmonston) on the table.

The yeas and nays being demanded, and ordered, were taken, and resulted as follows:

**YEAS.**—Messrs. Badger, Barbour, Beard, Bourne, Brookbank, Butler, Clark of Hamilton, Coats, Conduit, Cookerly, Crawford, Davis of Madison, Davis of Parke, Dunn of Jefferson, Duzan, Farrow, Fisher, Foley, Foster, Gibson, Gordon, Haddon, Hall, Hamilton, Helm, Helmer, Holman, Howe, Kelso, Kindley, Logan, March, May, McClelland, McLean, Miller of Gibson, Morgan, Mowrer, Murray, Nave, Newman, Rariden, Read of Clark, Read of Monroe, Ristine, Robinson, Schoonover, Shannon, Sherrod, Sims, Smiley, Stevenson, Tague, Tannehill, Thomas, Thornton, Todd, Trimble, Walpole, Watts, Wolfe, Yocum, Zenor, and Mr. President—64.

**NAYS.**—Messrs. Alexander, Allen, Anthony, Bascom, Berry, Biddle, Blythe, Borden, Bowers, Bright, Bryant, Carr, Chandler, Chapman, Chenowith, Clark of Tippecanoe, Cole, Colfax, Crumbacker, Davis of Vermillion, Dick, Dunn of Perry, Edmonston, Garvin, Gootee, Graham of Miami, Harbolt, Hardin, Hendricks, Hogin, Hovey, Huff, Johnson, Jones, Kent, Kendall of Wabash, Kendall of Warren, Lockhart, Maguire, Mather, McFarland, Miller of Clinton, Miller of Fulton, Milroy, Mooney, Moore, Morrison of Marion, Niles, Owen, Pepper of Ohio, Pepper of Crawford, Prather, Ritchey, Snook, Smith of Ripley, Smith of Scott, Steele, Taylor, Wallace, Wheeler, Wiley, and Wunderlich—63.

So the amendment, was laid upon the table.

**MR. KELSO.** I have an amendment which I now wish to offer to this section. It is to strike out the words, "not less than sixty nor more than seventy-five," and insert "one member from each organized county in the State." [Cries of "consent, consent, consent."] Sir, I have a word or two to say in regard to that amendment, and after that I think I shall be ready to vote upon any proposition that may be presented, without troubling the Convention any further. It seems to me, that upon this

proposition we ought, as far as possible, to divest ourselves of everything like selfishness.

Now there are two legitimate modes on which to base a representation—either on population or on territory—the one or the other. Now, of the two, in the State of Indiana, I maintain that that of territory is the most proper. For that reason I have offered the amendment that the House of Representatives shall consist of one member from each organized county in the State. The most general interests of the community should be that which is most specially attended to in a basis of representation. No member of this Convention will deny that three-fifths, if not four-fifths of the population of Indiana are engaged in agricultural pursuits, and by governing our representation by the territory, by giving one representative, at least, to each county, we fully represent the agricultural interests of the State. If their interest be well protected I apprehend but little danger to the rest of the community, for the interest of every other pursuit is based upon the success of the agriculture of the country.

Now, sir, in amending the Constitution, we propose hereafter to dispense with all the special and local legislation that we can possibly dispense with; that the laws enacted by the Legislature, and by which the people are to be governed, shall be of as general a character as the circumstances of the case will possibly permit. Now if that be the case, I ask any delegate on this floor to answer me this question: what is the necessity of having more than one member from any county in the State? I say, sir, that the man who cannot represent every single question in the county of Wayne, one of the largest counties in the State, cannot represent the least. The man that cannot understand the several interests of that county, the largest in the State, both in point of wealth and population, cannot learn the interests of any county at all. One representative, I maintain, can attend to the several interests to be operated upon alone, by general provisions of law, for ten thousand men, just as well as he can for one thousand. And why then the necessity of having more than one representative from any one county, and why may not each county have one representative? Each county may have its separate interest to be attended to; and in the application of general laws, that interest should and ought to be entitled to a voice equal to one vote. Now all the advantage that can be derived from sending two or three members to represent a county, is the advantage of numbers when they come to vote.

Now, I contend that there ought to be one representative from each county. If we were going to continue the old mode of legislation, where every county had a law for itself, and every separate interest a law for itself, there would be great propriety then, in insisting upon

numbers as large as possible in each county. But if we are to be hereafter governed by general laws, to operate upon all alike, I say that one representative from each county should have a separate voice in making the laws—the small counties as well as the large ones.

Sir, it is perhaps impossible to do strict and even-handed justice in this matter, and there are divers other questions to come before this Convention, in which strict justice cannot be meted out. It may be said in reply to my argument, that the large counties pay vastly more revenue than the smaller ones—such, for example as the county of Ohio, which, perhaps, is the smallest in the State, and that, therefore, the large counties ought to have a greater representation. But why ought this to be so? The large county, pays her money and contributes her funds to the general expenses of the government. And in return for what she pays in taxes, she has her large population, and her immense wealth protected. So does each county pay into the State treasury in proportion to her wealth; and all that she has back for it, is the same kind of protection to her population, her wealth, and her commerce. There is no necessity, sir, for giving any special advantages to the commercial interests of the State. They would be well enough secured by giving one representative to each county. It is charging the people with folly, to say that a county can be set up in opposition to a city within the limits of such county; for where the agricultural population does not prosper, no city can be built up. Then the county of Jefferson, or Floyd, or Marion, with their fine cities, would all be sufficiently well represented with one member in the Legislature. That representative can attend alike to the agricultural and the commercial interests of the county, and there is no danger of the commercial interest suffering, if the agricultural interest is well cared for.

I therefore maintain that the nearest we can come to strict justice, is to measure the population by the territory, and to give one representative to each county, be it great or small ("consent, consent"). There will be no danger hereafter, of an overwhelming increase in the House of Representatives—no danger of going beyond a reasonable number, for if it should be thought proper to increase the number of counties, we would only increase the representatives one for each additional county. But while that section in relation to the area of counties remains as it is, we are almost forbidden the idea of ever creating a new county in the State of Indiana.

Now it may be said that there are some eight or ten counties in the State that do not exceed a thousand votes in each. But let me say in reply to that, that there are not more than three or four of these counties but what have large territory and flattering prospects of a large increase of population. We should, therefore,

look to the results which are most probable, and furnish them with a representation according to their circumstances. Although I admit that it will not be strictly even-handed justice, I maintain that it will come nearer to it than any other rule which can apply to the House of Representatives or the General Assembly of the State hereafter.

Now, sir, if I am driven to accept of population as a basis of representation—and I admit, that that is the rule most generally adopted in the United States—it is I know by the General Government, and, perhaps, by a large majority of the States of the Union—then I give notice that I will move for the number of sixty, and fixing the increase to meet the increase of population in the growing counties, so that that increase shall not be filled up by any sudden freak of the Legislature hereafter.

MR. FOSTER. I believe that this is an amendment to the original section under consideration. I therefore propose to strike it out and insert the following.

THE PRESIDENT. It is in order for the friends of the section to perfect it before any motion can be entertained to strike it out.

MR. FOSTER. I will barely remark, then, that I will read the section which I contemplate offering hereafter, as a substitute for this. If I have an opportunity of moving to strike out this section and moving to insert the first section of report No. 21, from the committee on the elective franchise, I will do so. This is one of the compromises by the committee on apportionment. We wished to have thirty Senators, and ninety members in the House of Representatives; but we made a compromise, and thought that we would have the representative branch as large as it now is, and reduce the Senate so as to give one senator to two representatives. These were the views that influenced us. I shall not go into the argument now; but I shall offer this section when the opportunity occurs, believing that it is the fairest that has been offered yet, and that the committee came to the same conclusion when they penned this section, and when it was reported to the Convention,

MR. LOCKHART. I do not favor either the section read by the gentleman from Monroe (Mr. Foster) or the one now under consideration. I propose to strike out the section reported by the committee on the legislative department and to offer the following: "The Senate shall consist of fifty, and the House of Representatives of one hundred members." In the mean time I move to lay the amendment of the gentleman from Switzerland (Mr. Kelso) on the table.

The yeas and nays being demanded and ordered on this motion, they were taken, with the following result:

YEAS.—Messrs. Allen, Badger, Barbour, Beard, Berry, Bourne, Bowers, Bright, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Colfax,



Conduit, Cookerly, Crawford, Davis of Parke, Dobson, Dunn of Jefferson, Duzan, Farrow, Fisher, Foley, Gibson, Graham of Miami, Haddon, Hamilton, Helm, Helmer, Holman, Howe, Huff, Johnson, Jones, Kent, Kendall of Wabash, Kinley, Lockhart, Logan, Maguire, Mather, McLean, Miller of Gibson, Morgan, Morrison of Marion, Mowrer, Nave, Newman, Niles, Owen, Rariden, Read of Clark, Ristine, Robinson, Schoonover, Shannon, Sherrod, Sims, Steele, Stevenson, Thomas, Thornton, Todd, Wallace, Walpole, Watts, Wiley, Wolfe, and Mr. President—67.

**YAYS.**—Messrs. Alexander, Anthony, Bascom, Blythe, Borden, Brookbank, Bryant, Butler, Carr, Chandler, Chapman, Chenowith, Crumacker, Davis of Madison, Davis of Vermillion, Dick, Dunn of Perry, &c., Edmonston, Foster, Garvin, Gootee, Gordon, Harbolt, Hall, Hardin, Hendricks, Hitt, Hogin, Kelso, Kendall of Warren, March, May, McClelland, McFarland, Miller of Clinton, Miller of Fulton, Milroy, Mooney, Moore, Murray, Pepper of Ohio, Pepper of Crawford, Prather, Read of Monroe, Ritchey, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Tague, Tannehill, Taylor, Trimble, Wheeler, Work, Wunderlich, Yocum, and Zenor—59.

So the amendment was laid upon the table.

**MR. LOCKHART.** I now move to strike out the section, and insert the following:

"The Senate shall consist of fifty members, and the House of Representatives of one hundred, to be chosen by the qualified electors of the respective counties, or of the districts into which the State may from time to time be divided; and should any county or district be entitled to more than one representative, the General Assembly shall divide such county or representative district according to population without regard to territory."

**MR. PEPPER** of Crawford moved to lay the amendment on the table.

The yeas and nays being demanded and taken on the motion, resulted as follows:

**YEAS.**—Messrs. Alexander, Allen, Badger, Barbour, Beard, Berry, Bourne, Bright, Brookbank, Butler, Carr, Clark of Hamilton, Clark of Tippecanoe, Coats, Colfax, Conduit, Cookerly, Crawford, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dunn of Jefferson, Duzan, Farrow, Fisher, Foley, Foster, Gibson, Gootee, Gordon, Haddon, Hamilton, Helm, Helmer, Hitt, Holman, Howe, Huff, Johnson, Jones, Kelso, Kent, Kinley, Logan, March, Mather, May, McClelland, McLean, Miller of Clinton, Miller of Gibson, Milroy, Mooney, Morgan, Morrison of Marion, Mowrer, Nave, Newman, Pepper of Ohio, Rariden, Read of Clark, Read of Monroe, Ristine, Robinson, Schoonover, Shannon, Sherrod, Sims, Smiley, Steele, Stevenson, Tague, Tannehill, Taylor, Thomas, Thornton, Todd, Trimble,

Wallace, Walpole, Watts, Wolfe, Wunderlich, Yocum, Zenor, and Mr. President—87.

**NAYS.**—Messrs. Anthony, Bascom, Blythe, Borden, Bowers, Bryant, Chandler, Chapman, Chenowith, Cole, Crumacker, Dobson, Dunn of Perry, &c., Edmonston, Garvin, Graham of Miami, Hall, Harbolt, Hardin, Hendricks, Hogin, Kendall of Wabash, Kendall of Warren, Lockhart, Maguire, McFarland, Miller of Fulton, Moore, Niles, Pepper of Crawford, Prather, Ritchey, Snook, Smith of Ripley, Smith of Scott, Spann, Wheeler, Wiley, and Work—39.

So the amendment was laid upon the table.

**MR. SIMS** moved to strike out all before the word "members," in the ninth line, and insert:

"The Senate shall consist of forty, and the House of Representatives of eighty members."

**MR. PRATHER** moved to lay the amendment on the table.

The yeas and nays were demanded and ordered, and being taken, resulted as follows:

**YEAS.**—Messrs. Alexander, Anthony, Barbour, Berry, Blythe, Borden, Bright, Brookbank, Bryant, Butler, Chandler, Chenowith, Clark of Tippecanoe, Coats, Cole, Colfax, Conduit, Cookerly, Crawford, Crumacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dunn of Jefferson, Dunn of Perry, &c., Duzan, Edmonston, Fisher, Foley, Garvin, Gordon, Graham of Miami, Haddon, Harbolt, Hardin, Helmer, Hitt, Hogin, Hovey, Howe, Huff, Jones, Kelso, Kent, Kendall of Wabash, Kendall of Warren, Kinley, Lockhart, Logan, Maguire, Mather, McClelland, McFarland, McLean, Miller of Gibson, Milroy, Mooney, Moore, Morrison of Marion, Niles, Pepper of Ohio, Pepper of Crawford, Prather, Read of Monroe, Ristine, Ritchey, Robinson, Schoonover, Shannon, Sherrod, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Stevenson, Tague, Tannehill, Taylor, Thornton, Todd, Trimble, Watts, Wheeler, Wiley, Work, and Mr. President—89.

**NAYS.**—Messrs. Allen, Badger, Bascom, Beard, Bourne, Bowers, Carr, Chapman, Clark of Hamilton, Dobson, Farrow, Foster, Gibson, Hall, Hamilton, Helm, Hendricks, Holman, Johnson, March, May, Miller of Clinton, Miller of Fulton, Morgan, Mowrer, Nave, Newman, Rariden, Read of Clark, Sims, Smiley, Thomas, Wallace, Walpole, Wolfe, Wunderlich, Yocum, and Zenor—38.

So the amendment was laid upon the table.

**MR. SPANN** moved to amend the section by providing that the Senate consist of not exceeding fifty members, and the House of Representatives of not exceeding one hundred members, to be chosen by the qualified electors of the respective counties or districts into which the State may from time to time be divided.

Mr. RITCHEY. We have been voting very rapidly on amendment after amendment. There has been no discussion, and perhaps gentlemen do not want any; but I do wish to say to this Convention that I hope the amendment offered by the gentleman from Jennings may prevail. Sir, this was one of the most exciting questions which was agitated in the county of Jefferson during the last campaign. Our opponent—for we had but one in that county, took ground decidedly in favor of a reduction of the members of the Legislature, and the question was as hotly canvassed as any other question, and I believe the decision was as decidedly against a reduction of the number of the members of the Legislature, as it was in favor of any other proposition submitted to them.

Sir, there are a great many small counties in the State of Indiana, and if you lessen the number of representatives, you give to the large counties almost the exclusive privilege of making laws for the State. As was remarked by the gentleman from Switzerland, (Mr. Kelso,) many of the new counties are rapidly increasing in population; and it is unfair to say that the interests of those counties shall be smothered by the overwhelming interest which will be brought to bear upon them by the old counties of the State.

Sir, I hope the amendment will prevail; and if it were adopted I would go further and propose that after the first or second or third census after the new Constitution has been adopted—if it ever should be adopted—we should increase the number of representatives above one hundred. Sir, there is no propriety in limiting the representation of the people. It is the great interest of the State to have every portion of the State represented on this floor; and it is impossible with the number of counties we have that the people should ever be fairly represented with a less number than that proposed by the gentleman from Jennings. I hope the Convention will not consent to a less number than we have had for a number of years past—one hundred in the House and fifty in the Senate. I had an amendment which I was anxious to offer, which provides that the Senate shall not consist of less than half the number of representatives, and that the House of Representatives should at present be composed of one hundred members, and that there should afterwards be an increase of representation.

Sir, the idea that we should practice rigid economy is a very proper one; but to carry it to such an extent as to cripple the interests of the people is to be "penny wise and pound foolish." It is a penny wise economy which I hope never to see practiced.

I noticed in a paper yesterday that in New Hampshire they had authorized even their small townships having not more than one hundred and fifty voters to be represented in their representative Hall by sending a member there.

And why should not we allow our counties that consist of from 1200 to 2000 voters to be represented on this floor? Sir, if you reduce the number of representatives to what is proposed by the committee, and what would seem to be the wish of many members of this Convention, your counties which have two thousand voters would scarcely be entitled to send a representative here. And, sir, how large will your senatorial districts be under that arrangement? Why they will cover whole sections of the State; and I ask you if there are not interests in those sections as diverse as it is possible for interests to be? If the public debt were out of the way a tax of eight or ten cents on the hundred dollars would support a government with a hundred and fifty members in the House, and half that number in the Senate. I trust, then, that the Convention will not act hastily in regard to this reduction, and thus cripple the interests of the people, and prevent numerous counties in the State from having a voice in its counsels.

Mr. DOBSON. This is one of the most important questions that we shall have to consider this winter, and I am sorry to perceive that the Convention do not appear to be in a disposition suited to its calm and dispassionate consideration. This is no light question. A proposition has been introduced here for the purpose of doing away with a principle that has held good in our government ever since we had a government, and that was to dis sever the idea of taxation and representation. The proposition, it is true, was disposed of in a summary manner, showing that the members of this Convention were very little disposed to set aside one of the fundamental principles of all liberal governments. It was disposed of hastily; yet, as I think, rightly.

Now, what are we going to do? We are going to fix the number of Senators and Representatives for perhaps fifty years to come. Sir, under these circumstances, I go for the largest representation that can act without being too unwieldy, and not too expensive.

[A VOICE. "That's the doctrine."]

In a purely democratic government, all the people meet together for the purpose of making the law. In our country, however, owing to its great extent, they cannot do this; and hence they delegate their power to one whom they style their "representative," who goes to the seat of government, and gives utterance to the people's voice. Now, sir, I am of opinion that the people should be represented as fully as they are able to pay for. This matter of dollars and cents, in regard to a question of this kind, I hold to be one of the smallest considerations; and unless gentlemen wish that the large counties should swallow up all the small ones—as the rod of Moses when cast upon the ground, became a large snake, and swallowed all the smaller snakes of the Egyptian magi—I think



they are wrong in seeking to practice too rigid economy in this department of government.

The State of Indiana has now been in existence for thirty-four years; and how has she progressed? Looking at what she has been, and at what she is now, I think we may safely judge of the future by the past, and predict a degree of prosperity in time to come, that will make her one of the greatest States of this confederacy. She has grown with amazing rapidity; and by way of taking a cool, dispassionate, and correct view of things, I would call the attention of gentlemen to a few figures, exhibiting her progress as it is actually on record. In the year 1800, there were in the territory, only 4,875 persons, principally French inhabitants at Vincennes, and a few families in Clark's Grant. There were at that time—only fifty years ago—but 280,000 persons west of the Allegheny mountains, and not even a waggon road across them.

| Year. | Population. | Polls.* | Value of property. |
|-------|-------------|---------|--------------------|
| 1800  | 4,875       |         |                    |
| 1810  | 24,520      |         |                    |
| 1816  | 65,000      |         |                    |
| 1820  | 147,178     |         |                    |
| 1830  | 343,081     | 52,000  |                    |
| 1835† |             | 64,000  | \$47,353,885       |
| 1836  |             | 77,000  | 82,163,687         |
| 1837  |             | 85,000  | 98,500,000         |
| 1840  | 685,866     |         |                    |
| 1849  |             | 135,919 | 127,051,165        |
| 1850  | 1,000,000   | 187,000 | about 135,000,000  |

\*White males over 21 years of age.

†Before the year 1835, we had a specific tax, therefore the total value of property cannot be ascertained.

In 1836, we had only 5,000,000 acres of land taxable—in 1850, we have upwards of 15,000,000. By a law of Congress, passed in 1847, we can tax all lands sold by the United States, which will cause about 2,000,000 more to pay tax, whenever the Legislature may think proper to tax them, which will make above 17,000,000 of acres of land subject to taxation. There is 23,360,000 acres in the State, all of which will, in the course of time, become productive and taxable.

Now, as to the revenue, it has increased in the same proportion, and so has the amount of taxable property. In fifteen years, we have more than trebled our wealth, and doubled our population; and yet it seems that we are prepared here to say, that a less number of representatives shall transact the business of the people, in twenty, thirty, forty, or fifty years from now, than we have at the present time. Sir, this is a retrograde movement. It is wrong. The Legislature is the popular branch of the government, and ought to be as full as the people desire that it should be. It is their duty, to make, to alter, or amend the laws by which the people are to be governed, and to attend to their business in every particular; for it is through the Legislature that the people speak.

Now, Mr. President, we have said that the people, through the Legislature, should only speak once in two years. That, sir, is a back-

ward step, in my estimation, though a great many of the people appear to be in favor of it. I voted for it in accordance with their wishes. I believe that the public voice should be in constant readiness to speak, at any and every moment, when an exigency may require it. [A VOICE. "So it is, for the Governor has the power to convene the Legislature at any time."]

But, sir, it is the duty of the Legislature to assess the taxes requisite for the support of the government. Now I want gentlemen to remember that taxation and representation should be equal; that I, living in a county with five hundred inhabitants, should not have an equal voice in assessing a tax, with the county of Wayne, with four thousand and five hundred of a population. It would be unequal, and unfair, that I should have the same power of assessing taxes that they have. If they have four voices at home, and I only one, they should have four voices to my one in the assessment of taxes. Now, it is the business of the Legislature to assess the taxes, and to perform various other duties. It is true that we have reduced their duties to a considerable extent. Under the Constitution of the United States, it is their duty to elect a United States Senator, and, in the performance of that very important duty, the principle of electing one member of the House of Representatives from each county would work most injuriously—for the people would not then be represented on the broad principles of republicanism, but the only representation would be of the territory. Then the county of Benton, with only two hundred voters, would have as much voice in the election of a United States Senator, as the county of Wayne, or any other county in the State. That would be wrong; for, in that case, taxation and representation would no longer be equal, and that is a principle which ought never to be lost sight of.

Again: it is the duty of the Legislature to impeach the Governor of the State, if necessary, and that should be done only by a Legislature representing the people, and not a Legislature merely representing territory. It is their business, too, to guard and protect the revenues of the country; and as the revenue is usually in proportion to population—for there would be no revenue without it—it is but fair that those who have the largest amount of revenue to pay, should have the largest voice in the assessment.

Another thing, sir, it is not bad policy for the people of the various parts of the State to meet frequently together by their representatives, in order to instruct and be instructed in those matters which appertain to the interests of every section, so that such laws may be framed as will conduce to the good of the whole population of the State.

Now, I believe these to be the feelings of the people of the country. There are now ninety counties in the State, of which the counties that I represent, are over average counties, in point of population, and one of them a little over the average in point of wealth; and I believe that the county of Owen or Green, would never be content without one representative each. Mr. President, whenever the people in the smaller counties become too poor, either from mental or physical causes, to take care of themselves, it is time enough to appoint guardians over them; but, sir, not till then. I take it that the people have a right to be heard in the Legislative halls of the State, if they pay for it, and I believe that every average county in the State would be willing to pay for it.

Now, so far as the Senate is concerned, I would not care so much to have it reduced; still I shall oppose it. Many of the people are anxious to have it reduced, and it is perhaps necessary, whether their numbers be reduced or not, that they should be a little reduced in their dignity. [A laugh.]

Another thing: Our people have all the time an interest at the seat of government. They have a large interest here. They send to the seat of government over half a million of dollars annually, which is assessed and collected by the Legislature; and when we have double the population which we have now, which I suppose we will have before very long, it will amount to a million; and you may depend upon it that that time will come before this Constitution is altered or amended. The people have various other interests, and they want to come here to do various business. The people of each county would doubtless be willing to bear the expense of having a member here, not only to transact the duties of a legislator, as already mentioned, but it would even be a part of the consideration that an individual—no matter what his calling may be—who has business at the seat of government can find some one he is acquainted with when he reaches here, and who he knows will see that his rights are secured. He feels as if he were coming to his own house, and not to the house of the stranger.

I hope, then, that the Convention will provide for not less than a hundred members, to be selected from districts in regard to population, and not in regard to wealth, or territory, or anything else—but solely in regard to men. And I would provide that after the year 1870, they might be increased to 120. Sir, I hold that if the people cannot act through their representatives they can act in no way whatever. These are my views about the matter, and I hope that the Convention will consider the question calmly and dispassionately, both for our own and the public good.

Mr. READ of Clark. The gentleman says that we should make some compromise. My

opinion is, that the public sentiment requires that a reduction should be made in the number of the members of the Senate. Our Senate is larger than any Senate in the United States. Let us reduce them to thirty, and say a hundred in the House of Representatives. I, for one, am willing to vote for that number.

Mr. FOLEY. I move to amend the amendment by providing that the Senate shall consist of not more than thirty, and the House of Representatives of not more than seventy members. I think that we have a fair test before us of the value of such a proposition. It must be evident to every gentleman here, that if we had but seventy members on this floor we would proceed with business much faster than we do now. I do not consider that the interest of the country requires that there should be a member from every county. I thoroughly believe that a small number of men will do business with more dispatch and accuracy than a large number; and for that reason I offer the amendment.

Mr. HADDON. I am not going to make a speech on this question, but have merely risen to move to lay the amendment and the amendment to the amendment on the table, with the view of offering another amendment to the section, which is, that the Senate shall consist of thirty members and the House of Representatives of one hundred.

After some conversation between Mr. Kelso and Mr. Haddon, the latter gentleman withdrew his amendment.

Mr. RITCHEY. As it is so difficult a matter to agree upon the number of Senators and Representatives, I do hope that gentlemen will not pile amendments upon amendments, but let us take a vote on each distinct proposition. I think we could get along better than we are doing by laying so many amendments upon the top of each other.

Mr. FOSTER. I would remark to the gentleman from Allen that the committee on apportionment were just waiting for the very thing the Convention is now doing. The committee would have decided upon the matter long ago in regard to the general proposition, only that they were waiting for the Convention to fix the number of Senators and Representatives.

Mr. COLFAX. Mr. President, is not this a motion to strike out the whole section?

Mr. PRESIDENT. It is.

Mr. COLFAX. Is it not in order first to perfect the section?

Mr. PRESIDENT. It is.

Mr. COLFAX. Then I move to strike out the first three lines of the section and insert:

"The Senate shall consist of thirty members and the House of Representatives of one hundred."

Mr. SMITH of Ripley. I should like to say a few words on this subject, and I shall be very



brief. I have not spoken yet upon this question.

**SEVERAL MEMBERS.** "To-morrow, to-morrow," and "adjourn, adjourn."

Pending the question on the amendment of Mr. Colfax—

The Convention adjourned.

FRIDAY, DEC. 6, 1850.

The Convention met, pursuant to adjournment.

Prayer by the Rev. Mr. LONG.

The journal of yesterday was read and approved.

Mr. HOGIN presented a petition from citizens of Grant county, in reference to the rights of colored persons.

The petition was read and referred to the select committee on that subject.

There being no reports from committees,

The Convention proceeded to the consideration of the

#### ORDERS OF THE DAY,

The first thing in order being the third, fourth, fifth, and seventh sections of report No. 11, being a report from the committee on the rights and privileges of the inhabitants of the State.

The PRESIDENT. Will the Convention take the vote upon these sections collectively or separately?

**SEVERAL VOICES.** "Severally."

The PRESIDENT put the question, Shall the vote upon these sections be taken separately? And it was decided in the negative.

The sections were then read by the Secretary.

The third section provides that no religious test shall be required as a qualification for any office of trust or profit, &c.

The fourth declares that all elections shall be free and equal.

The fifth prohibits a suspension of the laws except by authority of the Legislature.

The sixth has reference to the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure, &c.

The seventh relates to the right of the people to instruct their representatives, and to petition for redress of grievances.

The question being shall the sections pass,

The yeas and nays were taken under the rule, and resulted—yeas 120, nays 1—as follows:

**YEAS.**—Messrs. Alexander, Allen, Anthony, Bascom, Beard, Berry, Bicknell, Biddle, Blythe, Bourne, Bowers, Bright, Brookbank, Bryant, Butler, Carr, Chandler, Chapman, Chenoweth, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Colfax, Conduit, Cookerly, Crawford, Crumbacker, Davis of Madison, Davis of Parke,

Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, Edmonston, Farrow, Fisher, Foley, Foster, Garvin, Gibson, Gootee, Gordon, Graham of Miami, Haddon, Hall, Hamilton, Harbolt, Hardin, Helm, Helmer, Hendricks, Hogin, Holman, Hovey, Howe, Huff, Johnson, Jones, Kelso, Kent, Kendall of Wabash, Kendall of Warren, Kinley, Lockhart, Logan, Maguire, March, Mather, May, McClelland, McFarland, McLean, Miller of Fulton, Mooney, Moore, Morgan, Mowrer, Murray, Nave, Newman, Niles, Pepper of Ohio, Pepper of Crawford, Prather, Rariden, Read of Clark, Read of Monroe, Ristine, Ritchey, Schoonover, Shannon, Sherrod, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Stevenson, Tague, Tannehill, Thomas, Thornton, Todd, Trimble, Walpole, Watts, Wheeler, Wiley, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President—120.

**NAYS.**—Mr. Pettit—1.

So the sections were passed.

The first section of report No. 12, being the report from the committee on the legislative department, was then taken up on its third reading. It was read, as follows:

**SEC. —.** The Legislative authority of this State shall be vested in a General Assembly, which shall be designated "The General Assembly of the State of Indiana," and shall consist of a Senate and House of Representatives, and the enacting clause of every law shall be: "Be it enacted by the General Assembly of the State of Indiana."

The question then being, Shall the section pass?

Mr. BRIGHT. I move to dispense with the call of the yeas and nays.

The PRESIDENT. The question is upon the final passage of the section, and the yeas and nays are required to be taken by a rule of the House.

Mr. BRIGHT. I can see no necessity for taking the yeas and nays on every section. I move that the rules be suspended. [Cries of "no, no."] Very well, let the vote be taken.

The yeas and nays were taken with the following result—yeas 124, nays none:

**YEAS.**—Messrs. Alexander, Allen, Anthony, Badger, Bascom, Beard, Berry, Bicknell, Biddle, Blythe, Bourne, Bowers, Bright, Brookbank, Bryant, Butler, Carr, Chandler, Chapman, Chenoweth, Clark of Hamilton, Clark of Tippecanoe, Coats, Cole, Colfax, Conduit, Cookerly, Crawford, Crumbacker, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dobson, Dunn of Jefferson, Dunn of Perry, Duzan, Edmonston, Farrow, Fisher, Foley, Foster, Garvin, Gootee, Gordon, Graham of Miami, Haddon, Hall, Hamilton, Harbolt, Hardin, Helm, Helmer, Hendricks, Hitt, Hogin, Holman, Hovey, Howe, Huff, Johnson, Jones, Kent, Kendall of Wabash, Kendall of Warren, Kilgore, Kinley, Lockhart, Logan, Maguire, March, Mather,

May, McClelland, McFarland, McLean, Miller of Fulton, Miller of Gibson, Milroy, Mooney, Moore, Morgan, Mowrer, Murray, Nave, Newman, Niles, Pepper of Ohio, Pepper of Crawford, Pettit, Prather, Rariden, Read of Clark, Read of Monroe, Ristine, Ritchey, Robinson, Schoonover, Shannon, Sherrod, Sims, Smiley, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Stevenson, Tague, Tannehill, Thomas, Thornton, Todd, Trimby, Walpole, Watts, Wheeler, Wiley, Wolfe, Work, Wunderlich, Yocum, Zenor, and Mr. President—124.

The PRESIDENT laid before the Convention, a communication from the Secretary of the Convention, accompanied by a report made by a committee of the Ohio Constitutional Convention on the subject of apportionment of representatives.

The communication and the report having been read,

Mr. COOKERLY moved that they be laid on the table.

Mr. PETTIT. I hope the gentleman will withdraw that motion. It is no more than proper that this document should be referred to the committee on the legislative department.

SEVERAL DELEGATES. "Let it be referred to the committee on apportionment."

The question was taken on the motion of the gentleman from Vigo, to lay the communication on the table, and it was decided in the negative.

Mr. PETTIT. I move now that the report be referred to the committee on the Legislative department.

VOICES. "Committee on apportionment."

Mr. PETTIT. Very well, the committee on apportionment, then.

The question being taken the motion was agreed to, and the communication was accordingly referred to the committee on the apportionment of representation.

The Convention then resumed the consideration of the section that was pending at the time of the adjournment yesterday, namely: the section which provides that the Senate shall consist of not less than one-third, or more than one-half of the number of members of the House of Representatives, and the House of Representatives shall consist of not less than sixty, nor more than seventy-five members.

The question being on the amendment moved by the gentleman from St. Joseph (Mr. Colfax) so as to provide that the Senate shall consist of thirty, and the House of Representatives of one hundred, members—

Mr. DOBSON moved to amend the amendment by striking out thirty and inserting fifty, so as to make the Senate consist of fifty members.

Mr. DOBSON. I have a word to say, sir, about this matter. I feel some anxiety about it, and I wish simply to make a statement in regard to it. I am not disposed to place the

entire control of the State of Indiana in the hands of thirty men.

Mr. MOWRER (addressing the President). I believe, sir, the gentleman from Owen has made one speech already upon this subject.

Mr. DOBSON. Not upon this question, sir.

Mr. SMITH of Ripley. I will remark that I was entitled to the floor, having moved the adjournment yesterday, but I concluded as the Convention appeared to be in a good humor, that they would proceed to vote; I therefore declined availing myself of my privilege.

The PRESIDENT. The gentleman from Owen is entitled to the floor.

Mr. DOBSON. I will inform gentlemen that I have been in legislative bodies a number of years, and am not often out of order.

I wish, sir, to say this, that by reducing the Senate to so small a number you are placing it in the power of a few commercial points in this State to govern the Legislature. I am opposed to it; not because it will benefit the commercial portion of the State, for I do not come here to raise a prejudice against any avocation that men may be engaged in, but because I think it will have an injurious tendency upon the interests of the State generally. Now let us see how this thing will work. If we have only thirty Senators—and I call on gentlemen who represent the small counties to look to this thing seriously—where will they be elected. And it must be recollected that this is to operate for a long time. Laporte county and Michigan City will have one Senator. St. Joseph will have another. There are two from the confines of the State. Fort Wayne will have one; Logansport and Lafayette each one; Terre Haute, Vincennes, and Evansville will each have one. New Albany will have one. As to Jeffersonville I do not know; it is doubtful whether there will be one from Jeffersonville.

Mr. PRATHER. No, sir, I think not.

Mr. DOBSON. Madison will have one, no doubt, and old Wayne will have one.

Mr. RARIDEN. Yes, sir, two.

Mr. DOBSON. Connersville will have one. She is never behind. She has furnished as many of the distinguished men for Indiana as North Carolina has furnished to the national councils. Now how many have we got already? There are twelve, and yet Indianapolis is not provided for. She will have one undoubtedly. Now we come into the interior. Indianapolis and Greencastle, fifteen—half of your Senate. Now between Indianapolis and Madison there must be one, which will make a majority—they will pass such laws as suits their own interests and rejecting such as you may wish to protect your interests after they have been passed by the House.

They will control all the interests of the State in one branch of the Legislature.

I know it is the fashion to talk about the popular branch of the Legislature being of the most



importance—about their vigilance, and faithfulness, and patriotism, but there will be a corresponding number in the House of Representatives ready to sustain the same policy. So the commercial interest of the State will control one branch of the Legislature positively and the other negatively. I hope that gentlemen will consider seriously of this matter—that they will consider that we are going to have, in all probability, three banks in this State. They will of course be located at the commercial points, for they will be conducted, not by men who are the producers of wealth, who enrich the State by their labor, but by those who wish to live by other means than labor. They will be located at these commercial points. Your savings institutions will be there, your insurance offices, your railroad directors' offices, &c., &c. This will be the location for your banks, and the residence of your moneyed men generally. I do not use this language for the purpose of creating a prejudice against those commercial places. I am willing that they should have a voice in the government as well as other parts of the State. But I am not willing that they should have more than their due share of power and influence in the Legislature.

I hope the proposition will be so amended as to compromise this matter, and that it will be adopted, and to enable us to see who are its supporters and who are its opponents, I wish to call the yeas and nays upon it.

**Mr. ROBINSON.** The remarks that I am about to make, sir, will be directed more immediately to the amendment proposed by my colleague.

**The PRESIDENT.** The Chair would remark that that amendment is not now under consideration.

**Mr. ROBINSON.** But, sir, the subject of this debate has an immediate connection with it.

**The PRESIDENT.** The gentleman must confine his remarks to the question before the Convention.

**Mr. ROBINSON.** Well, sir, I am opposed to this amendment, and I hope it will not be adopted. I hope that the section will not be stricken out for the reason that the amendment that is proposed, placed us back in the same situation which we occupy under the old Constitution in point of numbers, that is, it gives us one hundred Representatives and fifty Senators. I believe that such a provision is unnecessary, and I hope it will not be adopted for the reason that if it fails the amendment offered by my colleague will then come up for the action of the Convention; and as the amendment of my colleague embraces, as I believe, the wishes of our constituents, I feel bound to give it my support.

I listened patiently during the discussion of yesterday, as I do to every discussion that takes place on this floor. And I listened to it with pleasure because I believe nothing is lost by

discussion. I am not one of those who believe that debate ought to be stifled. I have not heard a speech made on this floor by any gentleman from which I have not been able to gather something at least to assist me in coming to a conclusion in regard to the correctness of matters on which I have to record my vote.

My friend from Switzerland (Mr. Kelso) is in favor of the amendment as it now stands, on the ground that it will procure equal representation, by giving each county a representative. He thinks, that, unless each county in the State has a representative of its own, coming immediately from the bounds of their own immediate county, we could not anticipate or expect to have a fair representation. Now, if I believed that to be true—if I thought it to be true in practice—I am the last man that would go, for a moment, to take from the people the right to a full and clear representation of their rights in the legislative halls of this State. But, sir, when we look over the history of legislation, what do we find? I may be permitted to refer to a case of this kind, as an illustration of my views on that point. We are now represented in Congress by districts, as we shall have to be represented here, if the amendment of my colleague prevails. For I understand, that, if we reduce the number of representatives and senators, as proposed in his amendment, and according to the principle contained in the amendment, we shall be obliged to resort to districting the State. Now let me say that the Congressional district in which I live is composed of seven counties. It has been represented by my friend from Ripley, on my left, for several years. Divided as we have been in politics, I have never supported him; but I have not yet learned that any county in that district which he represented had any cause of complaint against his course in Congress, so far, at least, as partiality is concerned. If, then, a representative in Congress can represent seven counties and do them justice, and give entire satisfaction, will any gentleman tell me why it is—can any one assign a good reason, unless it grow out of selfish feelings—why one representative in the State Legislature may not do ample justice to as many counties as it would be necessary to include in one district. It might operate harshly upon the new counties for the time being; but at no distant day, if the population continues to increase as it has heretofore done, those counties will be so densely populated that they will be equal to the old counties. I think there is but one true rule of representation, and that is, that representation and taxation should go hand in hand; they have always been connected.

One word in regard to the policy and propriety of the measure. Sir, it is a question well settled in political economy, that we should economize in legislation as much as in any other business. It is a point well settled, that,

when you can accomplish the same ends with less expense, it is right to do so. It was correctly remarked yesterday by my colleague, when he offered his amendment, that we had proof in this Hall that a smaller number would do more business and do it better; and we have an exemplification on this floor of the truth of the assertions which he then made, and of the utility and correct principle contained in the amendment; and when I say this I do not speak with disrespect towards other gentlemen on this floor. I do not believe there is any gentleman here who has spoken at any time except when he ought to have spoken. There are high duties devolving upon us; and, sir, I do not believe that many speeches have been made out of place. But, sir, owing to the numbers composing this body, our session must be long and tedious; and I venture the assertion, that there is not a gentleman on this floor who will not concede the fact, that, if this body was composed of but fifty members, we should get through with the business sooner, and perhaps not more than one-third the expense—do it with more accuracy—with more harmony existing among the members of the Convention! And, sir, if you go to the Legislature, the same rule will hold good. It is not solely on account of the expense, however, that I go for the amendment reducing the number; but the first question is: Can we, if we adopt the amendment proposed by the gentleman from Decatur, instead of the amendment now under consideration, accomplish anything more than if we allow the number of representatives to continue as it is? I suppose there is no gentleman who doubts that the two branches of the General Assembly, one composed of seventy-five members, and the other of twenty-five, will not embody in themselves sufficient talent to legislate in the best possible manner for the interests of the people of the State—that they will be able to legislate as well as if the General Assembly were composed of one hundred and fifty members. I think there can be no doubt about it. And it is very certain that they can do the business more quickly. Instead of having a session of nine weeks, they will be able to transact the business in six weeks; and it will be done at perhaps one-half of the expense that it now costs. And with equal success, it occurs to me, that there can be no question that a representative, coming from two counties, or representing a number of counties, as they did in the early history of this State, can and will be able to represent those counties as faithfully and as much to their advantage, as if each member represented but one county. And, sir, let me here say, that the reduction of the number of members of the General Assembly will be a measure of economy in two points of view: it will be a saving of time and a saving of money; and, in my opinion, produce better legislation—more sound and wholesome laws for the people.

It seems to me, therefore, that the proposed reduction should be made. I believe that it is in accordance with the wishes of the people that the reduction should be made. I hope that the amendment now pending will be adopted, and that we shall not go back to that system which has, in times gone by, been productive of much evil. I hope that we shall adopt a system that will secure the rights that the people want, and secure it at half the present cost. It will be economy in a pecuniary sense, and at the same time it will furnish the people with a Legislature sound and wholesome, and provide them with laws for their government that will do them ample justice.

Sir, I am well aware that much has been said on this question, that the Convention is becoming impatient and anxious to close the discussion. But, sir, I will add that if this Convention, as I believe it will do, provides means to guard against so much local legislation in future, in so doing they will remove from the Halls of legislation all the difficulties growing out of local interests, and only leave for the action of the Legislature, matters of a general nature, affecting the public at large and which may safely be trusted in the hands of representatives coming from a district composed of two more counties.

Sir, reduce the number of Senators and Representatives as proposed by my colleague, provide some means by which we can get rid of local legislation, and leave your legislators to act on general subjects, then, sir, you may safely reduce the number, effect a saving to the people, and at the same time guard and protect their rights. Then, sir, you may adopt the wholesome reform proposed by the gentleman from Decatur. In conclusion, sir, I will say that the people want safe, prudent, and proper legislation, on the most economical and saving terms. Give them this, and with it you will find them pleased and content.

Mr. PEPPER of Crawford. This, sir, is not only a question of much importance to this body, but it is a question which affects the whole body politic of Indiana. For every county, large or small, has a direct interest in this question. So far as my own feelings are concerned, I should prefer that the whole matter be left to the Legislature to be adjusted from time to time, as the wants of the people indicated. But I am satisfied that this Convention will not agree with me in this matter, and that they will fix the representation of the State for the future; at least, they will fix the maximum of representatives for the future; believing this, sir, and representing a county that may be considered under the medium size, gentlemen may readily anticipate the position I shall take upon this subject.

It shall be my purpose to secure the greatest possible advantage to small counties, without



at the same time, trampling upon the rights of the large counties.

The legislator should labor to bring the representative principle as near to the people as possible, giving a fair and full expression of opinion, on all public matters, so that every county could feel that it had a direct voice in the law-making power. The principle that representation should be based upon population, upon numbers, is in the main correct.

Territory, alone, should not be represented; but, sir, you might, with great propriety, blend territory and population together without sacrificing any wholesome principle of government.

Whenever the Legislature conceives it of sufficient importance to lay out and organize a new county, there can be no good reason why that county, after its organization, should not be entitled to a representation in the General Assembly. It is doubtless upon this principle, that the Constitution of the United States gives to every State, however small, two Senators—that she may feel that in one branch of our national councils she has a voice equal to the largest State in the Confederacy.

Under the present order of things, the larger counties have the advantage over the small ones, making population *alone* the basis of representation.

I am aware, sir, that it is very difficult to perfect an apportionment law to suit all; the large counties hold the power in their own hands, and generally use it so as to get the best of the bargain. I do not particularly complain of this, as the representative considers it his duty to procure the best bargain he can for his constituents; and the small counties would undoubtedly do the same thing if they had the power.

Hence, Mr. President, arises the necessity for this Convention, in revising a Constitution, not only for the present, but perhaps for the next century, to defend the weak against the strong.

As every man is bound to contribute to the support of his government in proportion to his means, so should the laws alike in all things protect his rights; and the right to a just and equal representation is paramount to all others. He pays for the enjoyment of this privilege more cheerfully than for any other; it elevates the mind and develops the better feelings of his nature.

While we are, Mr. President, engaged in adjusting this matter, we should fix the *basis* of representation upon the most equitable terms, and place it beyond the power of partisan Legislatures or selfish politicians to change, and in the appropriate words of the poet, I would say to every gentleman—

"Let all the ends thou aim'st at be thy country's, thy God's, and Truth's."

I am opposed to increasing the aggregate number of Senators and Representatives beyond the present limit, leaving the number subject to be reduced, if it should be thought expedient; and from the feeling prevalent in this Convention, we may safely infer that a majority will decide the question accordingly. But, while the whole number of Senators and Representatives is kept up to one hundred and fifty, in order that small counties may be accommodated as far as possible with a representative in the popular branch of the Legislature, I am in favor of increasing the House to one hundred and eighteen, and reducing the Senate to thirty-two. There would then be one hundred and fifty, in all, as at present, and the bodies quite as well proportioned as they now are. Most of the New England States have small Senates, even smaller than the number I propose; while the number composing the popular branch is large. No where is legislation performed with less expense, with more dispatch—and no where are law and order more sacredly observed than in that land known for steady habits.

I shall also favor the single district system. With single districts, men of merit and intelligence, farmers and mechanics, who are well known in the counties where they reside, but are not known abroad, will stand a much better chance to be elected to office.

But, sir, make your districts large, composed of two or more counties, where no necessity of this kind exists, and the men who make politics a trade and devote their whole time and energies in seeking office and stirring up political or sectional strifes, will, in a vast majority of cases, fill the most important offices. This is a matter of considerable importance, and should be duly considered by this Convention.

Mr. NILES. I should not have risen to make a single remark but for the allusion by the gentleman from Owen, to the county of Laporte. It is true, sir, as suggested by him, that that is to be one of the wealthiest and most commercial counties in the State, and whatever ratio of representation may be determined upon, we can never be without an immediate representative in the General Assembly. But I can speak safely not only for myself but for every individual whom I in part represent, when I say that we have no local, sectional, or party schemes to subvert in this Hall. I stand ready to aid in incorporating into the Constitution, any wholesome measures of reform, but I am equally ready to oppose whatever tends to extremes one way or the other. And I believe that the section now under consideration proposing to reduce the number of members of the General Assembly, in the aggregate of both Houses, below one hundred and fifty, to be one of these extremes. By this section we should probably have the smallest legislative body in the world. I would not by

any means increase either House to a burthen-some or unwieldy number, but I would make the number sufficient that all parts of the State and even local interests and feelings should be represented—that if possible every citizen of the State should have some personal acquaintance in the General Assembly with whom he could confer. I would bring the Legislature as near to the people as practicable. It seems to me that a reasonable provision on the subject would be not more than one hundred for the House, and not exceeding fifty for the Senate, as they are at present constituted. Even if we leave the question open within those numbers, I have no idea that they will ever be reduced.

But it is said that a Senate of fifty members is too large. I look upon a Senate as performing the same uses precisely as a House of Representatives, not as a peculiarly conservative body representing aristocracy or wealth, but simply as a co-ordinate branch, operating as a check upon hasty legislation—not at all as analogous to the House of Lords in Great Britain, but merely as another House of Commons—the Senate and House being so arranged that each must review the action of the other, and aid in wholesome Legislation by its wisdom and councils. What serious objection then to permitting the Senate to consist of not more than fifty members? If a House of seventy members, as proposed by the committee, can progress with business, surely a Senate can with fifty. Experience may prove the wisdom of ultimately reducing the number of the Senate; but I see nothing indicating the propriety of doing it now. But it is said that a small body could dispatch business more rapidly and with less debate than a larger one. Now, sir, I have no such horror of the idea of my representatives earnestly debating any important question and freely interchanging opinions before they act upon it, as seems to possess certain gentlemen. But I do not believe that by diminishing numbers, you check the freedom of speech or debate. The Senate of the United States is, if possible, a more talkative body than the House of Representatives. Neither by diminishing the numbers below what they are at present will you secure more discriminating or judicious action. There is no body in which legislation is conducted with more care than in the British House of Commons, consisting of five or six hundred members.

A main argument in favor of the reduction is the saving of expense. Now, sir, I hold to all reasonable economy in the public expenditures as strenuously as any other man. But while listening to the remarks of gentlemen this morning upon this subject, I have made a calculation, reducing to dollars and cents the amount of the proposed saving—if, indeed, the word dollar can properly be used. In ten years from this time our population will probably reach a

million and an half. At fifty in the Senate and an hundred in the House, each Senator will then represent thirty thousand people. Suppose a session to last sixty days, and the mileage and per diem to amount to two hundred dollars for each Senator, how much do you think he would cost every one of his constituents? Why, sir, *two-thirds of one cent.* [A laugh.] And a Representative would cost his constituents twice as much—all this to be paid once in two years. But if, instead of counting the entire expense you only estimate the saving to each inhabitant by the proposed reduction, it comes down to a fraction so low that you may need to consult your arithmetics to find a fraction small enough to express it. Shall such a pitiful saving as this be made a hobby and be urged as a reason for reducing the Senate to an oligarchy, and removing the Legislature further from the people? I trust not.

Mr. DUNN of Jefferson. I have heretofore expressed my views on the propriety of reducing the number of members of both branches of the General Assembly, and have nothing further to say on that subject at the present time. If, however, we must have an aggregate number of one hundred and fifty members in the two Houses, the ratio between them, it appears to me, ought to be different from the one that now exists, and which the amendment under consideration provides shall be continued. Instead of the Senate consisting of half the number of members of the House of Representatives, it ought not, in my opinion, to consist of more than one-third of that number. By an examination of the Senatorial districts, as at present organized, it will be seen that twenty-five—the one-half—of those districts consist respectively of but one county. These twenty-five Senators as fully represent the local interests of their respective counties as their corresponding Representatives in the lower House. And in view of this fact, what difference is there in effect between the Senate and the House of Representatives, and how does the Senate operate as a wholesome check upon the action of the other House? But if we reduce the number of Senators, and enlarge their districts, so that no Senator may have the same constituency as any member of the lower House, we will give to the Senate a more conservative character than it can possibly have according to the present ratio. If a Senator's district consists of two or more counties, instead of consulting the interests of a single county, his duty will compel him to endeavor to subserve impartially the interests of all the counties in his district.

I must beg leave to allude briefly to an argument used by the gentleman from Owen, (Mr. Dobson,) against the reduction of the Senate. He has directed the attention of the Convention to the influence which certain cities in this State will have in the Senate if the number of



Senators is reduced. Now, sir, I trust that this Convention will sanction no mode of apportionment that is not based upon population, and that will not give to every voter in Indiana, whether he lives in a city or in the country, an equal voice and influence in the legislation of the State. The people must be represented in your Legislature, and not territory, and no man's rights must be subject either to increase or diminution by the circumstance of his place of residence. If, then, the localities referred to by the gentleman, contain a majority of the voters of the State, they have a right to control the legislation of the State, and there must be no discriminations against them to deprive them of that right. That gentleman has endeavored to produce the impression that the interests of the cities conflict with the interests of the agricultural portions of the State. He could not have fallen into a greater error. Our towns and cities are entirely dependent for their growth and prosperity upon the country, and their interests cannot be more directly advanced than by promoting the great agricultural interests of the State. That gentleman also seems to think that the influence of the cities will be exerted to maintain our banks and increase our banking facilities. Undoubtedly it will. But let me say to that gentleman, that no class of our citizens are so deeply interested in maintaining our banks and increasing our banking facilities, so far as the same can be done with safety, as the farmers, and that if he were this day to strike down all these facilities, the first and the loudest complaints he would hear for this loss would be from the farmers. They would feel the loss at once in the price of their produce. Traders might find employment in other pursuits, but the farmer must depend upon the products of the soil for the increase of his comfort and prosperity. If you deprive the traders engaged in the purchase of hogs, corn, wheat, and all the other products of the soil, of the means of procuring loans for the purchase of those articles, which loans they may pay by the sale of the same articles, you drive from the market a large proportion of the purchasers, and redeem in the same ratio the prices of the surplus products of the farmer. I know the question of banking does not properly belong to the subject under consideration, but it was brought into the discussion by the gentleman from Owen, and I have thought it necessary to say this much in reply to his remarks. I always regret, under any circumstances, to hear remarks that tend to excite the prejudices of the people of the country against our towns and cities. We are one people, and our interests are the same wherever we may live; and on the important question of the apportionment of senators and representatives we should not permit ourselves to be influenced by any jealousies or selfish purposes.

Mr. KELSO. I wish to submit a few re-

marks on this question for the consideration of the Convention, without attempting to take sides particularly with either one or the other of the two parties that appear to have been raised in regard to it—hoping that something may grow out of what is said amongst us that will lead to a compromise and a united vote on the question.

If, sir, we are to be governed by population, as the basis of representation, as remarked by the gentleman last upon the floor, (Mr. Dunn of Jefferson,) then I maintain it is our duty not only to provide suitable representation for the present amount of population in Indiana, but to look forward to the future, and make some provision for those who are to come after us, bearing in mind the increase of population. In that view of the case evidently, we ought to commence with the smallest possible number that would answer the purpose of representation at present, leaving with the Legislature the power to increase the representation as the population may increase hereafter in the State.

But, sir, as I regard each county of the State as a kind of independent corporate community, it seems to me it is no more than proper that each county should have a representative. If, then, it is agreed that each county shall have a representative, we must make the popular branch of the Legislature so much the larger, in order to give to each county a representative, or as nearly so as possible. Regarding the Senate as a mere conservative body—only created for the purpose of affording a wholesome check upon the popular branch of the Legislature, and perhaps upon the Executive—who, in return, hold a species of check upon both branches—it seems to me that that body should be decreased to the very smallest number adequate to the performance of the necessary duties involved, and that, too, with much greater propriety than to decrease the popular branch. I ask, then, would it not be better policy to commence with a Senate of say thirty-three, and a House of Representatives of one hundred members—with the power to increase the number, given to the Legislature—the limit being fixed at fifty members in the Senate and one hundred and twenty members in the House. If we can agree upon a compromise of this description, there will be nearly a representative to each county, with the exception of some two or three counties, and there will be some five or six, or perhaps ten counties, having two Representatives. I believe, sir, we ought to make this kind of a compromise, and that we ought to fix the rule of representation in the lower branch of the Legislature, so as nearly as possible to give one representative to each county. There are about ninety counties in the State, and the surplus of ten or more members can be apportioned among the larger and more populous counties. Then we can arrange the Senators in just proportion to the population.

I maintain, sir, that one Senator can represent, with propriety, two, three, four, and even five counties. Each Senator, sir, is a kind of conservative to operate upon the action of two, three, and four Representatives, as a kind of wholesome check to hasty and inconsiderate legislation. I am opposed to fixing the number of Representatives at one hundred, and the number of Senators, at fifty; because, if we do fix it at that ratio, we do not allow for the increase of population in future, for I contend that the representation should be apportioned with a view to the increase of population. As the increase of population in this State will probably be at the rate of ten thousand persons per year, at the end of the next twenty years the proper number of Representatives would be one hundred and twenty in the House, and sixty in the Senate; this, of course, would be more than we would want. It would make both branches larger than it would be desirable to have them. Provided we shall make the number of Representatives one hundred, and Senators fifty at this time, this apportionment is to last during the life of the Constitution we are framing. Would this be acting fairly to those who are to come after us? It would not be fair, sir, that a million of people in Indiana, now, should have the same representation that perhaps a million and a half of people, or two, or three millions would have, thirty or forty years hence.

**MR. DOBSON.** After we get through with apportioning our representation, we can attend to that.

**MR. KELSO.** Why not make the matter right at once? Do what we do right now, and once doing will be sufficient.

The gentleman from Owen, sir, seems to have an idea that it is the dollars and cents in the State that we are going to represent. Now, sir, that is a doctrine I cannot subscribe to.

**MR. DOBSON.** The gentleman from Switzerland has misunderstood me. It is the people, and not dollars and cents, I desire to have represented.

**MR. KELSO.** Well, sir, I understood the gentleman yesterday, to argue that wealth and not the people were to be represented. Now for his tar-bucket speech to-day.—He has contended, sir, that the people in the county of Owen did not like to be made tar-buckets of. If, by that remark, he alluded to the people who came from North Carolina and settled in his county, I can only say that it is manifest that they came from a very tarry country. [Laughter.]

The gentleman from Owen has located a list of districts, from which he thinks Senators will be elected, who will control the action of the Legislature. Now, sir, there is a necessity existing for about thirty Senators, and no more; and those Senators will be elected wherever the people choose to elect them. I do not admit

the truth of his assertion, sir, that the commercial interests of the community will seek to act injuriously towards the agricultural interests of the State. I assert that the agricultural portion of the people of Indiana, are as wide awake to their interests, and as competent to attend to them as the commercial part of the community are able to attend to their interests. They will attend to their interests as readily, as certainly, and as effectually. There is no danger, sir, by making Senatorial districts of two, three, or four counties in the State, of Senators being elected for those districts from among the commercial classes, representing, perhaps, banking interest. They will be elected from the country as readily as from cities. The fact is, sir, men who are disconnected with banks, will be elected more readily by the people, than those who are—or who are themselves bankers.

The gentleman further says, that we will be more liable to have men representing the monied portion of the State, because of the free system of banking. Sir, I say God forbid that we should adopt that system, for if we do every monied man in Indiana will become a banker, and we shall have the disastrous shin-plaster system of '19, '20, and '21, enacted over again in Indiana.

It does not follow, sir, that men representing the monied interests of the State will be elected as a matter of course. I undertake to say that men and not money will be represented, and that fifty thousand men in Indiana more competent than either the gentleman or myself to determine the matter, will affirm this principle.

My friend from Laporte, (Mr. Niles,) one of the most clear headed members we have, and whom I am always pleased to listen to, for I invariably learn something I esteem valuable whenever he addresses the Convention, has referred to the Parliament of Great Britain, composed of six hundred and fifty-eight members, as a regular body, and yet there cautious legislation prevailed. Now, sir, this body composed of six hundred and fifty-eight members hardly represents three times as many constituent, in point of fact. It represents the land-holders of Great Britain and no one else. It represents the land-holders who own the balance of the community there.

Here Mr. DICK expressed his dissent, and said he thought otherwise.

**MR. KELSO** continued:

The gentleman has lived there, and I think this a mistake, not because he knows it to be a mistake, but because his prejudices for the country he has lived in makes him call it a mistake.

I ask him, sir, what representation the interests of the mass of the people receive at the hand of Parliament? It is true they did legislate to protect their own farmers, on the payment of whose rents they were dependent for



means—in the passage of the corn laws—and this was caused by sheer necessity, as we had to send them food to keep them from starving, and not from the adoption of a course of policy that they could control. That body, sir, moves cautiously, because its members represent a particular portion of the community on whom they are dependent for place. They look to the land-holders for their seats, and that is the true cause of their cautious legislation.

Sir, a better example I can name, and that is, of the State of New York. With about three millions of inhabitants that State has a Senate composed of thirty-two members, and a House of Representatives composed of one hundred and twenty-eight members. I ask the gentleman from Laporte whether the legislation of the Parliament of Great Britain will compare with the legislation of New York? I undertake to say that the decisions of the court of King's Bench in England are in nowise superior to those delivered in that State during the last fifteen years, excepting, perhaps, two or three years of the last. I say there is no State in the Union—there is no country out of the Union—where there is more cautious and healthy legislation than in the State of New York, during the last fifteen years, coming up say to within about three years. I am not so sure about the last three years, since the people of that State have taken it into their heads to disarrange the old system of jurisprudence, and to abolish all the distinctions between law and equity. I am not satisfied that such a course has proved any advancement in their judicial system. I have my fears upon that score, I confess.

Mr. DOBSON (in his seat). How about free banking?

Mr. KELSO. As to free banking, I have only to ask gentlemen to look over the country and see the experiments that have been made in regard to banking in the different States—first one experiment has been tried and then another. How long is it since we had a United States Bank to hold the deposits of Government? Gen. Jackson, however, concluded to try an experiment with it, and he was certainly a clear-headed politician and a man of some judgment. He took the deposits from the vaults of that bank and put them in the State banks, though greatly as it has since proved to the people's disadvantage and loss. He made a mistake in that, for once.

State banks having failed to answer the purpose, other expedients have been tried, none of which have ever been found to be sound. I consider the State bank system the best we have ever had, although by no means perfect.

I would challenge any gentleman (if this was the appropriate occasion for arguing the question) to show a single instance where State banks have failed so effectually (with the single

exception of Illinois) to carry out the purpose designed in their organization, as in the other systems of banking that have been established. They then tried the system of safety-fund banking in New York, but this did not suit them, and they adopted the system of free banks. Finally, sir, they have amalgamated the system of safety-fund and free banking, and that is the system of banking now in use in that State; though I think, sir, that system should be done away with, for I consider it is exercising a control over the commerce of that State detrimental to its best interests. So much for free banking.

But, sir, the question before us is as to representation. How shall we manage that? The bank question will come up at the proper time, and have a day here among us, I have not a doubt. I have already stated my views at length upon this question of representation. I can only say, that if a proposition is presented by way of compromise fixing the number of Senators at thirty-three, and Representatives at one hundred, and giving to the Legislature discretion, as the population of the State increases, to augment that number—not beyond a certain limit, however, say forty Senators and one hundred and twenty Representatives—I will vote for it. I am for any measure that will insure a fair and equal representation in the two branches taken together. But I certainly insist on it that the small counties should have an equal share of representation with the larger counties, in at least one branch of the Legislature.

Mr. STEVENSON. Mr. President: The question before the Convention is one merely of numbers—it is, what shall be the number of the Senate and House of Representatives.

The question as to the basis of representation is not now before us. The evils complained of depends more upon an improper basis than upon what may be the number. The delegate from Owen (Mr. Dobson) says if you reduce the number of Representatives and Senators as proposed in the report from the committee now before you, you will give an undue influence to the large towns and cities, such as Madison, Indianapolis, Terre Haute, &c., and also to the large counties—Wayne, Putnam, Laporte, and some others. Now, sir, I hold that the relative influence of different districts may be affected by the basis of representation, but not by the number of the representative body. If property were made the basis of representation then the wealthy counties would undoubtedly have greatly the advantage; but if population should be, as I have no doubt it will be, made the basis of representation, the number that may constitute the Legislature, whether great or small, can have no injurious effect. Say the present number of the House be reduced (which is one hundred) so long as population shall be the base, the reduction would affect equally the

large and small counties, and leave the relative strength of large and small counties the same after a reduction that it was before ; so, if you increase, the population remains the same, so that there can be no advantage whatever to the large counties over the small ones.

Then, sir, if a less number than one hundred Representatives and fifty Senators can discharge the legislative duties of the State, it should be adopted. The State is greatly indebted, and the taxes of the State in a very few years will be full as much as the people can meet. In view of this state of things, sir, I think there should be a due regard to economy. But the gentleman from Laporte thinks the additional expense not worth consideration, it is so very small an amount to each tax payer. It is true the amount to each tax payer may be small, but the aggregate amount will be found large.

I would, as a matter of compromise, be willing to accept the following proposition : The Senate shall consist of twenty-five Senators and the House of Representatives of seventy-five Representatives. The Legislature may, after ten years, increase the number of Representatives to one hundred, and the Senate to not more than one-third the number of the House. This, as a matter of compromise, I should be willing to go for. The question of increase would then be left to the people after ten years, and if at that time an increase should be thought necessary, it can be properly provided for by the Legislature.

MR. NAVE. Yesterday, sir, the Convention attempted to settle this question by silent voting, but it was ascertained that we could not agree upon any proposition. It was found, upon last evening, therefore, that it had become necessary to debate this question ; and in debating it, sir, for one, I am not to be led away from the discharge of the duty which I was sent here to perform, by the cry that the smaller counties are to be overlooked as regards their representation in the Legislature, by the passage of some particular measure, and are to have no voice in the Legislature, or in making the laws of Indiana.

Let us examine this assertion for a moment. The smaller counties have been compared to tar-buckets, left on every stump in the road over which every farmer's cart may pass ; and thus it is said it is with the smaller counties, the large ones over-riding them by having a larger number of representatives in the Legislature. Let us see, sir, whether there can be any greater abuses occur under a reduced representation than has already occurred under the present system of one hundred Representatives and fifty Senators. The Legislature of Indiana has been controled in its action by a few important points in the State for the last ten years. No man can controvert this position. Look at the allowance made to a contractor on the pub-

lic work at Lafayette—at the claim of McGinley, and the Catholic church at Vincennes. Were not bills passed through the Legislature some years since, allowing these and other exorbitant claims, through the influence of men representing the principal commercial points in Indiana, and that, too, over the head of the Executive who vetoed them ? In view of these facts, sir, I ask whether the interests of the State have been secure under the administration of one hundred Representatives and fifty Senators ?

Sir, this is a representative country. It is a republic based on representation, and the people have, by a delegated power, transferred their sovereignty to a few. The people originally have the sovereignty in their hands, but in this democratic form of government the people have a right to transfer the exercise of that power to a certain number, and to determine the number to whom they shall delegate the power. Is it necessary, I would ask, that the people delegate this power to a greater number than is necessary to carry out their wishes and designs ? I say it is not necessary. Then the question presents itself, does it require one hundred and fifty men, comprising the two branches of the Legislature of Indiana, to carry out the wishes of the people ? I take the ground that the wishes of the people can be carried out by a less number of representatives.

Gentlemen say that the proposed reduction of representatives is a petty picayune proposition. How, sir ? This is a mere proposition to reduce the number of the representatives of the people, involving, of course, in that reduction, a less expenditure of the people's money. I take the ground, sir, that it is the wish of the people that the present number of representatives, in both branches of the Legislature, should be reduced.

Gentlemen tell us that there is no State in the confederacy that has reduced the number of their representatives as low as it is proposed by us now to reduce ours. Look, sir, at the State of New York, with a population of three millions, having only thirty-two senators and one hundred and twenty-eight representatives. Look, too, at Pennsylvania, having a representation that never can exceed seventy in the House, and one-third that number in the Senate. In Ohio, both branches of the Legislature are less than they are in Indiana. When we look, then, at the number of Senators in New York, Pennsylvania, and Ohio, we see that they are less in number than that proposed by the gentleman from Owen in this amendment. I find in the State of New York they have one hundred and twenty-eight representatives, and in the other two States the number of representatives is less than it is proposed to have in Indiana. I ask, Mr. President, in view of this, whether it is necessary that we should have the large number of representatives in the



House that it is proposed to have? If it be necessary that we should adopt the largest number that has been proposed, by which each county in the State shall be represented in the House, does it follow, as a matter of course, that we should have fifty senators for the purpose of representing the people in the higher branch of the Legislature? I think not, sir. While upon this subject, I would remark that I have found some very wholesome doctrine with regard to it in a Governor's Message, which I ask leave of the Convention to read. Ex-Governor Wallace, a man of considerable experience, and who has spoken his sentiments to the people of Indiana on this question, when he filled the Gubernatorial chair, the highest office in the gift of the people of Indiana, he, in referring, in a message, to the expenses which had been entailed upon the people of the State, growing out of the fact of misguided and improvident legislation, and of the ability of a small body to do business as legislators more in accordance with the wishes and interests of a free people, and, in the mean time, cheapen the Government of the same, said:

"That it would be in the power of the Legislature to greatly diminish thereafter the expenses of legislation. For, when you come to discharge the constitutional duty which devolves upon you at the present session, (1840,) of fixing the apportionment of senators and representatives for the next five years, a reduction of their number would greatly contribute to curtail the onerous expense of this branch of the Government, without jeopardizing, as I can see, any of the great interests of the State. Indeed, my experience teaches me that a House of Representatives consisting of seventy members, and a Senate of thirty, would transact more business in a less time, far better, and more to the satisfaction of the people, than can a House of a hundred members, and a Senate of fifty."

This was the doctrine of the Governor in 1840. And does not this message contain doctrines that should be considered and acted upon by this Convention, coming, as it does, from a man with the experience of Ex-Governor Wallace, at a time, too, when the State was involved in difficulty and debt, as she is at present. I adhere to this sound doctrine unto this day, and I trust the gentleman, whose opinion I just read, adheres still to the principles he formerly advocated.

Is it possible—I would ask if it is possible, that the people of Indiana are to be involved in a greater debt, when they are groaning already under a heavy taxation, entailed upon them by the mad legislation of the present large number of representatives? Are we to suffer the people of this State to have imposed upon them the unnecessary taxation involved in the largest number of representatives proposed, referred to in the message of the Gov-

ernor from which I have just read. No, sir. I am for retrenching the expenses of the State in every possible way. The reduction of the number of representatives will, of course, lead to a retrenchment; though aside from this consideration, I am for reducing the number, because the people can be as well represented by a less number of men, as they can by one hundred and fifty men.

It is said that Indianapolis, Madison, Lafayette, and other cities of large commercial interests, will hereafter control the legislation of the State, if the Senate is reduced in number. Now, sir, I do not concur in this view at all. I am not sure, sir, whether the free banking system that has been proposed will be adopted by the people of Indiana; but if it is adopted, I feel bold to say that those points where these banking interests concentrate, will not elect a representative to represent those interests, especially in this State.

Mark what I say, sir—if this system of free banking goes into operation—and these large cities are the points upon which they operate, and through whose representatives they expect to have their designs carried into effect—such representatives will never be elected. The sovereign people of Indiana will control these monopolies. I look upon it as a settled fact, that the farmers of the State will rise up in their might and prostrate everything that will militate against their interests, and take possession of the halls of legislation, and legislate for the true interests of the State, and the State will prosper under their administration.

Mr. WALLACE. The gentleman from Hendricks (Mr. Nave) has been pleased to refer to a recommendation which I made to the Legislature some years ago, at a time when the financial condition of the State was such as to induce them, if at any time they could be induced, to adopt a system of the most rigid economy. It will be recollected, however, that, notwithstanding the reduction of representation which I then recommended, and notwithstanding the overwhelming pecuniary embarrassments under which the State was then laboring—that recommendation was entirely disregarded.

The representatives of the people then, in despite of these embarrassments, saw fit, in effect, to say what I believe the people themselves will always say—that if there is any one burthen which they will more cheerfully shoulder than another, it is that which compels them to pay for representation. [Applause.] The proof on this point is conclusive; for here is a recommendation to a legislative body having ample power to carry it fully into effect—a recommendation pointing out the very mode by which a large amount of money could be saved to the State—backed by the most powerful inducements to adopt it; yet how was it received and treated? Instead of reducing the Senate to

thirty, and the House to sixty members, as recommended, they increased the Senate to fifty, and the House to one hundred—the numbers at which they have stood ever since. What lesson should this teach us? Surely nothing but what I have already asserted—that no matter what may be the pecuniary embarrassments or distresses of the people, they will nevertheless pay for representation cheerfully when they would scarce pay for anything else—that if they determine to economize, they will seek for it in some other departments—or by denying to themselves other advantages which they prize less.

The proposition, therefore, Mr. President, which I shall vote for, and which I hope will carry, is—that the Senate shall not consist of more than fifty members, and the House of not more than one hundred—leaving it to the people through their representatives in the Legislature if they desire it, at any time hereafter, to diminish these numbers. But, Mr. President, my word for it, notwithstanding all the arguments that may be presented in favor of reduction or economy, we will never see the people consent to reduce their Senators or Representatives below the present number of fifty and a hundred. Indeed, sir, judging from my experience of the past; having repeatedly seen these reducing propositions sustained by arguments equally as cogent as we have just heard in this Hall, presented and voted down, and the people acquiescing or approving these votes by re-electing those who gave them, I confess my fears are, that unless we fix a maximum number beyond which they cannot go—they would consent to increase rather than to diminish.

In this Convention, Mr. President, while we are speaking of the occurrences of the past, and of the action of the people's Representatives—it would perhaps be well enough for us to recollect that while charges of immature and injudicious legislation may be preferred by one political party against another, like charges may, with equal propriety, be retorted back upon the accuser. It is not, however, my design now to comment upon any of these charges; but I shall, on some future occasion, if an opportunity is afforded me, speak to them more at large. I shall do so, sir, because I have been repeatedly alluded to in this Hall as one of the great sinners of the by-gone time. I desire to defend not only my own past political conduct and action in regard to certain important measures, but also the conduct and action of some honored friends, who have passed away from these to other, and I hope, happier scenes—I desire to show that even in the midst of errors undesignedly committed we were prompted by laudable desires and the most patriotic motives. In looking back upon the past, I confess I can see many instances wherein I have erred; and of the reference of gentlemen to these blun-

ders I do not complain. It is right that they should do so. It is only by referring to the errors of the past, that we can avoid like errors in the future.

Mr. President, I can only say in conclusion, what I have before stated, that I shall vote to sustain the proposition limiting the Senate to fifty, and the House to one hundred members—giving to the people the power to diminish that number whenever they shall deem it necessary; and be assured, sir, whenever they shall so determine, their Representatives will come up here and faithfully reflect their will and pleasure on the subject. Let us, then, leave the reduction of representation to the decision of the people.

Mr. BARBOUR. I believe, Mr. President, that if we reduce the number of representatives to twenty-five in the Senate and seventy-five in the House it will be regarded by the people as one of the best reforms we have made. In the county of Vigo, sir, there are over three thousand voters, and I do not believe you will get fifty votes out of that number for a continuance of the present system of representation, viz.: fifty Senators and one hundred Representatives. I should like much to know the opinion of other delegates as to the wishes of the people on this subject. I am satisfied, sir, if this question were to be submitted directly to the people that there would be a large majority of them in favor of reduction. This question has long been agitated among the people, but no Legislature has as yet been elected with the special view of arranging it; but this body has been elected with a view to the settlement of this as of other important questions. The Legislature is a body that will never reduce representation; that reduction has to be made by a body of individuals who are not anxious to secure place here in future.

I heartily concur with the sentiment of the gentleman from Putnam (Mr. Stevenson) that the great interests of this State will be as faithfully attended to by twenty-five Senators and seventy-five Representatives as by a larger number. I ask those gentlemen who desire the largest number of representation to show us what particular interest of the State will be neglected if we have a smaller number of Representatives? I would ask gentlemen to show us if they can in what respect twenty-five Senators and seventy-five Representatives are not as competent to pass wise and wholesome laws and to represent the whole interests of the people of the State as fifty Senators and one hundred Representatives? Will there be any preference in legislation because one representative may live at the distance of ten miles from us instead of five miles? is that going to prevent him from legislating for the great interests of Indiana? I trust not, sir. I think not. I believe he will be as competent and as ready to



faithfully perform his duty as if we were his next door neighbors.

It should be recollected by the Convention that we are about to dispense, in a great measure, with special and local legislation, and when this is disposed of what will the Legislature have to do? They will have only to pass wise and wholesome laws for the protection of persons and property, and in the execution of those duties they will have the wisdom of every member of the body to assist in perfecting the law. Heretofore bad laws of a special or local character have been passed in this way. They have been introduced by one or two members, and out of courtesy, in many instances, to those members they have been adopted. But now when they are only to pass laws of a general character, which are to operate alike on every citizen of the State, the aggregate wisdom of the Legislature will be brought to bear on every measure presented, so that the laws will be matured in judgment, and we shall have in the end wise and wholesome laws. For my part, sir, I can see no interest that will be neglected because of a reduction in representation.

Let us take the proposition of the gentleman from Putnam, sir, providing for twenty-five Senators and seventy-five Representatives, and then, as he has said, at the end of ten years let the Legislature be elected with a direct reference to the opinion of the people upon the question of an increase or reduction of representation. We may insert in the Constitution an amendment providing that the question may be submitted to the people at the end of ten years, whether they do or do not desire to have the number of their Representatives augmented; and in accordance with their wishes the number of representatives can remain as they now stand or be increased or reduced.

I think I hazard nothing in saying that when the question of reduction or no reduction of the number of the legislative body is submitted to the people, they will give a vote in favor of reduction not to be misunderstood.

Sir, the State of New York has been referred to in the course of this debate. Now that State has only thirty-two Senators, and I recently conversed with an intelligent gentleman living in that State, remote from her large city, and asked him if the people of that State had experienced any inconvenience from the limited number of their Senators. He expressed himself in the negative; and yet, sir, in that State there are more large and flourishing cities than in any other State in the Union. I deny the assertion of the gentleman from Owen (Mr. Dobson) implicitly if not avowedly made that the commercial interests of the large cities and towns were antagonistical to the local interests of those living away from those points in the country. There may be sometimes a little prejudice between country and town, but it amounts to nothing; their real interests are

closely identified. If the country flourishes the towns and cities flourish. The growth of one is the necessary growth of the other; and if the town has any great influence it is in consequence of her votes—her population—and to that extent she ought to have influence in a government of equals.

Mr. CHANDLER. As I represent one of the small counties of the State, Mr. President, perhaps it will not be out of place for me to make few remarks upon this question.

Who is it, sir, that calls for a reduction of the Legislature? I desire to inquire into that. Is it not your large and populous counties that are calling for a reduction? With the exception of perhaps one or two counties, there is no disposition to increase the number of the Legislature.

It was observed by the gentleman from DeCATUR, (Mr. Robinson,) who is in favor of a reduction of representation, that we should take into consideration two things: representation and taxation—that they should go together. Now, sir, perhaps in these large and populous counties the tax may trouble them, but I have only to say that these small counties would be willing to share the tax with them—or at least the county I represent would be willing I think—if we can be represented. Gentlemen say that they do not care what the expense of holding this Convention is, provided we make a good Constitution—they want to make a good Constitution for the people, but at the same time when the subject of representation is brought up they are for retrenchment and reform. Economy is the great cry. I am willing, sir, to compromise. Just let these gentlemen who hail from the large counties, come forward half-way and we who come from the small counties will meet them. If they have more tax to pay for representation than they desire to pay, we are willing to pay a fair share of it, provided, we can be represented. The effect, sir, in my opinion, of reducing the representation, will be to strengthen the strong, and weaken the weak, entirely changing the relative positions the smaller counties have occupied hitherto in regard to the larger. When the election comes on, the stronger counties will invariably rule. I consider if this rule is carried out, the small county can only be looked upon as a kind of dependency—a tenant at will. We cannot say that the small counties are independent, because they have very little influence. The only privilege afforded them is that of choosing between the candidates put forth in the larger counties.

It is a common saying, sir, that no man can serve two masters; and this rule I consider true as applied to the representation of the two counties. For instance, my colleague (Mr. Read) represents the counties of Monroe and Brown; now can he serve both counties if they happen to get at variance? Suppose an oppo-

sition—a diversity of interest springs up between the two counties, can my colleague; for whom I entertain the highest respect, represent the interest of both counties upon a question the result of that division of feeling in which they are antagonistic in position to each other, when he has but one vote? He will most probably vote for the interest of the county in which he resides. Consequently, it is evident that when the weaker county has an interest at variance with the stronger county, they have no voice at all in the Legislature. As I remarked before, I have a very high respect for my colleague; but I must be allowed to defend the interests of my own county, especially when a subject like that of representation, in which it is so deeply interested, comes up for consideration. The present number of members in the Legislature, sir, were elected just as we were. That body has had opportunity hitherto, if the people had desired it, of reducing their number, yet they have not thought of changing it. When the population was not near so large as it now is, they preferred fixing the number of Representatives at one hundred and Senators at fifty. It seems to me, sir, a strange kind of reasoning that when the population is small its number of representatives should be greater than when it has nearly double its former population.

In my opinion, sir, there is not a provision proposed to be inserted in the new Constitution that will so dispose my county, and I think the other small counties of the State, to vote against the adoption of the new Constitution, as to provide therein that they shall be deprived of the right of making the laws by which they are governed. In my county the number of voters is seven hundred and seventy-four—say eight hundred—and if we adopt biennial sessions in the new Constitution, I think we will be entitled to one representative independently, every seven years, or one seventh part of our interests will be represented every year. Now, sir, if we could have a representative ever year or two, from our county and not be entirely disfranchised, we would much prefer it.

The gentleman from Decatur (Mr. Robinson) alluded to local interests, and said that by reducing the number of representatives so that they would represent one or more counties, that any local or one-sided representation of these interests would be destroyed. I understand that local laws apply to a few counties and general laws apply to all the counties. Now by having a representative for each county we can have a general representation; these local feelings, common to all counties, can be represented. There is another important fact: A person living in the county of Wayne has the opportunity of voting for four different men for representatives, but an individual living in Brown county can only vote for one representative. This I think should be equalized. If

there are large counties electing three or four representatives, let them be distributed into townships or districts for representative purposes.

Reference was made to the Legislature, about their members being improperly influenced in their votes and actions. I would ask if there is not less danger of one hundred and fifty men being bribed, than of one hundred men, allowing that that body is ruled by any improper influences, which I earnestly hope it is not. I ask, sir, if in representation we ought not to approximate to the people as nearly as may be, and this can be done by increasing the number of our representatives.

Mr. President, in the course of debate we often digress from one thing to another, and therefore I trust I will be pardoned if I, for a few moments, follow the example that has been set me.

Gentlemen have arisen in this Convention and made Union speeches, opposed a dismemberment of the Union, and said they knew nothing but the Union. Now, sir, this is the language of my county—it knows nothing but the Union. They have always been for the Union; they are now for the Union; they always will be for the Union. Allusion has been made to the wealth and numerical superiority of different counties, as if they were to be a criterion of attachment to the Union. In 1846 my county numbered four or five hundred able bodied men, able to bear arms, and we sent to Mexico one fourth of that number. I think patriotism and service in the battles of our country ought to be taken into consideration as much as wealth and money. I consider that by our works we evidence our attachment to the Union; and in addition to what I have stated in regard to the number of men that served in the Mexican war from our county, I would remark that a lady residing there has evidenced her love for the prosperity of the Union by presenting her husband, at one birth, with three fine strapping boys. [Laughter and applause.]

MR. READ of Monroe. MR. PRESIDENT, as some allusion has been made by my respected colleague (Mr. Chandler) to my own position on this question, I may be permitted to offer a word of explanation. I by no means complain of the allusion which he has made.

I have already stated on this floor, that for the very purpose of meeting the wishes and interest of the smaller counties, (and of this class is one of the counties which I represent,) I shall vote for one hundred as the number to compose the House of Representatives. This whole subject must be a matter of consultation and compromise. No single individual or county can carry such a subject.

I am satisfied that in a considerable number of counties a reduction of representation is desired. This I believe to be the universal senti-



ment in Monroe county, (which I also represent,) a county of about medium population.

Well, sir, let the House remain stationary, and let the Senate be reduced. This is the ground upon which we may all meet, and where all our views may be best harmonized.

Allusion has this morning been made to the danger of corporation and bank influence controlling or swaying a Senate composed of thirty or thirty-five members. It is, I believe a principle of human action, that where the number of actors is increased responsibility is divided. It may be so divided as to be scarcely felt. This is a danger in all numerous representative bodies.

With a small Senate, we have the principle of a high degree of direct personal responsibility. With a sufficiently numerous House, we have the representation of all the interests of the State. With the two combined we have the elements of safe and wise legislation.

If we look at the past history of our State, we shall find no remarkable capacity in a Legislature composed of even a hundred and fifty men, to resist the bank influence, which the gentleman from Owen thinks so necessary to guard against. When has the State Bank asked privileges of the Legislature which it has not obtained? Was it, when contrary to all sound principle of political economy, it asked the power to issue bills of a denomination less than five dollars? Was it when, as a special privilege to itself alone, it demanded a suspension of the stay laws for the collection of bank debts; laws, the policy of which I shall not discuss, but which were designed to protect the property of debtors at a period of great pecuniary distress. Why, sir, the various acts granting powers and privileges, asked by the bank, make a considerable book. I am not sure but a smaller body, in which a higher sense of responsibility would have rested upon each member, would have presented a more effective check to its demands.

But, sir, I am ready, at once, as I have before stated on this floor, to vote for a House of one hundred members, (and in this I understood that I was coming up to the full wishes of my colleague) if the question can be so divided as to enable me to give my vote in that way. This is one of the very subjects upon which of all others, there must be concession and compromise, and such I may claim, has been the spirit which I have manifested in the matter from first to last, and which I shall continue to manifest to its final adjustment.

Mr. WOLFE. I am in favor of a reduction in both branches of the Legislature, although I do not represent one of those large counties that have been so frequently alluded to. In looking over the list before me, I see that there are fifty-two counties that have over two thousand polls, and thirty-eight counties having under two thousand polls—and my county stands in

the list of thirty-eight. Yet, sir, I am for a reduction in both branches of the Legislature, and when I say that I believe that I am representing the wishes of my people.

I believe, sir, if we adopt a proposition providing, say for thirty senators and seventy-five or eighty Representatives, that it will meet with the hearty concurrence of the people. I am satisfied and I believe that every gentleman in this Convention must be satisfied that a smaller number in both branches of the Legislature than there is at present, will certainly expedite the business of that body. It will, of course, be of less expense. Gentlemen may say what they please in reference to dollars and cents—but I tell them that they come here for no other purpose than to introduce economy in the different departments of government. It cannot be disputed, sir, that the people would never have authorized the calling of this Convention, except on the score of economy. This Convention would not have been sitting here now, if it had not been supposed that it would seek to introduce a general system of economy in the administration of government as far as practicable. Let us carry out economy and then we will fulfil the wishes of the people and execute what they have sent us here to perform. Say that we do not get a representation but once in one or two years we shall not suffer from it, because if our laws are made general, as anticipated, and if those individuals who live in Marion, Wayne, Jefferson, and other large counties, can live under them, those of us who live in smaller counties can do so likewise. If the majority pass a law binding the minority, the minority will have rights and privileges under the same law. The majority cannot put a rule upon the minority that they themselves must not submit to. Then there is no hardship in this matter, as I can see.

Now, sir, I would have been willing, myself, if I thought it would not have had the effect of causing the people to reject the new Constitution, to have inserted a provision in it, providing that each county should have a representative. But I am satisfied, sir, that such a provision would endanger the Constitution. I know one thing, sir, that so far as combinations for the purpose of effecting certain objects are concerned, that having a representative from each county would have a great tendency to destroy them. I have seen in this Hall, sir, under the present system of representation, that there have been combinations made by the delegates from the large and popular counties that have proved very injurious to the people. Now that we are going into a system of only making general laws, I have not so much fear for the future that such combination will again be made. Let us then, proceed, and make a reduction in the representation.

Mr. TAYLOR. I have listened with great patience to the debate which this subject has

created, and, until the present moment, had not thought it my duty to participate in it. I shall, however, occupy the attention of the Convention a very few moments in briefly stating a few suggestions which have occurred to my mind during this discussion.

Mr. President, it does seem to me that the object of this Convention should be to fix upon such a number of Representatives in both branches of the Legislature, as will meet with the wants as well as the wishes of our constituents; then we should leave it to the Legislature, as it is most particularly within their province to make such provisions for districting and apportioning this standard number among the different counties of the State, as in their wisdom they may deem from time to time necessary.

I have been somewhat surprised that the gentleman from Monroe, (Mr. Read,) who hitherto has been a most unflinching opponent to all banks, and of all corporations that are created by the Legislature, to find him now an ardent supporter of a proposition which will provide for such a small number of senators, as would place that body perfectly in the power of the corporations of the State. I am not astonished that other gentlemen, who have not such a vehement hatred toward these corporations, should express themselves in favor of a reduction in the number of senators. But when I see a gentleman, who, in all his acts and speeches, on all occasions, professed himself their most inveterate antagonist, I confess I am at a loss to see why he is so strong an advocate for a reduction of the Senate to thirty members.

I ask gentlemen to remember the action of the State of Pennsylvania upon the subject of a United States Bank. Do they not recollect in the session of 1833-4, that, through the influence of the mammoth Bank of the United States, they took charge of the reins of government, and ruled its counsels so as to enable them to procure a re-charter in that State. This would not have been the case, sir, if that State had been represented as it should have been, by a number large enough to resist corrupting out-door influence. With a sufficient number of Representatives in that State, the supporters of that bank could not have overruled her State counsels, or by improper influences have obtained a majority in favor of its re-charter. It is a notorious fact, that bribery and corruption were the instruments of this bank to influence the will of the Legislature in the furtherance of their designs. The importunities of the friends of this corporation, and the overtures of assistance indirectly made, resulted in securing a re-charter of that institution. I take it upon me to say, sir, that if this Convention fixes the number of our senators at thirty, that it will be in the power of the corporations of this State to influence their action. For one, sir, I do not desire to have a Senate so small in number that it can be controlled by

political wire-workers, or any of those influences that continually prevail around the capital. Gentlemen may talk as they please, but if the number of senators is fixed at thirty, the out-door influence of friends, and the practice of log-rolling, will exert such a corrupting influence over their action, that it will subvert the end for which that body is created. It is a well-known fact, that the action of small bodies in regard to politics, religion, or any other subject with which men have anything to do, are often improperly influenced. The advocates of corporations, the agents of capitalists, will be here to cajole, to interest, or to influence members into favorable action in behalf of the corporations of the State. Many honest and well-meaning members who would oppose improper and corrupt overtures would be lead to assist in that action by false statements and sophistical reasoning.

I hope, sir, that the proposition of the gentleman from Owen (Mr. Dobson) will be adopted. The number he proposes, fifty in the Senate, and one hundred in the House, is small enough, for it is not probable that one hundred and fifty men will be so liable to be improperly influenced as a body composed of only two-thirds of that number.

There is something due, also, to the smaller counties of the State. I live in a large county, one that will compare with any other county in the State, in point of agriculture, commerce, and wealth. It lies on the borders of the great lakes of the North, having every facility afforded for trade and commercial pursuits. Then, too, it is one of those prairie counties where farmers accumulate wealth with less labor than the farmers of any other county of the State, and our tax book will show that that wealth is not inconsiderable. I have no fears, sir, but that we shall always be entitled to one representative, and have a part in making the laws under which we live. But, sir, there are counties inferior in size, wealth, and population, which have as much right to a representative in the Legislature to defend their interests, as we have. And it should be our duty while we provide for a representative of the interests of the larger counties of the State to see that the smaller and weaker counties are also properly represented. As this is the just and fair ground upon which we should act, I do not think this point needs further consideration at my hands.

But, sir, to revert again to the influence which corporations will exert upon a reduced representation. Do you suppose, sir, if the State Bank and her branches desire to have any privilege conferred upon them, will not come here and endeavor to carry out their designs? Certainly they will. And if you place only fifteen or sixteen men in the control of the action of the Senate these corporations will inevitably control and influence them through all time to come. But, sir, if you fix



the Senate at fifty members, and the House at one hundred, much less damage need be apprehended influencing so large a number of men to the promotion of their designs. I grant you, sir, that these corporations will come here with fair promises, and apparently honest propositions. They will not ask you to do what they think is wrong, but they will tell you it is for the best interest of the State that their measures should be adopted, and it may be that in some instances it would be to the interest of the State; nevertheless we should guard against all improper intervention. Men are selfish, and they are governed by self-interest, and as far as they can, in every practicable way, they will seek to advance those interests. Therefore it is that men will come here and work zealously, and apparently honestly, in forwarding the interest of these corporations.

Sir, I cannot but think that when we attempt to reduce our representation, we retrograde in political science. I have thrown out these remarks merely for the purpose of calling the attention of gentlemen to the fact that if both branches of the Legislature, and particularly the Senate, are reduced in number, that they are much more liable to be governed by improper extraneous influences, than if the present number was sustained.

Pending the question, on motion of Mr. SHERROD,

The Convention adjourned.

#### AFTERNOON SESSION.

The delegate from Shelby, Mr. JAMES ELIOT, *vice* Mr. J. VANBENTHUYSEN, deceased, took the oath and his seat.

The Convention then resumed the consideration of the amendment offered by Mr. DOBSON.

Mr. MRSCOM said that this was a question in which he felt deeply interested, and he desired to make one or two remarks before the vote was taken. The gentleman from Hendricks had referred to the States of New York and Ohio, to show that legislation was done in these States by comparatively small bodies of men, notwithstanding that in both of these States the population and the number of voters were vastly more numerous—especially in the State of New York, than it was ever likely to be in the State of Indiana. If gentlemen would look to the State of Ohio, where they had only seventy-two representatives, and thirty-six senators, they would find that instead of doing their business in six weeks or two months as was usually the case in Indiana, they sat from three to four months in the year. Now take seventy-two men, and let them sit from three to four months, and take a hundred men and let them sit for six weeks or two months, and what would be gained? What saving would be effected? If they examined into the matter they would find that the great State of New

York had sessions that last generally about four months in the year. The argument, therefore, that a small body of men would despatch business more speedily than a large one did not hold good so far as the experience of other States went, for there was no State in the Union with a body of men so small as that in the Legislature of Indiana, in which the business was executed with so much dispatch. Look at the Senate of the United States, and compare that body with the House of Representatives. What did experience teach there? Had they not during the last session of Congress spent nine whole months in debating one question? Where was the dispatch there? True they were a very dignified body, and could not be muzzled by the previous question. That was a rule fit only to be applied to the dolts of the Lower House. As has been remarked by one gentleman on that floor, whether the Senate was reduced in numbers or not, there would be no harm in reducing them in dignity; for he did not believe in this thing of a small body of men sitting in one end of the Capitol as a board of censors over the larger body at the other end. He had no notion of such an aristocracy sitting there as lords over the people. He contended that it was just as necessary to have a large body in the Senate as it was in the Lower House. There was no good reason that he was aware of why the Senate should be so small a body as some gentlemen proposed they should be. If there was any use in having a Senate at all why not have it a large body? The responsibility was the same; they had to pass the same laws that were passed in the other branch of the Legislature, and why set up these few men to control, and in many cases to render nugatory, the action of the larger body? He could not agree with the gentleman who had said that it was necessary to have a small body of men sitting in the other end of the Capitol to act with a kind of supervisory care over the House of Representatives. He did not believe that the people sent any man to that House over whom they thought it was necessary that the Senate should exercise a supervisory care.

Again, it was said that the Convention would abolish local legislation, and that there would not be that necessity for a large number of men that there was when the legislation was so much of a local character. Now, he took directly the opposite ground; for if legislation was to be general, he contended that such laws as were passed, required to be well digested; that the whole subjects involved in them should undergo a thorough and searching examination, and the operations of such laws be viewed in all their bearings, because every gentleman on that floor would admit that different sections of the State had different interests; and if there was a diversity of interests, it was necessary that the voice of the people should be heard from each section, so that these general laws should not

bear more heavily on one section than on another. He thought it was as necessary, and perhaps even more necessary to have a large body to pass general, than it was to pass local laws; for, when local laws were passed, they affected but a county or a town; but when general laws were passed, they affected the whole State. He conceived, then, that there was no reason whatever, in the argument that it was only necessary to have a small body to pass general laws. He thought that, in such an assertion, gentlemen could not be sincere, and he doubted much whether they would dare to attempt to carry out their proposition before the people. He did not argue thus because he came from a small county. On the contrary, his county was as large as any, and there was no danger that it would ever be without a representation, but because all experience showed that small bodies did not do business with near so much dispatch as large ones.

Again, it was said that one man could represent two counties as well as one. He did not believe this, for it would not unfrequently happen that a local question would arise, in which the interest of one county was directly the reverse of that of the other county, and a man representing two counties, in such case, could not vote so as to suit the interests of both; and he would naturally vote in favor of the interests of the county in which he resided. This rendered it more necessary that there should be one representative at least from every county.

MR. ALLEN. MR. PRESIDENT: I do not expect to detain the Convention but a few moments, nor would I say one word, but I think that it is due to myself, to place myself right before my constituents. My people are as much in favor of reform and economy, as any portion of this State; but, sir, if this amendment should be adopted, it will certainly take from one and perhaps from both of the counties, which I have the honor to represent, their representative in the popular branch of the Legislature. This, I am sure, they would not consent to under any circumstances. Each of the counties which I represent, is, under the present apportionment and number of representatives, entitled to one Representative in the lower branch of the Legislature; and if, by the action of this body, in the formation of the new Constitution, they should be deprived of that number of Representatives, I am sure that they would vote against the adoption of the new Constitution; and it would, to that extent, at least, endanger its adoption. I am, therefore, unwilling that the number of Representatives, in the popular branch of the Legislature, should be reduced below one hundred. As it regards the Senate, I am not so tenacious; still I believe that fifty is none too many. I believe in a full representation, for the fewer Representatives you have in the Legislature, the nearer you approximate to the one man power; so the greater the number in the

Legislature, the nearer you approach a democracy. I am not contending that there cannot be too great a number; there is, as I contend, a proper medium; and that is when all the different interests in the different departments of life are fully represented. It is idle to talk about one man representing a large district, where the interests of different portions of the same district are diverse and conflicting, which must necessarily be the case in many instances, when you reduce the number of Representatives in either house, and thereby enlarge the bounds of the districts. There is another difficulty arising from large districts, where county boundaries are observed. In some districts, there will be a large access of population, while others will fall far below the ratio; which tends to make representation unequal, and create dissatisfaction and discord. By making the representation more full, this difficulty is, to some extent, obviated, and representation more equal. There is another consideration which, it seems to me, should exert a great influence on this question, and that is the great increase of population which may be justly anticipated during the existence of the Constitution which we are about framing.

Sir, if we wish to keep the legislative branch of our government pure—if we expect to protect and foster all the great and growing interests of our State in all time to come, we must secure to all the different interests and departments of life, a full, equal, and faithful representation in the Legislative department of our State government. It is said by gentlemen that the Senate is intended to operate as a check upon the popular branch of the Legislature. But, sir, I can see no reason why a smaller body should be a greater check upon the popular branch of the Legislature, than a larger one—it seems to me that the reverse is true—that a smaller body would be much easier influenced than a larger one. Sir, is it not just as necessary that the people should be represented in the Senate, as in the Lower House? Should it not be so arranged that at least a portion of the Senate should come fresh from the people every year; thereby reflecting in that body, to some extent, the immediate will of the people? I am in favor of bringing representation as near home to the people as possible. Sir, suppose you reduce the Senate to the number of thirty, as is contemplated by the amendment, do you not give too great an importance to the office of Senator?—do you not place in the hands of sixteen men, which would be a majority, too much power? Is not this too small a number to control the legislation, and settle those important questions of interest, which will necessarily arise in this already great and growing State? Entertaining these views, I shall, of course, go against the amendment, and hope that it will not be adopted by the Convention.

MR. BADGER moved to lay the amendment of the gentleman from Owen, on the table; and



the yeas and nays being ordered and taken on the motion, resulted as follows:

**YEAS.**—Messrs. Badger, Barbour, Beard, Berry, Bourne, Bright, Butler, Coats, Colfax, Conduit, Cookerly, Crawford, Davis of Madison, Davis of Parke, Davis of Vermillion, Dick, Dunn of Jefferson, Dunn of Perry, Duzan, Farrow, Fisher, Foley, Foster, Gibson, Gordon, Haddon, Helm, Helmer, Hitt, Hovey, Huff, Johnson, Kelso, Kinley, Logan, March, Miller of Gibson, Morgan, Mowrer, Nave, Newman, Rariden, Read of Clark, Read of Monroe, Ristine, Robinson, Schoonover, Sherrod, Sims, Smiley, Stevenson, Tague, Tannehill, Thomas, Todd, Trimby, Walpole, Watts, Wolfe, Yocum, Zenor, and Mr. President—62.

**NAYS.**—Messrs. Alexander, Allen, Anthony, Bascom, Biddle, Blythe, Borden, Bowers, Bracken, Brookbank, Bryant, Carr, Chandler, Chapman, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Cole, Dobson, Edmonston, Elliott, Garvin, Gootee, Graham of Miami, Hall, Hamilton, Harbolt, Hardin, Hendricks, Hogin, Howe, Jones, Kent, Kendall of Wabash, Kendall of Warren, Maguire, May, McClelland, McFarland, McLean, Miller of Clinton, Miller of Fulton, Milroy, Mooney, Moore, Murray, Niles, Owen, Pepper of Ohio, Pepper of Crawford, Prather, Ritchey, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Taylor, Thornton, Wallace, Wheeler, Wiley, Work, and Wunderlich—64.

So the amendment to the amendment was not laid upon the table.

**THE PRESIDENT.** The question now is upon the amendment offered by the gentleman from Owen, (Mr. Dobson,) to the amendment of the gentleman from St. Joseph (Mr. Colfax). The original amendment is, that the Senate shall consist of thirty members and the House of Representative of one hundred. The amendment to the amendment is to strike out "thirty" and insert "fifty."

The question being taken by yeas and nays on the amendment to the amendment, the following was the result:

**YEAS.**—Messrs. Alexander, Allen, Anthony, Bascom, Bicknell, Biddle, Blythe, Borden, Bowers, Bracken, Brookbank, Bryant, Carr, Chandler, Chapman, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Cole, Dobson, Edmonston, Garvin, Gootee, Graham of Miami, Hamilton, Harbolt, Hardin, Hendricks, Hogin, Howe, Jones, Kent, Kendall of Wabash, Kendall of Warren, Maguire, May, McClelland, McFarland, Miller of Clinton, Miller of Fulton, Milroy, Mooney, Moore, Murray, Niles, Owen, Pepper of Ohio, Pepper of Crawford, Prather, Ritchey, Shannon, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Taylor, Thornton, Elliott, Wallace, Wheeler, Work, and Wunderlich—63.

**NAYS.**—Messrs. Badger, Barbour, Beard, Berry, Bourne, Bright, Butler, Coats, Colfax, Conduit, Cookerly, Crawford, Davis of Parke, Da-

vis of Vermillion, Dick, Dunn of Jefferson, Dunn of Perry, Duzan, Farrow, Fisher, Foley, Foster, Gibson, Gordon, Haddon, Hall, Helm, Helmer, Hitt, Hovey, Huff, Johnson, Kelso, Kinley, Logan, March, Mather, Miller of Gibson, Morgan, Mowrer, Nave, Newman, Rariden, Read of Clark, Read of Monroe, Ristine, Robinson, Schoonover, Sherrod, Sims, Smiley, Stevenson, Tague, Tannehill, Thomas, Todd, Trimby, Walpole, Watts, Wiley, Wolfe, Yocum, Zenor, and Mr. President—64.

So the amendment to the amendment was not adopted.

**MR. DAVIS of Madison.** Mr. President, I have reason to believe that several gentlemen voted under a misapprehension. I therefore move that the vote last taken be re-considered.

The yeas and nays were demanded and ordered on the motion to re-consider, and were taken with the following result:

**YEAS.**—Messrs. Alexander, Allen, Anthony, Bascom, Bicknell, Biddle, Blythe, Borden, Bowers, Bracken, Brookbank, Bryant, Carr, Chandler, Chapman, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Cole, Davis of Madison, Dobson, Dunn of Perry, Edmonston, Elliott, Garvin, Gootee, Graham of Miami, Hamilton, Harbolt, Hardin, Hendricks, Hogin, Howe, Jones, Kent, Kendall of Wabash, Kendall of Warren, Maguire, May, McClelland, McFarland, Miller of Clinton, Miller of Fulton, Milroy, Mooney, Moore, Morrison of Marion, Murray, Niles, Owen, Pepper of Ohio, Pepper of Crawford, Prather, Ritchey, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Taylor, Thornton, Wallace, Wheeler, Wiley, Work, and Wunderlich—66.

**NAYS.**—Messrs. Badger, Barbour, Beard, Berry, Bourne, Bright, Butler, Coats, Colfax, Conduit, Cookerly, Crawford, Davis of Parke, Davis of Vermillion, Dick, Dunn of Jefferson, Duzan, Farrow, Fisher, Foley, Foster, Gibson, Gordon, Haddon, Hall, Helm, Helmer, Hitt, Hovey, Johnson, Kelso, Kinley, Logan, March, Mather, McLean, Miller of Gibson, Morgan, Mowrer, Nave, Newman, Rariden, Read of Clark, Read of Monroe, Ristine, Robinson, Schoonover, Sherrod, Sims, Smiley, Stevenson, Tague, Tannehill, Thomas, Todd, Trimby, Walpole, Watts, Wolfe, Yocum, Zenor, and Mr. President—62.

So the motion to re-consider the vote was agreed to.

**MR. HOVEY.** I believe that the provision of the old Constitution in regard to this matter is better than any amendment that has yet been offered. The old Constitution provides that the Senate shall consist of not more than one-half nor less than one-third of the number of the House of Representatives; and that that House shall consist of not less than thirty-six nor more than one hundred members. Now, if we change this and adopt a new rule, the smaller counties or the larger ones will certainly object, and the Constitution which we may frame

will be in great danger of being rejected by the people in consequence of such action. If we reduce the number the small counties will object; and if you increase the number the large counties will say, "you are putting upon us an unnecessary burden of expense." But let it remain as it is, agreeably to the old Constitution, and I believe that the people will be satisfied. I have drawn up an amendment which I will offer in its proper place. It is as follows:

"The Senate shall consist of not less than one-third nor more than one-half of the number of the House of Representatives, and the House of Representatives shall consist of not less than thirty-six nor more than one hundred members, to be chosen by the qualified electors of their respective counties, or of the districts into which the State may from time to time be divided."

I hope that the amendment now before the Convention will be voted down, and the provisions of the old Constitution be adopted. The General Assembly can then reduce the number of Senators or Representatives to suit the tastes of the people, whenever they may demand it.

Mr. SMITH of Ripley. The identical question involved in the amendment of the gentleman from Posey, is pending in the motion of the gentleman from Jennings to strike out the whole section.

Mr. HOVEY. No, sir. The motion of the gentleman from Jennings is merely to strike out the section. He offers nothing as a substitute.

Loud cries of "question," "question."

Mr. WOLFE. Would it be in order now to say a few words?

Cries of "no, no," and "question, question, question," and "hear him, hear him."

The question was then taken on the amendment offered by Mr. Dobson, and the yeas and nays being ordered and taken resulted as follows:

YEAS.—Messrs. Alexander, Allen, Anthony, Bascom, Bicknell, Biddle, Blythe, Borden, Bow-ers, Bracken, Brookbank, Bryant, Carr, Chandler, Chapman, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Cole, Davis of Madison, Dobson, Edmonston, Garvin, Gootee, Graham of Miami, Hamilton, Harbolt, Hardin, Hendricks, Hogin, Howe, Jones, Kent, Kendall of Wabash, Kendall of Warren, Lockhart, Maguire, May, McClelland, McFarland, Miller of Clinton, Miller of Fulton, Milroy, Mooney, Moore, Morrison of Marion, Murray, Niles, Owen, Pepper of Ohio, Pepper of Crawford, Prather, Ritchey, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Taylor, Thornton, Elliott, Wallace, Wheeler, Wiley, Work, and Wunderlich—66.

NAYS.—Messrs. Badger, Barbour, Beard, Berry, Bourne, Bright, Butler, Coats, Colfax, Conduit, Cookerly, Crawford, Davis of Parke, Davis of Vermillion, Dick, Dunn of Jefferson,

Dunn of Perry, Duzan, Farrow, Fisher, Foley, Foster, Gibson, Gordon, Haddon, Hall, Helm, Helmer, Hitt, Hovey, Huff, Johnson, Kelso, Kinley, Logan, March, Mather, McLean, Miller of Gibson, Morgan, Mowrer, Nave, Newman, Rariden, Read of Clark, Read of Monroe, Ristine, Robinson, Schoonover, Sherrod, Sims, Smiley, Stevenson, Tague, Tannehill, Thomas, Todd, Trimby, Walpole, Watts, Wolfe, Yocum, Zenor, and Mr. President—64.

The PRESIDENT. The question now is on adopting the amendment as amended, which is, that the Senate shall consist of fifty members and the House of Representatives of one hundred.

Mr. MILLER of Gibson. I move to lay the amendment on the table.

SEVERAL MEMBERS. "No, no, no," and "vote, vote."

Mr. MILLER. Then I will withdraw the motion.

Mr. KELSO. And I renew it. I move to lay the amendment on the table.

The yeas and nays were ordered and taken on the motion to lay the amendment on the table, and there were yeas 62, nays 69—as follows:

YEAS.—Messrs. Badger, Barbour, Beard, Berry, Bourne, Bright, Butler, Coats, Conduit, Cookerly, Crawford, Davis of Parke, Davis of Vermillion, Dick, Dunn of Jefferson, Dunn of Perry, &c., Duzan, Farrow, Fisher, Foley, Foster, Gibson, Gordon, Haddon, Hall, Helm, Helmer, Hitt, Hovey, Huff, Johnson, Kelso, Kinley, Logan, March, McLean, Miller of Gibson, Morgan, Mowrer, Nave, Newman, Rariden, Read of Clark, Read of Monroe, Ristine, Robinson, Schoonover, Sherrod, Sims, Smiley, Stevenson, Tague, Tannehill, Thomas, Todd, Trimby, Walpole, Watts, Wolfe, Yocum, and Mr. President—62.

NAYS.—Messrs. Alexander, Allen, Anthony, Bascom, Bicknell, Biddle, Blythe, Borden, Bow-ers, Bracken, Brookbank, Bryant, Carr, Chapman, Chandler, Chenowith, Clark of Hamilton, Clark of Tippecanoe, Cole, Colfax, Davis of Madison, Dobson, Edmonston, Elliott, Garvin, Graham of Miami, Hamilton, Harbolt, Hardin, Hendricks, Hogin, Howe, Jones, Kent, Kendall of Wabash, Kendall of Warren, Lockhart, Maguire, Mather, May, McClelland, McFarland, Miller of Clinton, Miller of Fulton, Milroy, Mooney, Moore, Morrison of Marion, Murray, Niles, Owen, Pepper of Ohio, Pepper of Crawford, Prather, Ritchey, Snook, Smith of Ripley, Smith of Scott, Spann, Steele, Taylor, Thornton, Wallace, Wheeler, Wiley, Work, Wunderlich, and Zenor—69.

So the motion to lay the amendment on the table was rejected.

Mr. HENDRICKS. I move to amend the section by inserting before the words "fifty" and "one hundred," the words "not to exceed."





## DATE DUE

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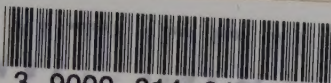


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